

Mid Ulster District Council

Public Right of Way Procedure



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Procedure Overview

Mid Ulster District Council ('MUDC') is committed to addressing enquiries regarding public rights of way in a comprehensive manner and in compliance with the Access to the Countryside (Northern Ireland) Order 1983 (hereafter referred to as the 'Access Order').
www.legislation.gov.uk/nisi/1983/1895

This document sets out the process that MUDC will employ when addressing enquiries regarding public rights of way and it is intended that this document is to be read with the Access Order and the Guide to Public Rights of Way and Access to the Countryside produced by the Environment and Heritage Service, (now NI Environment Agency) and issued to all District Councils.

<https://library2.nics.gov.uk/pdf/dof/2022/PDF220190.pdf>

In the event that any conflict occurs between the provisions of this procedure document and the Guide to Public Rights of Way and Access to the Countryside, the latter will take precedence, subject to the terms of the Access Order.

The Access Order places district councils in a unique position. Councils have a statutory duty to identify, record and protect existing access opportunities along public rights of way. Councils also have wide discretionary powers to help manage and maintain that access and to establish new access opportunities where they are needed. Moreover, such action can only be taken by the District Council; the powers and duties conferred by the Access Order are not available to any other body or organisation.

Under the Access Order, District Councils have a duty *"to assert, protect and keep open and free from obstruction or encroachment, any public right of way."*

An obstruction of a right of way is anything which interferes with the right to proceed along it, e.g. a tree, barbed wire fence, a gate across a path. The District Council has specific powers to institute proceedings to have obstructions removed.

Further, the Access Order bestows upon District Councils discretionary powers to repair and maintain rights of way, to create, divert or close public paths and to make access agreements or orders to open land.

District councils have a responsibility to secure the provision of adequate facilities for recreational, social, physical and cultural activities, pursuant to the Local Government Order 1972 and the Recreation and Youth Service (NI) Order 1986. Specific functions regarding the adoption and subsequent maintenance of open space by District Councils are contained in the Open Spaces Act 1906.

In fulfilling its duties and exercising its powers, MUDC acknowledges the need to secure the goodwill and cooperation of a wide range of other interests. It is equally important that the Council develops a consensus of support among the wider community. With the limited staff and financial resources that are available, much more will be achieved if the Council is able to draw on the help of the many other interests that are involved, or might potentially become involved, including community groups and community development associations, countryside user groups and tourism interests.

Presently, there are 19 asserted public rights of way within the Mid Ulster Council District, along with 9 permissive / public path agreements.

How Council decisions are made

MUDC has a statutory duty to assert any public right of way. Importantly, such duty will only arise in circumstances where the Council is satisfied, on the balance of probabilities, that an alleged right of way is in fact a public right of way.

The investigatory procedure implemented by Council is, therefore, important and will result in 3 possible outcomes:

1. Firstly, where there is clear evidence that a public right of way exists, or where the evidence substantially supports the existence of a public right of way with no counter evidence other than that of a current or recent owner claiming that they do not/did not want or believe that there was a public right of way crossing their land.
2. Secondly, where the evidence is evenly balanced, both for and against, the public claim, resulting in a real dispute as to the status of the route; in short, the evidence is inconclusive. By way of illustration, this can include situations where, despite user evidence, a long-time owner submits evidence to show that whereas he/she was aware of the use of the route by neighbours etc, he/she has permitted use, so as not to create ill will, but had never intended to dedicate a right to them or indeed the public at large.
3. Thirdly, where there is clear evidence to show that the route is not a public right of way or the evidence substantially refutes the existence of a public right of way.

Following consideration of the evidence gathered during the investigation procedure and consideration of the conclusions reached in the final report:

- a) If the outcome of the investigation is found to be as of 1 above, Council will assert the route as a public right of way, accepting that the case may have to be pursued through the Court for the purposes of obtaining the appropriate declaration;
- b) If the outcome of the investigation is found to be as of 2 above, Council will accept that no dedication had taken place and that, therefore, no public right of way exists. In such circumstances, the Council should not assert or pursue a public right of way case. The Council may, however, chose to defer the matter if it considers that further evidence comes to light in the future.
- c) If the outcome of the investigation is found to be as of 3 above – Council will not assert or pursue a public right of way case.

All decisions relating to public rights of way are taken through a two-stage process, with a report detailing the evidence and a recommendation based on the evidence, which is submitted to the relevant Committee within Council for consideration. This is then subject to ratification by full Council.

Process of Investigation and Assertion of public rights of way

The procedure handbook “PUBLIC RIGHTS OF WAY – A guide to the Status Investigation Procedure”, was researched and compiled over a period of months by Lesley Duff, Countryside Recreation Officer with Antrim Borough Council.

The procedure was subsequently approved and published in consultation with Environment & Heritage Service (NIEA). The procedures outlined in this document seek to broadly outline the process that the Council will follow in response to an issue regarding a public right of way or a status query brought by a member of the public.

Enquirers should be made aware that the Public Right of Way Investigation Procedure can be lengthy and complex. Plenty of time should be allowed for the process to run its course. It should be recognised that evidence is unlikely ever to be complete as new sources may remain to be discovered.

The process can be helped by enquirers undertaking their own research, but Council will not comment on the value of individual pieces of evidence provided by enquirers. The Council is only obliged to assert a public right of way where it is satisfied that an alleged right of way is in fact a public right of way and there is no real dispute as to its status.

Assertion

Pursuant to Article 3 of the Access Order, the Council has a statutory duty to assert, protect and keep open and free from obstruction or encroachment any public right of way and compile and preserve maps and other records of public rights of way in its district.

The process of assertion is concerned with determining what public rights already exist and the nature of those rights. It is not about changing or managing public rights of way, nor is it about creating new ones.

