# rights of way in Northern Ireland lanes, roads and access

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Homes, farms and commercial property

Few things cause more trouble in Northern Ireland property than access. A shared lane, a path across a field or a gateway onto a county road can decide whether a house can be sold or mortgaged, whether a site can be developed, and whether neighbours stay on speaking terms. This briefing explains how rights of way arise, how they are proved, protected and enforced, and how to put them on a proper legal footing, before a buyer, a lender or a neighbour asks the question.

## Public and private rights of way

| | Public right of way | Private right of way |
|---|---|---|
| Who can use it | Everyone | Only the owners and occupiers of the land that benefits |
| How it arises | Dedication by the landowner and acceptance by public use, or by statute or order | Deed, implication on a sale, or long use (prescription) |
| Who looks after it | Adopted roads: DfI Roads. Paths: the local council asserts and protects them | The users, as agreed; the landowner usually has no duty to repair |
| How it ends | Only by legal process, such as an abandonment or extinguishment order | By release, merger of ownership, or proven abandonment |

## Dedication to the public

A public right of way arises where a landowner intends to dedicate a route to the public and the public accept it by using it. Dedication can be inferred from long, open public use without objection. Under the Access to the Countryside (NI) Order 1983, district councils must assert, protect and keep open public rights of way, and can make orders creating, diverting or extinguishing public paths.

Once a way is public, the landowner cannot simply close it, and the right is not lost by disuse. A private owner who wants to prevent dedication should make it clear, by signs or occasional closure, that use is by permission only.

The first rule

If there is a track, a lane, a gap in a hedge or a worn path on the ground, there is very probably a right of way of some kind, whether or not it appears on any title. Assume a right exists until it is shown that it does not.

Rights that bind without registration

Under Schedule 5 to the Land Registration Act (NI) 1970, certain burdens affect registered land even though they are not shown on the folio, including many rights of way acquired by long use. A clean folio does not mean the land is free of rights of way.

### Implied rights

When an owner sells off part of their land, such as a site, rights needed to use it, or obviously enjoyed with it, can pass by implication even if the deed is silent. Confirm them in writing.

### Other easements

The same rules apply to rights of drainage, water supply, support, light and to run services. They cause the same problems.

### Commercial property

Service yards, loading bays, shared car parks and estate roads depend on rights of way for vehicles. Width and vehicle type are critical.

# Who owns the laneway, county roads, and rights acquired by long use

## Agricultural laneways

Many rural laneways in Northern Ireland have never been conveyed to anyone. When farms were first registered under the Land Registration Acts, the adjoining owners were often given registered title up to the middle of the lane. This reflects the old presumption that owners on either side own to the centre line.

The result is that the bed of a single laneway may belong, in strips, to several farm families, while the houses along it rely on rights of way over every strip. Those rights are often unwritten, and the owners of the bed may have changed many times. Some strips may be unregistered, or owned by someone who has died or cannot be traced.

## County roads

The same is true of many public roads. Adjoining folios frequently run to the middle of the road. The owner holds that ground subject to the public's right of passage, and an adopted road is maintained by DfI Roads. A registered title to the centre of a road gives no right to obstruct it, and it remains subject to all public and private rights of way over it.

Other evidence of a right of way

Old Ordnance Survey and Griffith's Valuation maps, aerial photographs, the title deeds of neighbouring land, Land Registry folio maps, planning files, statutory declarations from long-standing neighbours, and the physical signs on the ground: gates, walls, kerbs, surfacing and worn tracks.

### Registering a right acquired by use

A right acquired by long use can be registered against the servient folio. The application is supported by statutory declarations describing the use, its route and its duration, and a map. The Land Registry gives the owner of the lane notice and an opportunity to object. Once registered, the right is clear to every future buyer and lender.

Folio maps are not boundary surveys

Land Registry maps in Northern Ireland show general boundaries only. A lane on a map may not follow the route on the ground. A surveyor's check shows whose land it actually crosses.

## Rights acquired by long use: prescription

A private right of way can be acquired by 20 years' use, under three overlapping routes:

- Common law: use since "time immemorial", presumed from 20 years' use but defeated by showing the right could not have existed at some point since 1189.
- Lost modern grant: the courts presume, from 20 years of use, that a deed granting the right was made and later lost. This is the route most often relied on.
- The Prescription Act 1832, extended to Ireland in 1858, provides for periods of 20 and 40 years.

In each case the use must have been "as of right": nec vi, nec clam, nec precario. That means not by force or against objection, not in secret, and not by permission. Use by permission, however long, never creates a right. The use must also be continuous, by the owners or occupiers of the land that benefits, and against an owner who could have stopped it.

How much use does it allow?

A prescriptive right is limited to the kind and intensity of use enjoyed during the 20 years. A right to bring a tractor to a field does not automatically allow access for eight houses or a commercial yard. A radical change in the use of the land that benefits can exceed the right and be stopped by the owner of the lane.

Reform has not come

The Republic reformed prescription in 2009. In Northern Ireland the Law Commission recommended modernisation, but the old and uncertain rules still apply. Until they change, careful documentation is the only real protection.

