

Public Rights of Way information

Access land

Open Access land is different to a public right of way.

Under the [Countryside and Rights of Way Act 2000 \(Legislation.gov.uk\)](#), the public can walk freely on mapped areas of mountain, moor, heath, downland and registered common land, without having to stay on paths.

There are not many of these sites in Warrington. The most relevant for countryside access is Lately Common in Glazebury.

The latest editions of the Ordnance Survey explorer maps show Access Land with a yellow tint. For more information visit the [Natural England website](#).

Accessibility

Section 69 of the [Countryside and Rights of Way Act 2000 \(Legislation.gov.uk\)](#) amended Section 147 of the [Highways Act 1980 \(Legislation.gov.uk\)](#) requires the council to consider the needs of people with mobility problems when authorising new structures on public rights of way.

Following the [Equality Act 2010 \(Legislation.gov.uk\)](#), we have an Equality Duty which is a duty on public bodies and others carrying out public functions. It covers the following protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race – this includes ethnic or national origins, colour or nationality
- religion or belief – this includes lack of belief
- sex
- sexual orientation

Public bodies must have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and others. This impacts on our policy making and decision making.

In order to improve access to the countryside, we have a Code of Practice governing the erection of access barriers.

We have no power to remove lawful structures e.g. stiles on rights of way that belong to landowners.

Barbed wire

Barbed wire across a public right of way

A barbed wire fence or exposed barbed wire erected across a public right of way is an offence. It is an obstruction to the public right of way, and also a nuisance and a danger to members of the public. All new structures across public rights of way need to be authorised by ourselves as the Highway Authority, whether temporary or not.

Barbed wire alongside a public right of way

If a barbed wire fence is situated alongside a public right of way, and if we conclude that the barbed wire represents a nuisance likely to injure people or animals lawfully using the right of way, the landowner will be contacted and asked to make the fence safe. Action in the magistrates court against them may follow if remedial works are not carried out.

Bulls and dangerous animals

It's an offence for the occupier of land crossed by a public right of way, or land with public access, to allow a bull over 10 months old (except of a beef breed when accompanied by cows or heifers) to be at large in it. It is an offence for any bull of a recognised dairy breed to have access to such land.

If any animal, which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a public right of way or land with public access then an offence may have been committed and the occupier could be sued by the injured party.

Crops

Where a crop (other than grass) has been planted or sown on the land crossed by a public right of way, the occupier has a duty to ensure that the line of the public right of way on the ground is indicated to not less than the minimum width:

- 1m for public footpaths
- 2m for public bridleways

Additionally the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence. As the Highway Authority we have the powers to serve notice, carry out works in default and then re-charge the cost to the person responsible if necessary.

Dangerous land

From time to time the council encounters unfenced dangers on adjoining land which present hazards to public right of way path users (e.g. a dangerously out of repair building, etc). We have a duty to protect path users from such dangers, and will enter into dialogue with the owner of the adjacent land to urge them to remove or adequately fence off the danger.

We can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner doesn't comply with the notice, we may carry out the work and then recover the costs from the owner.

Dogs

Dogs are allowed on public rights of way but they should be kept under close control at all times.

There is no requirement in law for a dog to be on a lead however a path user who allows a dog to wander off the public right of way becomes a trespasser and owners/occupiers have a right to ask them to leave the land.

If a dog is likely to wander off the line of the path or if there is livestock in the field, the owners are advised to keep the dog on a lead.

On access land, dogs must be on short fixed leads (of no more than two metres) between 1 March and 31 July to protect ground nesting birds, or at any time when they are near livestock.

More information about:

- [Dog fouling](#)
- [Microchipping](#)
- [Dog warden service and stray dogs](#)
- [Dangerous dogs](#)

Electric fences

Electric fences across a public right of way

An electric fence erected across a public right of way without a safe means of crossing is an offence. It is an obstruction to the public right of way, a nuisance and a danger to members of the public. We would firstly ask the owner of the electric fence to remove it immediately, or if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter needs to be authorised by the council as it would constitute a new structure. If the owner fails to agree to either of these courses of action we will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature we will consider prosecution for obstruction.

Electric fences alongside a public right of way

Where an electric fence runs alongside a public right of way good practice requires adequate advisory signage of its presence. The fence may be a danger and a nuisance to members of the public. If we believe

this is the case then we would firstly ask the owner to make the fence safe. If the owner refuses or fails to do so we will serve legal notice requiring the owner to remove the source of danger within a specified time. We will remove the fence if our notice is ignored, we will then move to recover costs from the owner.