It follows that in assessing the evidence that is available about each route, the only test the council is able to apply is “does a public 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.

In accordance with its duty to assert, the Council shall follow the process of investigation and assertion set out in pages 6-8 of this document.

MUDC shall, in the first instance, seek to assert public rights of way with the agreement of the landowner, however, in the absence of agreement, the Council will take all necessary action in order to fulfil its statutory duties; this includes including taking necessary legal proceedings subject to legal advice obtained from the Council’s Legal Department.

The Council shall, as set out in the Access Order, maintain a public register of asserted Public Rights of Way. The public register will contain the assertion statement detailing the line of the path and the rights that the public have over it. Permissive Paths and Alleged Public Rights of Way should be recorded separately.

The Council shall, as set out in the Access Order, prepare a set of maps of the paths it has asserted and an accompanying public register. The public register will contain the assertion statement detailing the line of the path and the rights that the public have over it, a map of the route at the appropriate scale and resolution of the council. Permissive Paths and Alleged Rights of Way should be recorded separately. Under the Access to the Countryside

Regulations (Northern Ireland) 1984, councils are required to record maps for Public Path Orders and Access Order Maps & Rights of Public Access Maps. "Right of public access maps" must be at a scale of not less than 1:10,000. Maps used in public path orders must be at a scale of not less than 1:2,500.

The Council has a duty in exercising its functions under the Access Order and other legislation to have regards to: -

- a) The needs of agriculture and forestry, and
- b) The need to conserve the natural beauty and amenity of the countryside.

Council PRow Investigation / Assertion (Process)

The process for dealing with an alleged Public Right of Way ('PRow') when it is brought to the attention of the Council involves several stages. Here is a detailed explanation of each stage and its possible outcomes:

STAGE 1: Desktop Survey and Initial Investigation

- Site visit and photographs: A site visit will be conducted, for the purposes of documenting any features on the route.
- Historic mapping: Historic maps will be reviewed to determine the existence of the alleged PRow.
- GPS mapping for indicative level of usage: GPS data will be used to assess the level of usage on the route.
- Check Land Registry: land ownership will be investigated to determine if the land is registered and if so, whether any right of way is registered as a burden.
- Write to DfI (Department for Infrastructure): The letter will enquire about the adoption status of the surrounding area.
- Preliminary report: A report which summarises the current use and apparent status of the route will be compiled comprising all evidence reviewed.
- The Ulster Farmers' Union and Northern Ireland Agricultural Producers Association will be notified of the overall review, as will any local path user groups or community associations known to be interested in the paths in its area.

Possible Outcomes:

1. The land is privately owned and indicates a PRow may exist: Move to Stage 2 Initiation;
2. The land belongs to/maintained by a Government Department: The Council has no powers or duties. Inform the relevant Department;
3. The route is a Private Right of Way or does not connect two public places: The Access Order does not apply, and there is no obligation on the Council to hold documentation.

STAGE 2: Landowner Engagement

- If there is a basis to believe a PRow may exist, MUDC will make contact with the landowner informing them of the Council's investigation.

Possible Outcomes:

1. Landowner denies a PRow exists: Move to Stage 3 Neighbourhood Survey;
2. Landowner concedes a PRow exists: Move to Stage 4 Assertion.

STAGE 3: Neighbourhood Survey

- Send a letter and survey to potential users to gather their knowledge about the route.

- Identify possible documentary evidence.
- Compile findings into a comprehensive report and send it to Legal Services for opinion.

Assessment of Evidence

Possible Outcomes:

1. The evidence shows both that a public right of way exists and the nature of the public's rights: – Move to Stage 4 Assertion. (Council should assert the route as a public right of way, accepting that proceedings may have to be issued seeking the relevant declaration/vindication;
2. The evidence shows that a public right of way does exist, but there is remaining uncertainty over the nature of the public's rights: If it seems likely that the uncertainty can be resolved by further investigations the assertion should be deferred while they are carried out. If the uncertainty is unlikely to be resolved, the path should be asserted as either a footpath or bridleway (as appropriate). In doing so, the council will make it clear that this is without prejudice to the further assertion of any "higher" rights which subsequently may be shown to exist.
3. The evidence points to use being permissive or not de facto, i.e. 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. If the Council believe that public access is essential or highly desirable, it may seek to establish a PROW by agreement.
4. Insufficient/inconclusive evidence: If it is likely that the uncertainty can be resolved by further investigations or negotiations (e.g. by identifying additional witnesses 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.
5. Legal services to input for case reviews if new evidence is submitted or an appeal to Council decision is received.

STAGE 4: Assertion

- Determine the nature of the right of passage (on foot, bridleway, cycling, or a combination).
- Define and record:
the exact line of the public right of way;
- the nature of the public's rights over it;
- the presence and location of any stiles, gates, footbridges or similar features;
- any other conditions or limitations affecting the public's use of the way that are known to exist;
- the width of the right of way, to the extent that this can be ascertained

These matters will all be set out in a formal assertion statement drawn up by the Council, with the line of the right of way and appropriate features being shown on an accompanying map.

- Seek to assert the PROW by presenting the case through the relevant Council committee for consideration/approval.
- Notify the landowner and request the removal of barriers or restoration of the route.

Possible Outcomes:

1. Landowner contests the assertion: – Move to Stage 5 Legal Proceedings;
2. Landowner refuses to reinstate the path: – Move to Stage 5 Legal Proceedings;
3. Landowner concedes, and the assertion stands.

STAGE 5: Legal Proceedings

- Council may initiate legal proceedings against the landowner, seeking a declaration/vindication as to the existence of the PROW as asserted.

Possible Outcomes:

1. Court makes a declaration/vindication as to the existence of the PROW as asserted
2. Court makes a declaration that no PROW exists and an Order quashing the assertion;
3. Council and landowner agree on a new path.

