

ARDS AND NORTH DOWN BOROUGH COUNCIL

POLICY COVER SHEET

Policy Title	Policy on dealing with alleged and asserted Public Rights of Way
Policy/File Reference	
Version	1.0
Policy Summary	<p>The duty to assert public rights of way is the basis on which a council can establish, and make known to farmers, landowners and the public, what public rights of way exist, where they run and how they can legally be used.</p> <p>Article 3 of the Access to the countryside (NI) Order 1983 places each district Council under a duty to assert public rights of way, and to compile and preserve maps of public rights of way in its district.</p>
Responsible Officer(s)	Director of Organisational Development and Administration
Date of Equality Screening	
Date of consultation with Consultative Panel (external policies)	
Date of consultation with Unions and Staff Forum (internal policies)	
Date of Council approval	
Implementation date	
Appendices attached	<ul style="list-style-type: none">• Procedure for Asserting and Recording Public Rights of Way• Public Right of Way Evidence Form• Preliminary Inspection Report for alleged Right of Way
Next review date	

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Revision History:

Version	Changes made by	Date	Reason for Change
1.0	Amanda Martin, Head of Administration	11 May 2017	Policy established

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Policy on dealing with alleged and asserted Public Rights of Way

Introduction The duty to assert public rights of way is the basis on which a council can establish, and make known to farmers, landowners and the public, what public rights of way exist, where they run and how they can legally be used.

Article 3 of the Access to the countryside (NI) Order 1983 places each district Council under a duty to assert public rights of way, and to compile and preserve maps of public rights of way in its district.

Policy Statement Following investigation, Ards and North Down Borough Council (the Council) will assert applicable public rights of way and priority will be given to those routes which offer most benefit to users. When determining priority, the Council may consider the length of the route, scenic attractiveness, links to sites of tourist interest, level of usage, potential inclusion within a network of paths or long distance route. Shared use will also be considered offering access routes for people with disabilities.

Definitions **Assert:** is to claim there exists, in practice, and formally recognising a public right of way by a resolution of the Council and, where necessary, asking assertion vindicated in a Court of Law to 'vindicate' (or confirm) the assertion.

Public right of way:

- Under the NIEA's Guidance on Public Rights of Way and Access to the Countryside, CONNECTS TWO PUBLIC PLACES or places to which the public regularly and legitimately resort e.g. one main road to another main road.
 - is a path which any members of the public may use as a right; not a privilege granted by the landowner, ie. They have not been given permission to use it may be limited to certain types of user, for example walkers only or walkers and horse riders
 - exists forever and remains in existence until the path is extinguished or diverted by legal process
 - must be respected by the occupier and landowner who should do nothing to obstruct the right of way or prevent or intimidate anyone from exercising their right of passage
 - does not include a road or any other way which is maintained by a government department.
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Policy on dealing with alleged and asserted Public Rights of Way, Continued

Definitions,
continued

Types of public rights of way:

There are three different types of public rights of way. These may be marked along their route with signposts.

- footpath – open to walkers only;
- bridleway – open to walkers and horse-riders ;
- carriageway – open to walkers, cyclists, horse-riders, horse-drawn vehicles and motor vehicles

Maintenance: is defined as, but not limited to, repairing, cleaning, litter picking, trimming hedges or cutting grass.

Roles and Responsibilities

The Council has a duty to:

- assert, protect and keep open and free from obstruction any public right of way
- compile and preserve maps of the rights of way in its area
- signpost asserted paths, where necessary, to help anyone who does not know the area
- contribute at least a quarter of the cost of maintaining stiles and gates

At the Council's discretion it has the power to:

- maintain any asserted public right of way
- establish new rights of way by agreement
- make orders to divert, extinguish or create paths, and confirm unopposed orders
- make and confirm orders temporarily to divert or close any public right of way
- authorise the erection of new stiles and gates
- take legal proceedings
- in some circumstances, act in default of the landowner and recover its costs

Landowners duties and powers: If you have an asserted public right of way on your land; you have certain responsibilities for that right of way, and powers that you are eligible to use.

Landowners have a duty to:

- maintain stiles and gates so they are safe and convenient to use
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Roles and Responsibilities, continued

- not permit a bull to be at large in a field where there is a public right of way, except a bull that is under 11 months old, or is not a recognised dairy breed and is with cows or heifers
- not put up a notice likely to deter use of a right of way

Landowners have a right to:

- put up, with the council's permission, additional stiles and gates where they are needed to restrict animals
- claim back a quarter of the costs of repairs to existing stiles and gates (from the council)
- plough a right of way across agricultural land (but not along the sides of a field) providing (a) it is necessary, (b) the council is notified within 7 days, and (c) the surface is restored, normally within 14 days
- apply for the temporary diversion or closure of a path for up to 3 months (from the council)

The general public's rights

The general public has a right to:

- be made aware of any orders that are made permanently to divert, extinguish or create an asserted public right of way or to give a right of access to open country object to such orders and be heard by a person appointed by the Department
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Assertion programme

The Council will put in place a programme of assertions that will help to ensure farmers and landowners are aware of what legal rights, if any, the public have over their land and take this into account when managing the land and know their responsibilities to avoid possible legal action by the Council or path user.