### Use by tenants and family members

Use by a tenant, a licensee or a relative living on the land can count, but rights claimed by long use are acquired for the owner of the land. Use while both pieces of land were owned by the same person does not count at all. Where the lane was let, the landlord may not have been able to object, which can affect the claim.

# Resurfacing, services, lenders, abandonment and dividing land

## No automatic right to resurface

A person with a right of way may carry out reasonable repairs so the way can be used as the right allows. They cannot improve or change it without the landowner's consent: tarring a grass or gravel track, widening it, adding kerbs or lighting, or altering drainage. The owner of the lane usually has no duty to repair it either. Where several houses share a lane and nobody owns the bed, nobody may be entitled to resurface it at all.

## Pipes, cables and drains

A right of way is a right to pass, nothing more. It does not include a right to lay water pipes, sewers, electricity or broadband cables under or along the lane. A separate right, a wayleave or easement for services, is needed from every owner of the ground affected. Where the owners of the lane bed cannot be identified, there may be nobody who can grant it.

## Why lenders are cautious

Mortgage lenders require a property to have adequate legal rights of access and services. A house reached by an informal lane, with no written grant from the registered owners of the bed, is a common reason for a mortgage offer to be delayed, made conditional or withdrawn. Lenders may accept statutory declarations of long use, a registered prescriptive right, or title insurance, but each case is judged individually. Sellers should deal with this before marketing, not after a buyer is found.

## Abandonment is hard to prove

A right of way is not lost simply because it is not used. The courts require clear evidence of an intention to give up the right permanently. Non-use for decades, a gate left locked, or an overgrown path is usually not enough on its own. Never assume a neighbour's right has been abandoned, or build across a route, without advice.

## Dividing land that has a right of way

When land with the benefit of a right of way is divided, for example when a farmer sells sites, each part usually keeps the benefit of the right, provided the overall burden on the lane does not become excessive. A deed of grant drafted for one farm may not be wide enough for several new houses. Check before selling sites, and before buying one.

## Created by deed or by use

| | By deed (express) | By long use (prescription) |
|---|---|---|
| Certainty | Clear route, width and purpose | Must be proved from evidence |
| Extent | As stated in the deed | Limited to the past use |
| Services and repair | Can be included | Not included |
| Registration | Registered as a burden and benefit on the folios | Can be registered with evidence, after notice to the owner |
| Lenders | Usually accepted | Often needs declarations or insurance |

Formalising a right of way

The best solution is a deed of grant from every owner of the ground crossed, defining the route on a map, its width and permitted use, rights to lay and maintain services, and how repair and resurfacing costs are shared. The deed is registered against each folio. Where a right has been used for 20 years, it can often be registered on the strength of statutory declarations and a surveyor's map.

# Enforcing a right of way: injunctions, undertakings and title insurance

## When access is blocked

### 1 Gather the evidence

Photographs, maps, title documents, and dated statements from neighbours about how long and how the way has been used.

### 2 Letter before action

A formal letter setting out the right, the interference, and what must be done by a set date.

### 3 Mediation

Neighbours have to live together. A mediated agreement, recorded in a deed, is often quicker, cheaper and more lasting than a court order.

### 4 Court proceedings

In the County Court or the High Court, claiming a declaration of the right, an injunction to remove the obstruction, and damages.

### 5 Urgent cases

Where access is cut off, an interim injunction can be sought quickly, sometimes within days.

## Injunctions and undertakings

An injunction is a court order requiring someone to do, or stop doing, something: to remove a gate, a fence or a pile of rubble, or not to obstruct the lane. Breach is contempt of court. To obtain an interim injunction, the applicant usually has to give an undertaking in damages: a promise to compensate the other side if it later turns out the injunction should not have been granted.

Often the other side will instead give an undertaking to the court, a formal promise not to obstruct the way until trial. It has the same force as an injunction, and avoids a contested hearing.

> Act promptly, but proportionately
>
> Delay can weaken a claim for an injunction. But litigation over a few yards of lane can cost far more than the land is worth, and costs usually follow the result. We always look first for a negotiated and documented solution.

## Title insurance

Where a right of way cannot be proved or formalised in time, title (indemnity) insurance can often be obtained. It covers the loss of value, and the cost of defending a claim, if a right of access or services is successfully challenged. Most lenders accept suitable cover.

Insurance is generally not available once the owner of the lane has been approached about the right, or a dispute has started. It is also not a substitute for a proper grant where one can be obtained. It should therefore be considered before any approach is made.

### Altering, varying or releasing a right of way

Rights of way can be moved, narrowed, widened, extended to new uses, or released altogether, but only by agreement of everyone with an interest, recorded by deed and registered. Diverting a lane around a new house, adding a right to lay services, or converting a farm right into a residential one are all done this way. Lenders with charges over either property may also need to consent.

### Costs

In court, the losing party is usually ordered to pay a large part of the winner's legal costs, as well as their own. A realistic assessment of the evidence, early offers to settle and mediation all help to control that risk. We give you an estimate at each stage.