Final Outcomes:

- On assertion of a PROW, a report is sent to the Department of Agriculture, Environment, and Rural Affairs ('DAERA').
- A map is compiled detailing the route and this is added to the GIS file for PROWs.
- The public who engaged in the process are informed of the outcome.
- All files are retained and stored in hard copy at the Council Offices.
- The PROW is inspected quarterly as resources allow, to ensure it remains open and unobstructed.
- Record all developments, issues, and correspondence related to the PROW post-assertion.

Route is not asserted when:

- The route does not connect two public places.
- Evidence demonstrates permissive usage or access that is not de facto.
- The assertion is overturned by a court.

This process outlines the steps taken by the Council when dealing with alleged PROWs and the various possible outcomes at each stage.

Investigation Process Timelines

“Under the access to the Countryside (Northern Ireland) Order 1983, local Councils have a duty to assert, protect and keep open” public rights of way. However, before a Council can decide whether to assert a route, it must first be satisfied, through a process of investigation, that the route is indeed a public right of way. This process can often be complex, controversial, lengthy and legalistic”.¹

- Council officers, where possible, will acknowledge a report of the potential existence a PROW within two working weeks of notification.
- Council officers will then conduct a physical survey of the potential route and produce a preliminary report within a further four working weeks.
- Subject to preliminary report findings that a route may exist the enquirer will be invited to complete an Investigation Initiation Application Form.
- Council officers will then acknowledge a correctly completed Investigation Initiation Application Form within two weeks of receipt.
- Due to the complexity of ongoing investigations council officers will endeavour to update the applicant every eight weeks on progress until the investigation process is concluded.

¹ “PUBLIC RIGHTS OF WAY – A guide to the status investigation Procedure” Environment & Heritage Service (NIEA).



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Council PRow Investigation & Assertion Process (Summary of Process)

Stage 1 Initial Investigation • Site visit & mapping • Land checks • Dfl consult	Stage 2 Landowner Engagement • Notify owner	Stage 3 Evidence Assessment • Surveys & legal consultation	Stage 4 Assertion • Define route • Council Committee Approval	Stage 5 Legal Process • Court decision	Final Outcomes • Notify DAERA • GIS mapping • Inform applicants • Monitoring
<i>Outcome:</i> Stage 2 / Refer / Close	<i>Outcome:</i> Close / Stage 3	<i>Outcome:</i> Assert / Defer / Close	<i>Outcome:</i> Final / Stage 5	<i>Outcome:</i> Confirm / Reject	

Creating a new Public Path

In creating new public access, the Council will always endeavour to do so with the agreement of the relevant landowner(s) and to create permanent access trails wherever possible.

Public path creation by agreement

- Article 11 of the Access Order provides that the Council may enter into a 'public path creation agreement' with any person having the necessary power to so do; this will normally be the legal owner of the land.
- the public path creation agreement shall be on such terms as to payment as may be set out in the agreement and may provide for the creation of a public path subject to conditions or limitations affecting the public right of way over it.
- Where necessary to create strategic links, the Council will enter into public path creation agreements with any relevant landowner.
- The Council will also consider the provision of insurance cover for the path as part of the path agreement.
- Where a public path is created the Council shall, pursuant to Article 13, carry out such work as appears to the Council to be necessary to bring the path into a fit state for use by the public in conformity with the terms and conditions or limitations of the agreement or order, and shall maintain the path in that state.

Public path creation by Order (Compulsory powers for creation)

- Pursuant to Article 12 of the Access Order, the Council may create a public path by way of Order.
- The Council may exercise its power under this provision where:
 - (a) it appears to the Council that there is need for a public path; and
 - (b) the Council is satisfied that, having regard:
 - (i) to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons residing in the district, and
 - (ii) to the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in Article 17, it is expedient that the path should be created; and
 - (c) it appears to the district council impracticable to create the path by means of a public path creation agreement, the Council may make the right of way unconditional or subject to conditions.

Making up and maintaining public paths

- Pursuant to Article 13 of the Access Order, when a public path is created by a public path creation agreement, or a public path creation order or a public path diversion order, the Council shall carry out such work as appears to it to be necessary to bring the path into a fit state for use by the public in conformity with the terms and conditions or limitations of the agreement or order, and shall maintain the path in that state.

Permissive path agreements

- Under Article 3(1) of the Recreation and Youth Service (Northern Ireland) Order 1986, district councils may:
 - "Enter into agreements with any person for securing the use by the public of any land for recreational purposes."
- Agreements can be made on whichever terms can be agreed between the landowner and the Council.
- Where Council agrees to enter into such as agreement, the length of the agreement should reflect the level of investment in the particular path, for example, where a substantial amount of money is invested in developing a path, then the minimum period of agreement should be 25 years. In other circumstances, a shorter period of time will be considered.

- Permissive paths will be inspected and maintained by the Council in accordance with the individual legal agreement. Council will also consider providing insurance cover for the route.

Temporary and permanent closures and diversions

Public Path Extinguishment Orders (Permanent Extinguishment)

- Pursuant to Article 14 of the Access Order, where it is expedient that a public path should be closed, on grounds it is not needed for public use, the Council may by Order (confirmed by the Department, or Council if unopposed) extinguish the right of way over the path. In satisfying itself that it is expedient to so do, the Council shall have regard to the factors set out in Article 14(2).
- The request to make a public path closure order should be made in writing to the Council and approval obtained by full Council. Only in exceptional circumstances will a recommendation be made to Council to consider an extinguishment order.
- The Council reserves the right to charge the individual/organisation requesting the closure to cover the costs of making such an order and for any physical works required to stop up the path. Councils have statutory power, pursuant to Article 18 of the Access Order, to charge for the costs of administrative costs, advertising the order, legal drafting and site works to stop up the path.