The assertion programme will also help members of the public know where they may lawfully walk, ride and cycle, and where they may not.

The programme will enable the Council to meet its statutory duty and keep the path open and free from obstruction or encroachment. Where public rights of way do not exist, the programme may serve to support landowners in correctly asking trespassers to leave his property.

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Approach to assertions

Assertions should be carried out based on agreement with the landowners whenever it is possible to do so. The Council will take into consideration any concerns the landowners may have.

Determining the existence of a Public Right of Way

The existence of a public right of way and its status as either a footpath, bridleway or carriageway may already be known to the landowner. If the owner is willing to sign a simple statement, the assertion can proceed on that basis alone. If the landowner is unwilling to consider signing a statement, the Council may apply the following test or produce evidence to prove that a public right of way exists.

The only test the Council can apply is “does a right of way – i.e. a right of passage – already exist over this line?” If it does, then the Council has a duty to assert the path. Discretionary powers may be used to divert the path onto a more suitable line if necessary.

If there is insufficient evidence and the test cannot be satisfied, then the Council has no power to make an assertion. If this is the case, then the Council may consider establishing a new public right of way by agreement or order or endeavour to agree a permissive path.

Sources of evidence

Evidence to support the existence of a Public Right of Way can come from witness statements, historical or other documentary sources, or a combination of the two.

The strongest evidence is normally that given by witnesses who have used the path themselves or known of its use from their own personal experience or persons who can testify to a continuous period of use for over 20 years.

Documentary evidence can come from a wide range of sources, for example plans, maps, guidebooks or records of proceeding, title deeds or similar documents.

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How we will make an assertion

Making an assertion will be carried out in line with the Procedure for Asserting and Recording Public Rights of Way. See Appendix 1.

Outcomes of the Assertion Process

If ...	Then ...
the evidence shows both that a public right of way does exist and the nature of the public's rights.	the Council has a statutory duty to make the assertion. It should be recommended to do so and, if necessary seek to have the assertion vindicated in a Court of Law.
the evidence shows that a public right of way does exist, but there is remaining uncertainty over the nature of the public's rights.	<p>if it seems likely that the uncertainty can be resolved by further investigations the assertion should be deferred while they are carried out.</p> <p>If the uncertainty is unlikely to be resolved, the path should be asserted as either a footpath or bridleway (as appropriate)</p> <p>In doing so, the Council should make it clear that this is without prejudice to the further assertion of any "higher" rights which subsequently may be shown to exist</p>

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Outcomes of the Assertion Process,
continued

If ...	Then ...
the evidence shows that a public right of way does not exist.	a recommendation should be made asking the Council to note that the investigation has been carried out and to record the outcome. The landowners concerned and any other people involved in the matter should also be formally notified, and the path removed from the map of “alleged public rights of way” If the Council nonetheless believes that public access over the land is essential or highly desirable (eg to fulfil recreation or tourism objectives) the only options open to it are either to seek to establish a PROW by agreement or order, or to endeavour to negotiate a permissive path agreement.
the evidence is inconclusive	if it is likely that the uncertainty can be resolved by further investigations or negotiations (by identifying additional witness and/or winning the cooperation of the owners) then the matter should continue to be actively pursued. Where that is not the case the Council may decide to hold the matter in abeyance until further information comes to light. However, public use of the path will then be dependent on the attitude of the landowner and the Council will have no formal powers to take action. Otherwise the options are those set out above; of establishing a ‘new’ public right of way by agreement or order or negotiating a permissive path – although it is important to note that neither of these courses would affect any existing rights which might be shown to exist should further evidence come to light.

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Keeping Public Rights of Way free from obstruction

The Council will ensure that all asserted Public Rights of Way remain free from obstructions. If the Council has to remove any obstructions to access, it may seek to recoup the costs of doing so from the landowner.

Maintaining Public Rights of Way

The Council has no obligation to maintain a Public Right of Way and to do so could result in it taking on the liability for land/property over which it has neither ownership nor control.

The Council will therefore **NOT** maintain any Public Right of Way.

Relevant legislation

Access to the countryside (NI) Order 1983 – Article 3
