



Subject:	Public Right of Way at Floral Park
Date:	6 th December 2022
Reporting Officer:	David Sales, Director of Neighbourhood Services
Contact Officer:	Cate Taggart, Neighbourhood Services Manage Duane Fitzsimons, Outdoor Recreation & Education Officer

Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issue
1.1	Under the Article 3 of the Access to the Countryside Order (NI) 1983 all Local Councils have a duty to <i>...assert, protect and keep open and free from obstruction or encroachment any Public Right of Way.</i>
1.2	Application LA04/2021/0743/F received by Planning proposes to divert a public right of way from Floral Park to the Antrim Road. This route was investigated by Council in 2005 and was deemed to be a public right of way. However, at that time the proposed development

	<p>did not proceed, and the assertion of the route did not take place. The Council have written to DAERA and been advised that the route can only be diverted to facilitate development after it has been asserted. Legal Services have been contacted and have advised that the route can be asserted using historic information.</p>
2.0	Recommendations
2.1	<p>The Committee is asked to:</p> <ul style="list-style-type: none"> • Give approval to assert the Public Right of Way from Floral Park to Antrim Road.
3.0	Main report
	<p><u>Key Issues</u></p>
3.1	<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>
3.2	<p>In 2021 an application was received by the Council to develop land which a route, deemed by Legal Services as a public right of way, crosses. This route was previously investigated in 2005. However, despite a grant of planning permission being given, the development of the land did not proceed and the assertion was not undertaken by the Council. The current proposal includes a diversion of the existing route. The land in question has previously been granted planning permission and Planning is likely to be granted again.</p>
3.3	<p>Article 16 of the Access to the Countryside (Northern Ireland) Order 1983 gives the Department power to divert any public right of way where this is needed to enable compliance with a planning permission. The Council wrote to DAERA and were advised that the route can only be diverted after it has been asserted. Legal Services are satisfied that previous evidence supports the case for the route being a public right of way and that status cannot have changed since that time.</p>
3.4	<p>For a Public Right of Way to exist at Common Law there are two essential elements,</p> <ul style="list-style-type: none"> a) Dedication by the owner of the soil b) Acceptance of the Right of Way by the public

3.5	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.
3.6	<p>The following evidence shows presumed dedication by the landowner;</p> <ul style="list-style-type: none"> a) The path was constructed through the amenity space by the developer providing a pedestrian link between Floral Park and Antrim Road. b) The route in question has been used 'as of right' by the general public. c) the use continued for a sufficient period to imply the owner intended to dedicate a Public Right of Way. d) The route connects two public places or places to which the public regularly resort e) That use has followed a more or less consistent line.
3.7	<p>Given the above assessment, members are asked to assert the route from Floral Park to Antrim Road as a Public Right of Way on foot.</p> <p><u>Financial & Resource Implications</u></p>
3.8	<p>There are no Financial or Resource implications.</p> <p><u>Equality or Good Relations Implications /Rural Needs Assessments</u></p>
3.9	<p>There are no Equality, Good Relations or Rural Needs Implications identified.</p>
4.0	Appendices – Documents Attached
	Appendix 1: Map of the route