Public Path Diversion Orders (Permanent Diversion)

- Pursuant to Article 15 of the Access Order, where it appears to the Council that, in the interests of the owner, lessee or occupier of land crossed by the path, it is expedient that the line of the path, or part of that line, should be diverted, the Council may by order (a "public path diversion order") made by the Council and submitted to and confirmed by the Department, or confirmed by the district council as an unopposed order, —
 (a) create any such new public path as appears to the Council to be requisite for effecting the diversion, and
 (b) extinguish the right of way over so much of the path as appears to the Council to be requisite for effecting the diversion.

The Council shall not confirm an Order unless it is satisfied that it has complied with the provisions of Article 15.

- The request to make a diversion order should be made in writing to the Council and approval obtained by full Council.
- Where the path is diverted, landowners must demonstrate legal ownership of the land onto which the proposed diversion is to take place, or where it is diverted onto another's property the written agreement of the landowner must be obtained.

Closure or Diversion due to Planning Permission

- Pursuant to Article 16 of the Access Order, the Northern Ireland Environment Agency (or subsequent Department) may make a public path diversion or extinguishment order in order to enable a development to take place as a result of a planning permission or to be carried out by a government department.
- If necessary, the Council will assist the Department in the erection of public notices on site and provide the public with copies of relevant notices.

Temporary Closure or Diversion of public paths

- Pursuant to Article 19 of the Access Order, if the occupier of land over which there is a public path applies, or if any other person so applies; and if the Council is satisfied that it is expedient in the interests of good farming or forestry or otherwise temporarily to close or divert the path, the district council may order the closure or diversion of the path for such period, not exceeding three months, as may be specified in the order.
Any request for a temporary path closure or diversion order under Article 19 must be made in writing to the Council.

- The Council, in deciding whether to make an Order, will take into account the interests of users of the path.
- Where, in exceptional circumstances, a temporary diversion or closure order is required for a period longer than 3 months, a new order will be required for the further period of closure for a maximum period of 3 months.
- An Order diverting a public path shall not be made unless written consent to the making of the order has been given by the occupier of the land on to which the path is diverted and by any person whose consent is needed to obtain access to the land.
- Under the Access Order there is no obligation for the making of a temporary path order to be advertised. However, where the closure is likely to have a significant impact on a high number of users or where the closure or diversion is for a period longer than one week, consideration will be given to advertising the order in the local papers.
- Where an order is required urgently in relation to a health and safety issue, the Council will facilitate the closure as soon as practically possible, without the need to advertise the notice.

Access to Open Countryside

- Where it is in the interests of the wider public, the Council may seek to enter into Access Agreements with landowners.
- Pursuant to Article 28 of the Access Order, the Council may enter into an Access Agreement with any person having an interest in land meeting the criteria as set out in Article 25.
- Pursuant to Article 29 of the Access Order, the Council has the power to make an Access Order, however, such an Order will only be made when negotiation has failed, in circumstances where the Council consider it is nonetheless imperative that public access is retained.

Miscellaneous Provisions relating to access

Assertion of public rights of way on Council owned land

- Where a public right of way is proved to exist over Council owned land, the right should be asserted in the usual manner.

Opening up of public rights of way

- Where an asserted path has become extremely overgrown and impassable, the Council will investigate the possibility of opening up the path in agreement with the landowners, subject to funding being available. Where landowners are not in agreement, then all options will be examined by the Council.

Width of PROW's

- If the width of the path is not defined by physical boundaries, the Council consider the width of the path to be that which has been and is being used by the public to pass and re-pass over the lands.
- Regarding this, the custom and practice of the Council is to ensure that the right of way is of a reasonable width to allow persons using it to safely pass each other. Generally, the Council consider a distance of 1 metre to 1.5 metres to be a reasonable width, however, each case is assessed on its own particular circumstances.

Obstructions and Encroachments

- The Council has a duty under Article 3 (1) of the Access Order to ensure that public rights of way are kept open and free from obstruction or encroachment. Where a path is obstructed or encroached upon the Council will, in the first instance, attempt to negotiate with the person responsible.
- Where all attempts at negotiation have failed after a three-month period and where it is in the public interest to do so, the Council may resort to the use of legal action to remove the obstruction or encroachment.

Signposting/Waymarking

- Signposting and waymarking can enhance visitor enjoyment and assist with the management of public rights of ways. In locations where it is required, after consulting the owner or the occupier of the land, Council may decide to erect and maintain signposts or other similar works on any public right of way, ensuring that they are signed in accordance with their correct legal status. Some urban paths may not require signposting.

Stiles/Gates and Barriers

- Under the Access Order the landowner retains the right to have a gate or stile if it was in situ at the time of dedication.
- Pursuant to Article 5 of the Access Order, any stile, gate or other similar structure across a public right of way shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of persons using the public right of way.
- The Council shall contribute not less than a quarter of any expenses which it is satisfied have been reasonably incurred in such maintenance and may make further contributions of such amount in each case as, having regard to all the circumstances, it considers reasonable.
- However with the enactment of the Disability Discrimination Act 1995, an ageing population and the onus on encouraging a broad range of people to use the network, it is important that everything is done to make the network as user friendly as possible.
- Pursuant to Article 6 of the Access Order, the Council has the power to authorise erection of stiles, where the owner, lessee or occupier of land which is used, or being brought into use, for agriculture or forestry represents to the Council that, for securing that the use, it is expedient that stiles, gates or other similar structures for preventing the ingress or egress of animals should be erected on a public right of way which crosses the land.
- In considering the authorisation of any new furniture or the replacement of any existing furniture, the Council will seek the landowner's and/or occupier's agreement to replacement with the least restrictive option. The "least restrictive option" is detailed below: -
- A gap is the preferred option.
- Where a gap is not practicable for stock control, then a field gate or small pedestrian gate will be used. On bridleways, latches will be operable from horseback.
- On footpaths, a kissing gate may be used where a gate is not practical.
- Stiles will only be considered where any other option, such as a gate, is not possible due to gradients.
- In some instances, a balance will need to be struck as between the needs of people with limited mobility and the need to retain the integrity of certain structures. For example, a stone wall may be a listed structure, where a stile may be most appropriate.²