Encroachment

An encroachment onto a highway is an unlawful obstruction. When an encroachment has occurred, or is alleged to have occurred, the council will investigate as it has a duty to prevent encroachment of a public right of way.

Consideration will be given to whether an encroachment has actually occurred and if so whether it is materially affecting the right of way. This investigation may require considerable work including historical research to establish the legitimate width of the highway. Where it can be decided that fences have been erected by reference to the right of way there is a presumption that the fences mark its boundary unless some other evidence rebuts this presumption. Even if land ownership extends under the right of way, encroachment is expressly forbidden by law.

If it's demonstrated to our satisfaction that encroachment has occurred, but it's not materially affecting the path or the rights of users, we may regard it as 'de minimis' ("the law is not concerned with trifles") meaning that the encroachment is unlawful but the effect is minimal and so no action will be taken at this time. In these circumstances the council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove the encroachment.

If the encroachment is found to be affecting the public right of way, action will be taken to have it removed. Firstly the circumstances will be brought to the attention of the person responsible and we will ask for the encroachment to be removed within a reasonable time-scale. If this fails to secure the removal of the encroachment, we'll commence enforcement action in respect of the obstruction.

Fencing

Where a public right of way is fenced across, this is an obstruction of the highway and we'll take action for the removal of the fence.

New fencing alongside a public right of way should be erected in a way that does not cause encroachment on the public right of way. If you're a landowner then you should consult with us before carrying out such work to ensure the correct line is fenced and no encroachment occurs.

Gates and stiles

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. Our duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of at least 25% towards repairing such structures.

If an occupier of land wishes to install additional gates on public footpaths or public bridleways they must apply to us for authority to do so. Authority will not be given for any additional stiles. To erect stiles or gates without authority is an unlawful obstruction and is a criminal offence. In general we can only provide authorisation for the erection of a new gate if it is required to prevent the ingress or egress of animals. Stiles and gates cannot be erected for security or other purposes.

Where a field gate crosses a public right of way it should remain unlocked even if there is a stile or gate alongside it unless it was historically locked i.e. when the public right of way was dedicated. The locking of the field gate will generally be construed as an obstruction as the right of way is taken to be passing through the larger gate, not the adjacent stile.

Legislation

Rights of Way are affected by several pieces of legislation:

National Parks and Access to the Countryside Act 1949

- This included the creation of definitive maps and statements, upon which rights of way were to be recorded (often for the first time).

Countryside Act 1968

- This Act required the signing and way marking of public paths.

Highways Act 1980

- This Act, covers many areas of law relevant to public rights of way which are legally “highways”, including creation, diversion and extinguishment; maintenance responsibility; protection and enforcement.

Wildlife and Countryside Act 1981

- This Act amongst other things updated the law relating to the recording of public rights of way in the definitive map and statement.

Town and Country Planning Act 1990

- This Act regulates the development of land and makes provision for the diversion and extinguishment of public paths where necessary for development to take place.

Countryside and Rights of Way Act 2000

- This Act created Access Land, founded Local Access Forums, required Rights of Way Improvement Plans and made various amendments to public rights of way law.

Clean Neighbourhoods and Environment Act 2005

- This Act introduced legislation for Gating Orders

Natural Environment and Rural Communities Act 2006

- This Act limits the recording of public vehicular highways on the Definitive Map

Equality Act 2010 consolidates various Acts including the Disability Discrimination Act 1995 & 2005. The Act relates to having to have regard for people with protected characteristics including disability, age and gender.

Local Access Form (LAF)

The LAF is an advisory body made up of members of the public, selected to give a good cross-section of those affected by rights of way and rights of way legislation. They advise on how to best improve public access to the countryside in the area covered by the LAF. Warrington is included in the Merseyside, Halton and Warrington LAF.

Liability

Owners, lessees and occupiers of land crossed by public rights of way can be liable for injuries caused to path users by their negligence. For example, if a stile were to collapse under a walker, or if a path user were to be injured by an electric fence placed across a path or by barbed wire too close to a path, then the injured party may pursue a claim against the person in control of the structure.

As the Highway Authority, we are responsible for the surface of most public rights of way and bridges. In certain circumstances we may be liable for injury caused to people using a public right of way if the injury is due to negligence on the our part.

