

AILG

Association of Irish Local Government
Aontas Rialtas Áitiúil na hÉireann

AILG Elected Members' Information Leaflets

Public Rights-of-Way – Creation and Extinguishment

Leaflet **4**





Purpose of this leaflet

Issues involving “rights-of-way” appear quite frequently on Council agendas as under both Planning and Roads legislation elected members have reserved functions in relation to public rights-of-way. In some cases, matters concerning rights of way can be controversial – for example in relation to the extinguishment of a public right-of-way where nearby residents can have conflicting views on the proposed action.

Separately, the modern popularity of outdoor recreation has prompted Councils to devise waymarked trails for pedestrians and cyclists which may involve the creation of rights-of-way.

The Development Plan and rights-of-way

Under the Planning Acts local authorities are required to document public rights-of-way in both map and in listing format in the development plan.

Where the local authority proposes to list a right-of-way in the development plan for the first time it must observe the procedure prescribed in the Planning Acts as follows:

- It must serve notice on the owner and occupier of land over which the right-of-way is located notifying of its intention to list the right-of-way in the development plan.
 - The notice must state that the owner or occupier may make submissions or observations within a period not less than six weeks from the date of the notice.
 - The authority must take into consideration any submissions received.
 - It is reserved function of the elected members to decide, having had regard to the submissions, on whether or not to include the right-of-way in the development plan.
- Any person who made a submission must be notified of the council's resolution as well as it being published in a newspaper circulating in the area.
 - Any person notified of the Council's decision may appeal a decision to include a right-of-way in the development plan to the Circuit Court and the Court's decision shall be final.

Two points worth noting:

1) the inclusion of a right-of-way in the development plan is evidence of the existing of such a right unless the contrary can be shown.

2) conversely, the fact that a right-of-way is not included in the Development plan does not affect its validity.

Creation of a right-of-way by agreement and by compulsory purchase

Under the planning acts a local authority may make an agreement with a person having the necessary title to create a right of way.

There is also an explicit power to create a right of way compulsorily which involves serving of notice, publication in a local newspaper, and a right of appeal to An Bord Pleanála. Deciding whether or not to acquire a right of way compulsorily is a reserved function of the elected members.

Extinguishment of a Right of Way

The procedure for the extinguishment of a right of way appears quite frequently on a local authority agenda.

“ The extinguishment of a right of way applies to all situations where the local authority wishes to remove the legal basis for all public use of a right of way. ”

The procedure is sometimes used as a “tidying up” process following a road improvement scheme where there is a stretch of old road now redundant. By moving to extinguish the public right-of-way over the road the council is relieving itself of all liability to maintain the road in question. It is also freeing up the land for use in another way.

However, the extinguishing procedure may also be used for rights of way which are not vehicular roads.

One of the most frequent instances of their use is where residents in an estate seek the closure of a passage way on the basis of alleged anti-social behaviour. Such situations can be topical as the same passage way may also be a convenient pathway to local services for other residents in the neighbourhood – a consideration particularly relevant when sustainable travel routes are being considered.

Process for extinguishing a right-of-way

The procedure before the question reaches the elected members is as follows:

1. The local authority must publish a notice in a newspaper circulating in the area specifying the place and times – being a period not less than four weeks – where the map indicating the right of way proposed to be extinguished may be inspected.
2. The local authority must also position a copy of the same notice at each end of the right of way which it is intending to abandon.
3. A period of at least two weeks must be allowed after the map is taken off display for objections or representations to be made.
4. A person may request that in writing that they be allowed state their case at an oral hearing conducted by a person appointed by the local authority.
5. The elected members’ have two decisions to make:
 - Firstly, if there have been requests for an oral hearing to decide to convene such a hearing conducted by a person appointed by the authority.
 - Secondly, the substantive decision of whether to close the road not.

Consequence of the elected members making such an order

If the elected members decide to extinguish the right of way the local authority is obliged to take positive action to:

- a) Make the extinguishment of the right of way a reality by erecting notices and physical barriers – unless a private right-of-way exists;
- b) Ensure that the former right of way does not become, in the words of the Act, an “eyesore”

Other than the foregoing actions the local authority ceases to be responsible for any maintenance of the right of way and is deemed to have legally abandoned the stretch of path or road in question.

Legal basis for the extinguishment of a public right-of-way

Roads Act 1993, Section 73 sets out the process for the extinguishment of a right of way.

Exceptions

The 1993 Roads Act procedure does not hold in the case of a Compulsory Purchase Order or a Motorway Scheme both of which include the extinguishment of right-of-way as part of their processes.

Municipal District Competence

The extinguishment of a right of way is to be performed by the Municipal District in councils where such exist – *Local Government Act 2001-14 Schedule 3 Part 1*.

Public v Private Rights of Way

The law on rights of way is complex and, in practice, each case turns on the specific circumstances of the location in question. While the Planning Acts would seem to provide a route to establishing a right of way in practice it can be extremely difficult – and expensive in legal costs – to establish a right of way if there is opposition from the land owner(s) involved.



Example Public Notice for Extinguishment of right of way (a pedestrian passage)

KILDARE COUNTY COUNCIL

ROADS ACT 1993 – SECTION 73

EXTINGUISHMENT OF PUBLIC RIGHT OF WAY

AT ROSCONNELL, NEWBRIDGE

Notice is hereby given that Kildare County Council in pursuance of Section 73 of the Roads Act, 1993 proposes to make an order extinguishing a public right of way on the laneway linking Rosconnell Avenue and Rosconnell Close, Newbridge as shown on drawing No. KNMD/2020/ERW/1.

Drawing No. KNMD/2020/ERW/1 may be inspected by appointment only during normal opening hours for a period of one month from the date of publication of this notice, (until Wednesday, 18 November, 2020) at the following locations:

- Kildare County Council, Roads, Transportation & Public Safety, Level 4, Áras Chill Dara, Devoy Park, Naas, Co. Kildare, W91 X77F

AND

- Newbridge Municipal District Office, Newbridge Industrial Estate, Newbridge, Co. Kildare, W12 N297

and will also be available to view on Kildare County Council's website:

<http://kildare.ie/countycouncil/AllServices/Roads/ExtinguishmentofPublicRightsofWay>

Objections/Submissions or representations may be made in writing to the Acting Senior Executive Officer, Roads Transportation and Public Safety Department, Level 4 at the address below or by email to roadsubmissions@kildarecoco.ie on or before 5.00 p.m. on Tuesday, 1 December, 2020.

Any person making an objection or representation within the foregoing period may make a request, in writing to state their case at an oral hearing to be conducted by a person appointed by the said Council for that purpose.



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Disclaimer: Issued July 2021. While every care has been taken in the preparation of this information leaflet, the Association of Irish Local Government assumes no responsibility for and gives no guarantees concerning the accuracy, completeness or up to date nature of the information provided and accepts no liability arising from any errors or omissions. This commentary is intended to be a helpful summary of the process for introductory purposes. The legal texts should be consulted – with appropriate advice- before forming a definitive opinion on any question.



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