Bulls

- Pursuant to Article 9 of the Access Order, any person who is the occupier of a field or enclosure through which there is a public right of way shall be guilty of an offence if he permits a bull to be at large in that field or enclosure; unless:
 - (a) the bull does not exceed the age of ten months; or
 - (b) the bull is not of a recognised dairy breed and is at large in any field or enclosure in which cows or heifers are also at large.
- Complaints regarding bulls in a field crossed by a public right of way will be investigated by the Council to determine whether an offence has occurred under the Access Order.
- Evidence will be gathered and the owner/occupier will be informed of Health and Safety requirements. They will then be requested to remove the bull immediately if a contravention has been determined. Council reserves the right to pass information to the Health and Safety Executive without prior communication should a repeat offence occur.

² BS 5709:2018 – Gaps, gates and stiles standard

- Where a landowner cannot accommodate a bull in any other field other than one through which a public right of way passes, the Council will consider a request for a temporary or permanent diversion, in accordance with the provisions of Article 15.
- Council reserves the right to request the landowner to contribute to the costs of bringing a diversion order into effect and towards the costs of creating a new path, whether temporary or permanent.

Ploughing Rights of Ways

- Pursuant to Article 7 of the Access Order, where a public right of way crosses land which is used, or being brought into use for agriculture or forestry, and if (a) it is proposed in accordance with the rules of good farming or forestry to plough the land, and (b) it is convenient, in so ploughing the land, to plough the way together with the rest of the land, the right of way shall be subject to the condition that the occupier shall have the right to plough the way as well as the rest of the land.
 - However, where the public right of way is a public path, an agreement or order relating to that path may exclude the right to plough the path or any part of it and may impose restrictions or conditions on the exercise of that right.
 - Within seven days after ploughing a public right of way the occupier shall give the district council notice of that fact.
- The landowner is also obliged to re-instate the path surface not later than 14 days following ploughing or if prevented from doing so by exceptional weather conditions, as soon as practicable thereafter.
- Prior to exercising its powers to restore the surface of a PROW that has been illegally ploughed but not restored, the Council will in the first instance negotiate with the landowner to get the land restored to an acceptable state. If no agreement can be reached, the Council will take "all necessary steps" to re-instate the surface of the public right of way and may recover any expenses reasonably incurred.
 - Where a landowner makes an application to Council to temporarily divert the path or extend the period to reinstate the path surface for a period of up to three months (after ploughing), the Council will consider the application in accordance with Article 15.

Bye-Laws

- Pursuant to Article 46 of the Access Order, the Council may, in relation to land
 - (a) over which there is a public path, a long-distance route or any other public right of way;
 - (b) in relation to which an access agreement or order has been made;
 - (c) to which the public is given access in consequence of acquisition;
 make bye-laws for the prevention of damage to such land, and for securing that persons resorting there will so behave themselves as to avoid undue interference with the enjoyment of the land by other persons. The bye-laws may include prohibition of damage to the environment, the use of vehicles and a range of activities which may annoy local residents or other recreation users.
- Council may make such bye laws in order to assist landowners/occupiers in the effective management of the public path network.

Cycling on PROW's

- Pursuant to Article 20 of the Access Order, any member of the public shall have, as a right of way, the right to ride a pedal cycle on any **public path**, but in exercising that right cyclists shall give way to pedestrians and persons on horseback; subject to any orders made by a the Council and to any bye-laws.
- Due to the ambiguous nature of the Access Order around the rights of cyclists on **public rights of way**, the Council shall seek the consent of the relevant landowners, where cycling on the network is desirable on a formalised basis.

Horse Riding on PROW's

- The Council may, wherever possible, work with landowners to agree the assertion of bridleways within the district, to create viable networks suitable for off-road horse riding.

Motor vehicles on PROW's

- At common law, highways are of three kinds, depending on the degree of restriction of the public right of passage over them. The only type of public right of way which motorised vehicles are entitled to use, is a designation of a cartway or carriageway.
- Unauthorised off-road use of motor vehicles is a matter for the Police Service of Northern Ireland and where it is reported to the Council, the issue will be referred onto them.
- Furthermore, it needs to be recognised that landowners may have private rights to drive vehicles along PROWs.

Private rights of way

- The Council will not become involved in settling private rights of way disputes, as the Access Order relates only to public rights of way. Private rights of way do not fall within the remit of the Access Order.

Access Over Crown Land

- Crown Land, is generally land that is owned by a government department, by the Crown Estate, or by the Duchies of Cornwall and Lancaster.
- In the Access Order, Article 53 states that Crown land refers to land belonging to a government department or held in trust for His Majesty for the purposes of a government department, and "appropriate authority" means that department.
- Where an alleged public right of way exists over Crown Land, the Council will take the necessary action to assert and record any rights and to ensure they remain open and unobstructed, as it would for any other public right of way.

Long Distance Routes

- Pursuant to Article 21 of the Access Order, where it appears to the Council that the public should be enabled to make extensive journeys on foot, on pedal cycles or on horseback along a particular route, being a route which for the whole or the greater part of its length does not pass along roads mainly used by vehicles, the Council may prepare and submit to the Department a report containing:

(a) a map showing the route, defining those parts of the route over which there exists a public right of way and indicating in each case the nature of that right;

(b) the proposals of the Council with regard to the provision, maintenance and enjoyment of the route;

(c) an estimate of the capital outlay and annual expenditure likely to be incurred by the Council or any other body or person in carrying out any such proposals;

(d) any representations made to the Council as a result of consultation.