Maintenance

We have a duty to maintain the surface of most public paths to a standard suitable for the lawful public use and includes the control of surface vegetation (this does not include cultivated crops).

Paths coming into being post the 1959 Highways Act from long usage are not publicly maintainable.

Many public rights of way are privately maintainable to a higher status. Where dual liability exists, the council - as the Highway Authority - is only responsible for maintenance to the public status.

Misleading signs and notices

Misleading signs can deter people from lawfully exercising their right to use paths and the council has a duty to prevent such occurrences. We can remove any unofficial signs erected in a public right of way.

Unofficial signs affecting a public right of way but on adjacent land or on lawful structures can be dealt with on application to the magistrates court. The magistrates may impose a fine or order the offender to remove the sign with a continuing fine for each day it remains.

Motorbikes

A common complaint is the illegal use of motorbikes (or other engine/motor vehicles) on rights of way and other land.

It is a criminal offence to drive on land not forming a road except with lawful authority e.g. land owner's permission. This is a motoring offence so must be reported to the police.

Riding a bicycle or a horse on a footpath is a trespass against the holder of the land over which the path runs, which is a common law offence. Generally, you can ride on a footpath if you have the landowners' permission.

Obstructions

We have a lawful duty to remove all obstructions and encroachments to public rights of way. We also have a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Depending on the circumstances, offenders are normally given a reasonable time to comply with a request to remove the obstruction. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the council will remove the obstruction and recover costs from the landowner. Consideration will be given to prosecution for wilful obstruction in the magistrate's court.

Permissive paths

If a landowner wishes, they may create a 'permissive path'. This is a route which the landowner permits the public to use but with the intention that it should not become a public right of way. A landowner can enter into a permissive path agreement with the council for a useful route.

Unofficial (illegal) diversions of public rights of way made by landowners can be regarded as permissive paths, but if certain measures are not taken the new route may in time become a public right of way through presumed dedication to the public.

Ploughing

Farmers are entitled to plough public rights of way only if it is not reasonably convenient to avoid ploughing them out. This only applies to cross-field public footpaths and public bridleways. It is an offence to plough field edge public rights of way and cross-field byways.

Where cross-field public footpaths or public bridleways are ploughed it must be reinstated within 14 days for the first disturbance (then 24 hours for any further disturbance), otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use to not less than the statutory minimum width.

- The minimum width for public footpaths is 1m
- The minimum width for public bridleways is 2m

Rights and responsibilities

The right to use highways such as footpaths, bridleways and byways is a right to "pass and repass" at all times. This covers incidental activities such as taking a pram, pushchair or wheelchair if practicable; taking a dog under close control, admiring the views, bird watching etc.

Path users may make a small deviation to avoid an obstruction or remove an illegal obstruction sufficient to get past.

The public should be aware that the countryside is a working landscape that other people rely on for their livelihood. In using the network please respect the rights of farmers and landowners as well as other users.

Codes of conduct

- Follow the [country code](#)
- Follow the [cyclist's code](#)

Signing and waymarking

We're responsible for signing public paths from metalled roads and waymarking the path as appropriate.

Surface maintenance

Overall the surface of public paths is our responsibility – we effectively own and control the surface, irrespective of the general land ownership.

Disturbance of the surface of a public right of way to the extent it becomes inconvenient for public use is a criminal offence.

A landowner / occupier may not dig up or resurface a public right of way without the prior authorisation from us.

Vegetation

Vegetation which grows from the surface of a public right of way is the council's responsibility to clear.

Every summer (mid May to the end of June and mid July to the end of August), we cut paths that need cutting.

Widths of public rights of way

The width may be recorded in the definitive statement but for most paths in Warrington it isn't. In these cases the width, which is a matter of fact, has to be determined in each individual case. The width may be set out in an historical document or it may be the width of the way between boundaries such as hedges or fences, alternatively the width may be that which the public have customarily enjoyed.

In the case of a new path including those created in diversion orders we require a 2m width for footpaths and 3m width for bridleways.

An encroachment into the width of a public right of way is an obstruction and a criminal offence. The council will deal with encroachments accordingly.

Statutory default minimum widths apply to all public rights of way but only in relation to ploughing and reinstatement following ploughing. These are:

- Public footpath: Field edge 1.5m, Cross field 1m
- Public bridleway: Field edge 3m, Cross field 2m
- Restricted byway: Field edge 3m, Cross field 3m
- Byway open to all traffic: Field edge 3m, Cross field 3m