



Subject:	Public Rights of Way at Old Coach Road
Date:	Tuesday 06 th August 2024
Reporting Officer:	David Sales, Strategic Director, City & Neighbourhood Services
Contact Officer:	Stephen Leonard, Operational Director, City & Neighbourhood Services

Restricted Reports

Is this report restricted? Yes No

Please indicate the description, as listed in Schedule 6, of the exempt information by virtue of which the council has deemed this report restricted.

Insert number

1. Information relating to any individual.
2. Information likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the council holding that information)
4. Information in connection with any labour relations matter
5. Information in relation to which a claim to legal professional privilege could be maintained.
6. Information showing that the council proposes to (a) to give a notice imposing restrictions on a person; or (b) to make an order or direction.
7. Information on any action in relation to the prevention, investigation or prosecution of crime

If Yes, when will the report become unrestricted?

After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Sometime in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in

Is the decision eligible for Call-in? Yes No

1.0	Purpose of Report/Summary of Main Issues
1.1	<p>Under the Article 3 of the Access to the Countryside Order (NI) 1983 all Local Councils have a duty to</p> <p><i>...assert, protect and keep open and free from obstruction or encroachment any Public Right of Way.</i></p>
1.2	<p>Investigation into the Old Coach Road began in 1998. In 2023 complaints were made to the Council regarding the condition of the path. As the path was not an asserted Public Right of Way (PRoW) the Council had no power to take any further action. To ascertain if a PRoW exists the Council opened a neighbourhood enquiry to gather evidence. 118 responses were received, 113 indicated that they believed a PRoW did exist, 1 stated that a PRoW did not exist but did not provide a reason for this.</p>
2.0	Recommendation
2.1	<p>Members are asked to assert three Public Rights of Way on foot from:</p> <ol style="list-style-type: none"> 1. Upper Malone Road to Old Coach Road 2. Old Coach Road to Malone Heights 3. Old Coach Road to Malone Playing Fields
3.0	Main Report
3.1	<p><u>Key Issues</u></p> <p>The Access to the Countryside (Northern Ireland) Order 1983 places a duty on District Councils to ‘assert, protect and keep open and free from obstruction or encroachment any public right of way’.</p> <p>In 1998 an investigation was begun into the nature of paths which run along remnants of the Old Coach Road. This road carried traffic from Belfast to Dublin but was abandoned when the road was diverted in the 1800s. Remnants of the road continued to be used and subsequently a number of recreational facilities were developed on the land including Malone Playing Fields.</p> <p>Legal Services have been consulted and have confirmed that the path appears to meet the common law tests for establishment of a public right of way. The public’s right would terminate at the entrance to Malone Playing Fields which meet the criteria of being a place to which the public can legitimately resort. The public’s right also extends to other sections of the Old Coach Road namely Malone Heights and a further section from Old Coach Road to Upper Malone Road. It is therefore recommended that the Council assert these Public Rights of Way as required by its duty under the Access to the Countryside Order.</p> <p>For a Public Right of Way to exist at Common Law there are two essential elements,</p> <ol style="list-style-type: none"> a) Dedication by the owner of the soil b) Acceptance of the Right of Way by the public <p>Dedication by the Landowner can be either express or presumed. The vast majority of cases will turn on presumed dedication by the Landowner, as only very rarely will a Landowner expressly dedicate his lands as a Public Right of Way.</p> <p>The following evidence shows presumed dedication by the landowner;</p>

	<ul style="list-style-type: none"> a) Continued use of the path for a number of years. b) The routes in question have been used 'as of right' by the general public. c) The public's use of the path was open has continued during the past 26 years when the case was first opened and for a continued period previous to that. Prior to this the public's use of the path was such that the landowner knew or should have known about it, did nothing to stop it. Malone Playing Fields have a kissing gate leaving access open at all times. d) The use continued for a sufficient period to imply the owner intended to dedicate Public Rights of Way. e) The routes connects a number of public places or places to which the public regularly resort f) That use has followed a more or less consistent line. <p>Given the above assessment, members are asked to assert the three noted routes in the vicinity of the Old Coach Road as Public Rights of Way on foot.</p> <p>3.2 <u>Financial and Resource Implications</u></p> <p>There are no known financial implications at this time. However, the Council does have a discretionary power to maintain public rights of way when a landowner cannot be traced.</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>There are no Equality or Good Relations Implications.</p>
4.0	Appendices - Documents Attached
	Map of the area showing the three public rights of way to be asserted.