Additional information may also be included as set out in Article 21(3) of the Access Order.

- The Council will continue to examine the possibility of using disused railway lines for multi-use trails or Greenways.

Cycling/Mountain Biking

- The Council will continue to work in conjunction with other partners including statutory agencies to provide cycling and mountain biking facilities within the district.

Access to Historic monuments

- The Council may, wherever possible, develop public access to places of historical interest and monuments in State care with the potential to create “added value” to existing walking and cycle routes.

Abandoned Roads

- Where Transport NI proposes to abandon a public road, the Council may formally object to the abandonment, if the road is considered to be of importance to the locality for pedestrians or other user groups. Alternatively, the Council may, if it is considered expedient and in the public interest, negotiate the establishment of a new public right of way by agreement or to make a public path creation order.

Alley gating

- There is no provision for the erection of security gates across PROWs in the current access legislation in Northern Ireland.
- Within the Council this function is currently carried out by the Policing and Community Safety Partnership. All requests for alley gating should be directed towards the PCSP.

Planning Applications and PROW's

- Where a PROW is adjacent to or runs through a proposed development site, Health, Leisure & Wellbeing Officers will liaise with Planning staff and where necessary consult in relation to the application.

Access to Protected Areas

- Access to land that is an Area of Special Scientific Interest (ASSI) is governed by Article 44 of the Environment (NI) Order 2002. This does not give a right to private individuals (unless a PROW/permissive path exists) but provides a right of entry for Department of Environment employees and those authorised by it for the specific purpose of identifying, monitoring and protecting ASSIs.

Maintenance of public rights of ways and inspections

Pursuant to Article 3(2) of the Access Order, the Council may, after consultation with the owner of the land concerned, maintain any public right of way, however, such maintenance shall not relieve any person from any liability to maintain a public right of way.

It should be noted that, whilst the Council has the aforementioned power, it is a discretionary power, stopping short of an obligation to carry out such works. Rather, the express duty upon the Council is to assert, protect and keep open and free from obstruction or encroachment any public right of way.

The majority of the asserted public rights of way within the district are under private ownership and it is the view of MUDC, that prior to any maintenance being undertaken, the explicit permission of the landowner should be sought.

Maintenance of Vegetation

The following principles will apply to maintenance of vegetation on all asserted and open public rights of way within the district: -

- Council Neighbourhood Operations staff will maintain grass and vegetation growing on the surface between the path boundaries with the aim of achieving, where possible, a high level of biodiversity and protecting national and local habitats and species.
- Bearing in mind the Mid Ulster Biodiversity Action Plan, individual maintenance prescriptions for each public right of way to be maintained may be developed as resources

are available to do so, taking into consideration issues around biodiversity, the wishes of residents, landowners and available resources.

- Council Neighbourhood Operations staff will cut overhanging vegetation and branches to ensure there is adequate headroom and width for each category of path.
- Where there are other vegetation issues on asserted public rights of way (such as invasive species), the relevant officer will assess the issue on a case-by-case basis and determine whether any further action should be taken by Council's Neighbourhood Operations staff.

Maintenance to surface and other structures

Surface conditions on the existing public rights of way network within the district is variable, ranging from concrete to grass. The Council's obligation to maintain the surface is very limited – it is only necessary to ensure that the way is open and free from obstruction or encroachment. There is no requirement to surface, upgrade or improve public rights of way.

Councils can, following consultation with the owner, use its discretionary power under Article 3(2), to carry out repairs to surfacing of public rights of way, to ensure that users can easily access path networks.

As previously stated, the Council is not under an obligation to carry out such works, rather, the express duty upon the Council is to assert, protect and keep open and free from obstruction or encroachment any public right of way.

Inspection Regime

Council will inspect all asserted and open public rights of way as required. Those paths that have vegetation maintained, will be inspected when cutting is completed by Council's Neighbourhood Operations Department, which occurs in and around 6 times per annum during growth season.

Appendix 1 – Public Right of Way Investigation Initiation Application Form

Mid Ulster District Council

Public Right of Way Initial Investigation Application Form

Access to the Countryside (NI) Order 1983

File Ref: (for office use only) _____

I/We (name) _____

of (address) _____

hereby apply to have the status of the route running:

From (Start point of route) _____

to (end point of route) _____

investigated.

Please show the route on the attached map. Please ensure that this is a sufficiently good copy so as it can be photocopied by Council.

I/We have provided copies of the following documentary evidence (including statements of witnesses) in support of this application:

(List any docs att) _____

Signed: _____

Date: _____



Notes to the applicant

Enquirers should note that the Public Right of Way Investigation Procedure can be lengthy and complex. Plenty of time should be allowed for the process to run its course. It should be recognised that evidence is unlikely ever to be complete as new sources may remain to be discovered.

The process can be helped by enquirers undertaking their own research, but Council will not comment on the value of individual pieces of evidence provided by enquirers. The Council is only obliged to assert a public right of way where it is satisfied that an alleged right of way is in fact a public right of way and there is no real dispute as to its status.

User Evidence

Witness Evidence Forms form the basis of user evidence. As many as possible should be submitted, fully completed by members of the public.

