



<b>Subject:</b>	Public Right of Way at Orby Green
<b>Date:</b>	22nd September 2022
<b>Reporting Officer:</b>	David Sales, Director of Neighbourhood Services
<b>Contact Officer:</b>	Duane Fitzsimons, Outdoor Recreation and Education Officer

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

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

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
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	A fence with a gate was erected in 2014 across a path between Orby Green and Orby Link. In 2020 this gate was welded shut and members of the public alleged that this had blocked a public right of way. A questionnaire and map were sent out to residents. The evidence returned showed that people did use the routes as of right and that the developer at the

	time of construction had intended to create public access through. The evidence also revealed that this route has been used regularly for a prolonged time by members of the public.
<b>2.0</b>	<b>Recommendations</b>
2.1	The Committee is asked to <ul style="list-style-type: none"> <li>• Assert the Public Right of Way on foot from Orby Green to Orby Link.</li> </ul>
<b>3.0</b>	<b>Main report</b>
	<b><u>Key Issues</u></b>
3.1	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’.
3.2	In 2021 when the gate was welded shut once again, having been reopened, the Council were compelled under the above duty to investigate. The Council wrote to the landowner asking for the gate to be reopened to restore the public right of way. The landowner stated that they held no evidence of a public right of way. The Council investigated the matter by means of a community survey. 100% of the total returns (25 respondents) provided evidence that a public right of way had come into existence by presumed dedication.
3.3	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, so have recommended that the Council assert this Public Right of Way as required by its duty under the Access to the Countryside Order.
3.4	For a Public Right of Way to exist at Common Law there are two essential elements, <ul style="list-style-type: none"> <li>a) Dedication by the owner of the soil</li> <li>b) Acceptance of the Right of Way by the public</li> </ul>
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	The following evidence shows presumed dedication by the landowner;

3.7	<p>a) The path was constructed through the amenity space by the developer providing a pedestrian link between Orby Green and Orby Link. It is constructed of a sealed tarmac surface.</p> <p>b) The route in question has been used 'as of right' by the general public.</p> <p>c) The public's use of the path was open until 2014. At this point a fence with a gate was erected but the use continued until the gate was welded shut in 2020. The gate was reopened in 2020 but reclosed in 2021. Prior to this the public's use of the path was open so that the landowner knew or should have known about it, did nothing to stop it. The construction of a fence with gate indicates an intention to retain access through.</p> <p>d) the use continued for a sufficient period to imply the owner intended to dedicate a Public Right of Way.</p> <p>e) The route connects two public places or places to which the public regularly resort</p> <p>f) That use has followed a more or less consistent line.</p> <p>Given the above assessment, members are asked to assert the route from Orby Green to as a Public Right of Way on foot.</p>
3.8	<p><b><u>Financial &amp; Resource Implications</u></b></p> <p>There are no Financial or Resource implications.</p>
3.9	<p><b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b></p> <p>There are no Equality or Good Relations Implications.</p>
4.0	<p><b>Appendices – Documents Attached</b></p>
	<p>Appendix 1: Map of the route</p>