> Keep a record
>
> Date-stamped photographs of the lane every year, a note of who uses it and for what, and copies of any letters or conversations about it can be decisive evidence years later. Start the record now.

Case study

# The laneway in County Armagh: eight houses, many owners, no title

A 500-metre gravel laneway leaves a county road in south Armagh and climbs to eight houses. The oldest has stood for more than 100 years. The newest was built five years ago on a site sold off by a farmer. The bed of the lane appears on nobody's title as a separate parcel.

## Who owns what?

- Searches show that the farm folios on each side run to the centre of the lane for most of its length. Two farm families therefore own the bed in strips.
- One short section beside an old cottage is unregistered, and the last owner on the Registry of Deeds died in the 1960s.
- The seven older houses have used the lane on foot and by vehicle for well over 20 years, so they very probably have prescriptive rights, but none is written down.
- The newest house has only been there five years, so it cannot rely on prescription. Its owner has an express grant from the farmer who sold the site, but that farmer owns only half the width of part of the lane.

## The problems

- The residents want to resurface the lane and lay a new water main and fibre cable. They have no right to do either over land they do not own.
- One of the farm families objects to tarmac, fearing faster traffic past the farmyard.
- A buyer for the newest house cannot get a mortgage offer, because the lender requires access over the whole lane.

## If agreement had not been reached

The seven older houses could have applied to register their prescriptive rights, and could have defended them in court if challenged. The newest house would have needed title insurance, which covers loss of value but gives no physical right to resurface or lay services. Its sale might well have failed. The new water main and fibre cable could not have been laid over land whose owners refused consent.

## How we resolved it

| | Step |
|---|---|
| 1 | Title investigation of every folio along the lane, and Registry of Deeds searches for the unregistered section |
| 2 | A surveyor's map of the lane, the boundaries of each strip, and the proposed service route |
| 3 | Statutory declarations from long-standing residents, proving more than 20 years' use for the seven older houses |
| 4 | Negotiation with both farm families, leading to a single deed of grant: rights of way for all eight houses, rights to lay and maintain services, and agreed resurfacing in gravel with speed bumps at the farmyard |
| 5 | A lane maintenance agreement sharing costs between the eight households and the farms |
| 6 | Title insurance for the short unregistered stretch, where no owner could be found |
| 7 | Registration of the rights on every folio, and confirmation to the buyer's lender |

The lesson

The sale of the newest house was saved, and the value of all eight was protected for the future. It was cheaper because everyone acted together, before any dispute had hardened.

Timescale and cost

From first meeting to registration took about five months. The legal, survey and insurance costs were shared between the eight households, and cost each a fraction of what a single court case would have cost.

Our role

# What we do, what we cannot do, and what you should tell us

When you buy, sell, mortgage or develop property, our job is to investigate the title and make sure the rights you need are in place, or that the risks are understood. We can only ask the right questions if we know what to look for. Please tell us about any lane, path, gateway, shared drive or access across someone else's land, or across yours, however informal it seems.

## What we do

- Examine the folios, maps and deeds for express rights of way, burdens and boundaries.
- Raise enquiries and requisitions with the other side about access, services and disputes.
- Prepare statutory declarations of long use, and apply to register prescriptive rights.
- Draft deeds of grant, variation, diversion and release, and lane maintenance agreements.
- Arrange title insurance where appropriate, before any approach is made.
- Negotiate with neighbours and their solicitors, and mediate disputes.
- Act in court for declarations, injunctions and damages where agreement cannot be reached.

## What we do not do

- We do not inspect the property or walk the lane.
- We do not confirm that title maps match the boundaries on the ground. That needs a surveyor or architect.
- We cannot see rights that are used on the ground but not written down, unless you or the seller tell us.

Buying rural property: a checklist

Walk the whole access route. Ask who owns every part of the lane, and who maintains it. Ask how water, power and broadband reach the property, and over whose land. Ask the seller for anything in writing about the lane, and about any disagreements. Tell your lender's broker about any informal access at the outset.

## What can be achieved, and what cannot

Usually achievable

Registering a right that has been used openly for 20 years; a negotiated deed of grant and maintenance agreement; title insurance to satisfy a lender; an injunction to remove an unlawful obstruction.

Not achievable without agreement

Forcing a landowner to allow resurfacing, widening or new services; extending a farm right to new houses; proving a right that has existed for less than 20 years and was never granted; or making an unregistered strip owned by an untraceable person yours.

Traps to avoid

Asking for or accepting permission to use a route: use by permission cannot create a right, and an approach can damage a claim still being established. Contacting the owner before insurance is in place. Blocking a neighbour's route on the assumption the right has been abandoned. Buying a site served by an informal lane without checking the lender's requirements. Relying on a planning permission, which grants no legal right of access.

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The law is rarely one size fits all. While the same legal principles apply, every case turns on its own facts. This guide is reviewed and updated as the law and tax rules change. This briefing is general information on the law of Northern Ireland as at October 2026. The case study is illustrative and based on a typical set of facts. Please take advice on your own circumstances.

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