Useful Sources of Documentary Evidence

Documentary evidence can be researched from a number of sources depending upon the specifics of the route in question. The following are some suggestions:

- Ordnance Survey maps (recent or past). It should be noted however, that the representation on an OS map of a path, track or other way as a topographical feature is not evidence that the route is, or is not, a public right of way.
- OS Memoires (through the Public Records Office)
- Title Deeds (through the Register of Deeds)
- Land Registry maps (through Land Registry)
- Private Estate records (through the Public Records Office)
- Court Proceedings (as above)
- Local Newspaper Articles (past) (Local Libraries or Public Records Office)
- Records of Government Departments e.g. Roads, Water, Planning, Agriculture.
- Records of other bodies e.g. Housing Executive
- Old Railway/Canal Plans and Schedules
- Documentation held by local history societies

Please ensure that all photocopied documentation carries a verification stamp from source, where applicable.

**Appendix 2 – Neighbourhood Survey Questionnaire
Public Right of Way Enquiry Evidence Form**



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Mid Ulster District Council is currently investigating whether or not the path from _____ to _____ is a Public Right of Way for the purposes of the Access to the Countryside (NI) Order 1983.

Please answer the questions as fully as possible and do not withhold any information, whether for or against the claim that the route in question is or is not a public right of way. This is important if the information is to be of real value in establishing the status of the route. You may if necessary continue your answers on a separate sheet of paper.

File Ref: (for office use only) _____

Full Name: _____

Age: _____

Address: _____

Tel No (day): _____

Post Code: _____

Tel No (eve): _____

How long have you lived in the area?

Occupation: _____

Please give a description of the route in question:

Townland: _____

Nearest Town/Village: _____

Map Ref. No./s: _____

Does the route link two public places? If so, where?: _____

Believed usage of route e.g. walking, horse riding, cycling: _____

State any features on the route that help define its line: _____

YOU MUST MARK THE ROUTE CLEARLY AND PRECISELY ON THE ATTACHED COPY MAP.

PLEASE ANSWER THE QUESTIONS AS ACCURATELY AS POSSIBLE. YOU MAY CONTINUE ON A SEPARATE SHEET OF PAPER IF REQUIRED.

1. Do you believe the route in question to be a public right of way?

Yes _____ No _____ (please tick as applicable)

1a. If so, for how many years have you held this belief?

1b. Please give details as to why you hold this belief.

2. Do you know of any other people who regard the route as a public right of way?

Yes _____ No _____ (please tick as applicable)

2a. If so, who are they?

3. Have you used the route?

Yes _____ No _____ (please tick as applicable)

3a. If so, during which years?

3b. For what purpose? (pleasure, business, work etc.)

3c. During the time period you outlined above how many times have you used the route ie: _____ times on a Daily; Weekly; Monthly; Yearly; Other? (Please Circle, if other please state below).

3d. By what means? (e.g. on foot, on horseback etc.)

4. Is the route used by other people?

Yes _____ No _____ (please tick as applicable)

4a. If so, for what purpose? (pleasure, business, work etc.)

4b. By what means? (e.g. on foot, on horseback etc.)

5. Is the route clearly defined on the ground?

Yes _____ No _____ (please tick as applicable)

5b. If so, has it always run over the same route or has it been diverted?

Same route _____ Diverted _____ (please tick as applicable)

5c. If it has been diverted, give details and dates if known.

5d. Is there an acceptable diversion?

Yes _____ No _____ (please tick as applicable)

5e. If so, describe the acceptable diverted route?

6. To the best of your knowledge, have there ever been on the route:

6a. Any stiles or gates?

Yes _____ No _____ (please tick as applicable)

6b. Any notices?

Yes _____ No _____ (please tick as applicable)

6c. If so, please state, with details of locations and dates, where the stiles, gates or notices stood and, in the case of notices, what was said on them:

7. Who owns or occupies the land crossed by the route?

8. If you were working for any owner or occupier of land crossed by the route at the time when you used it, or if you were a tenant of any such owner, please give details and dates. If not please write No.

8a. If you were working for, or a tenant of the owner, did you ever receive any instructions from him/her as to the use of the route by the public? If so, what were they? If not write No.

9. Have you ever been stopped or turned back when using this route?

Yes _____ No _____ (please tick as applicable)

9a. If so, please state when and what happened.

9b. Have you ever heard of anyone else being stopped or turned back whilst using this route?

Yes _____ No _____ (please tick as applicable)

9c. If so, please state when and what you heard happened.

10. Have you ever been told by any owner or tenant of the land crossed by the route, or by anyone in their employment, that the way was not public?

Yes _____ No _____ (please tick as applicable)

10a. If so, please state the date/s and outline what was said.

11. Have you ever known there to be locked gates or other obstruction along the route?

Yes _____ No _____ (please tick as applicable)

11a. If so, please give details.

12. Have you ever seen notices such as "Private", "No Road", "No Thoroughfare" or "Trespassers Prosecuted" either on or near the route?

Yes _____ No _____ (please tick as applicable)

12a. If so, what did these notices say?

13. Have you ever been given permission to use the route?

Yes _____ No _____ (please tick as applicable)

14. Do you know of any other evidence to support or deny a public right of way claim concerning this route? E.g. written historical information, maps, evidence of other people.

Yes _____ No _____ (please tick as applicable)

14a. If so, please give details (use a separate sheet if necessary)

I hereby certify that to the best of my knowledge and belief, the facts that I have stated are true. I understand that I may be required to attend a hearing or Court to give evidence on oath on this matter should this prove necessary.

