



| | |
|--------------------|---|
| Subject: | Public Rights of Way |
| Date: | 4 th February 2025 |
| Reporting Officer: | Stephen Leonard, Director of Resources, Fleet and OSS |
| Contact Officer: | Duane Fitzsimons, Outdoor Recreation & Education Officer Edel Gowdy OSS Lead 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 Issues |
| 1.1 | To provide clarification from Legal Services that the Council could commit to maintaining the surfaces and keeping the rights of way clear for: <ol style="list-style-type: none">1. Upper Malone Road to Old Coach Road2. Old Coach Road to Malone Heights3. Old Coach Road to Malone Playing Fields. |
| 2.0 | Recommendations |
| 2.1 | Members are asked to note that the Council is statutorily bound to assert the public rights of way, and to note the update and advice on maintaining surfaces and keeping the public rights of way clear. |

| | |
|------------|--|
| 3.0 | Main report |
| | <p data-bbox="272 197 628 230">Background and Context</p> <p data-bbox="165 271 1390 365">3.1 At People and Communities Committee in September 2024, Committee considered a report seeking approval to assert three public rights of way. The Committee agreed, in principle, to assert three Public Rights of Way on foot from:</p> <ol data-bbox="272 394 863 501" style="list-style-type: none"> 1. Upper Malone Road to Old Coach Road; 2. Old Coach Road to Malone Heights; and 3. Old Coach Road to Malone Playing Fields. <p data-bbox="165 546 1437 618">3.2 Subject to clarification being sought from Legal Services that the Council could commit to maintaining the surfaces and keeping the right of ways clear and accessible.</p> <p data-bbox="165 663 1458 846">3.3 Officers have spoken with legal services and they have confirmed that the Council is under a statutory duty to assert these three public rights of way. The clarification from legal has been provided in relation to the Councils duties and powers regarding maintaining the surfaces and keeping public rights of way clear and accessible. This advice is detailed below:</p> <p data-bbox="165 891 1453 963">3.4 In answer to the query above, Article 3 of the Access to the Countryside (Northern Ireland) Order 1983 stipulates:</p> <ol data-bbox="272 1008 1458 1236" style="list-style-type: none"> 3.—(1) A district council shall assert, protect and keep open and free from obstruction or encroachment any public right of way; and for this purpose a district council may institute proceedings in its own name. (2) A district council may, after consultation with the owner of the land concerned, maintain any public right of way; but this paragraph shall not relieve any person from any liability to maintain a public right of way. <p data-bbox="165 1281 1442 1585">3.5 This means that:</p> <ol style="list-style-type: none"> a. The Council have a statutory duty to assert any route they have identified as a public right of way. In this case, the evidence presented to the Council is sufficient to make the case that these three routes meet the criteria for public rights of way and therefore must be asserted as such. Furthermore, the Council are statutorily bound to ensure that a public right of way is clear and accessible; but b. The Council are not statutorily bound to maintain any public right of way. Rather they have a power to do this after consulting with the owner of the land. <p data-bbox="165 1619 756 1653">3.6 Implications of maintaining the route:</p> <ol style="list-style-type: none"> 1. Policy – The Council does not have any policy in relation to the maintenance of public rights of way. 2. Budget – The Council has no assigned budget for the maintenance of public rights of way across the city. 3. Precedent – The Council does maintain at its discretion across the city a number of public rights of way of various typologies. However, the Council has not assumed nor can it assume the duty to maintain these routes. |

| | |
|----------------------------------|--|
| <p>3.7</p> <p>3.8</p> <p>3.9</p> | <p>4. Liability – The Council has never changed or maintained the surface of any public right of way. By altering the surface of the path there is a potential liability for a misfeasance if the work is done negligently. There is no liability for nonfeasance (doing nothing) should the path come into disrepair.</p> <p>The approach for all public rights of way is to maintain them in their present condition. According to the guidance on the legislation “minor flooding, long grass or uneven surfaces may not be considered as obstructions.” However, the Council after consulting with the owner of the land and the adjacent properties can seek to deal with the issues of overhanging vegetation and even the surface of the path. The Council will continue to consider this on a case-by-case basis.</p> <p><u>Financial & Resource Implications</u> There is no provision in the revenue estimates for maintaining public rights of way.</p> <p><u>Equality or Good Relations Implications /Rural Needs Assessments</u> There are no good relations or rural needs implications.</p> |
| <p>4.0</p> | <p>Appendices – Documents Attached</p> |
| | <p>n/a</p> |