15. Are you willing to attend Court?

Yes _____ No _____ (please tick as applicable)

Signature: _____

Date: _____

Please return to:

Recreation and Countryside Officer
Mid Ulster District Council
Dungannon Park
Ballynorthland Demesne
Moy Road
Dungannon
BT71 6DY



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Appendix 3 - List of Asserted Public Rights of Way in Mid Ulster District
(updated 29.05.2026)

Name	Location	Length (approx.)	Type of Access	Date Asserted & Council area
Moyola River Walk	Castledawson Tarmac lane (5 – 19 Bridge St) to below Bridge.	50m	Pedestrian	12 October 2010 Magherafelt District Council
Dublin Road	Carmean Road – Megargy Road	810m	Pedestrian	8 February 2011 Magherafelt District Council
Killynumber Hill	A29 b/t Tobermore & Desertmartin Morans Corner – A29	868 m x 3.5 – 4.5m	Pedestrian, Bridleway & vehicular	12 March 2002 Magherafelt District Council
Reuben's Glen	A29 b/t Tobermore & Desertmartin	1km	Pedestrian route through the Glen	July 2002 Magherafelt District Council
Carntogher Trails	Carntogher Mountain, Maghera	9km x 1.5 – 3m	Pedestrian	October 1999 Magherafelt District Council
Hudy's Way	Moneyneaney, Draperstown. (Starts at the back of Chapel travels up to the old Celtic Cross)	10km	Pedestrian	May 1998 Magherafelt District Council
Tamlaght O'Crilly	Church Square, Main St & travels along the pathway and local farmer's fields. The pathway follows the outside of Drumbolg Hill.	1.7km x 1.5 – 2.5m	Pedestrian & recreation	12 March 2002 Magherafelt District Council
Crossett's Lane	A29 Main St, Desertmartin, leads down old graveyard behind Main St.	95m x 3.5 – 4.5m	Pedestrian & vehicular access	12 March 2001 Magherafelt District Council
Termnoneeny Old Cross Walk	Gulladuff, Maghera, A42. The route starts at the back of the chapel grounds on the A42, passes up to the B67 until it reaches O'Neill's Lane here it enters the	1.45km x 2 – 4.5m	Pedestrian	12 October 2001 Magherafelt District Council

	forest on the hill. Passing up the back of the forest on the stone path and finishes at the Old Celtic Cross.			
Gort Moss	Battery Road, Clunto, following a zigzag route encompassing Annaghmore lane, the middle and back rampart finishing at Kinturk Road exit. This main route may also be accessed from adjoining paths that originate along the main Annaghmore and Kinturk Roads, namely Annaghmore Lane, Sandy Rampart, Anneter lane, Curran Rampart and Jamsies Rampart (All form part of Gort Moss walk).	Approx. 3.9 Miles	Pedestrian	18 May 1999 Cookstown District Council
Cot Lane	Cot lane Links Co. Tyrone and Co. Derry and the parishes of Lower Mullan and Ballylifford.	1.54 km	Pedestrians & cyclists	19.11.2001 Cookstown District Council
Innevall Railway walk	Route is accessed from Annaghone Road onto the Great Northern Railway embankment to a stone cottage returning via farm lanes.	1.2 Mile	Pedestrian	19 May 1999 Cookstown District Council
Loughrey Estate	Home Farm – The Bridle Path, The Old Coach Road, The Woodland Trails, Tullyhogue, The Farm lanes. Desertcreat Farm – Cameron’s Farm, Desearthcreat Farm, The farm lanes.	1.4 Mile	Pedestrian	18 May 1999 Cookstown District Council
Old Chapel Road/Warwick’s Way	Church Street to Westland Road South, Cookstown	260m	Pedestrian	18 May 1999 Cookstown District Council

Loup Road to Ballyeglish Old Graveyard	Path leads off Loup Rd at 'Rockhead Pig Breeders' Farm. The PRow then bears right along a small burn to a footbridge, crossing the footbridge and enter the small field; the old graveyard entrance is marked by stone pillars & a wrought iron gate.	Total length 330m	Pedestrian	14 June 2000 Cookstown District Council
Broughderg Broughderg Rd and Davagh Rd	Route runs from farmyard at 121 Broughderg Road, following the farm lane past a derelict dwelling house continuing along field boundaries until it reaches the Broughderg Road.	450m (approx.)	Pedestrian	13 June 2019 Dev Cmte D099/19 Mid Ulster District Council
Shore Road filling Station – Ballyronan Marina Nursing Home, Ballyronan	Path runs from the filling station heading eastward to the nursing home.	180m (approx.)	Pedestrians & cyclists	14 Dec 2016 D257/16
Blackwater to Cloverhill, Moy	'C' shaped path from Benburb Road	467m	Pedestrians	13.09.2004 DSTBC
Moyallen Terrace to Gortgonis Road	Knockmoy Terrace to Gortgonis Road, linear path	40m	Pedestrians	07.11.2008 DSTBC

**Appendix 4 - List of Permissive Path Agreements in Mid Ulster District
(updated 29.05.2026)**

Name	From	To	Council	Date	Duration
Augher Riverside Walk	Bridge on Annaghilla Road	Augher Playing Fields Knockmany Road	MUDC	5 Feb 2019	25 yrs
Newmills	Farlough Road	Newmills Aqueduct	MUDC	01 Aug 2022	25 yrs
An Rath Dubh	An Rath Dubh Centre, Moneyneany Road	'The Field' adjacent to An Rath Dubh Centre, Moneyneany Road	MUDC	05 June 2020	25 yrs
Moy Riverside Walk	Brick Lane, Moy	GAC Pitches (Riverside)	MUDC	01 June 2020. New ownership / amendment 10.10.23.	25 yrs
Crockbrack Way (Section A)	Glenelly Road	Crockbrack Mtn	Magherafelt District Council	31 July 2014	10 yrs
Crockbrack Way (Section B)	Crockbrack Mtn	Dunlogan Road	Magherafelt District Council	31 July 2014	10 yrs
Slieve Gallion	Reubens Glen	Summit Slieve Gallion	Magherafelt District Council	31 July 2014	10 yrs
Crockbrack Way (Section D & E)	Crockbrack Mtn	Derrynoyd Lane (Cornafarna)	Magherafelt District Council	31 July 2014	10 yrs
Earls Trail	Quary Lane	Carland Road	MUDC	20 May 2015	15 yrs