

Residential / land access along public rights of way
West Berkshire District Council's policy for dealing with repairs

Background

Public rights of way are all highways, and West Berkshire District Council (WBC) has a duty to maintain them in a suitable condition for their public use whilst also protecting the rights of the public to their use and enjoyment. Below is a list of types of public right of way and their legal uses. Although these are the legal users, the location of a right of way means that the level and purpose of use will vary.

Public footpaths – used by pedestrians.

Public bridleways – used by pedestrians, horse riders and cyclists.

Restricted byways – used by pedestrians, horse riders, cyclists and carriage-drivers.

Byways open to all traffic – used by pedestrians, horse riders, cyclists, carriage-drivers and motorised vehicles.

There are over 700 miles of public rights of way in West Berkshire, the vast majority being pathways in rural locations. WBC's maintenance budget must be spread across this large network.

Public rights of way serving as access to private property or land

Where a public right of way forms the access to properties or adjacent land, there may be a relatively large amount of wear and tear on the surface as a result of these additional uses. WBC's responsibility remains the same, however, and it will be obliged to ensure that the surface of the right of way is safe and suitable for the public users. Most of these rights of way are rural tracks (or form easy access to rural areas), and so the standard of maintenance would be very basic:- ensuring they are safe whilst at the same time protecting the rights of the public enjoy a rural environment.

It is important to note that WBC has a responsibility towards public users only. It therefore has no duty to provide suitable access for any users of a right of way which are not listed above. For instance, if a public or footpath or bridleway forms vehicular access to land or property, WBC has no duty to ensure it is suitable for vehicles, because a public footpath or bridleway carries no public vehicular rights.

In such instances, residents or landowners possessing private rights of vehicular access are entitled to make this access useable for their purposes, but all works must be approved in advance by WBC, and only suitable contractors may be used, because the right of way is a highway. Many residents / landowners accept they have a responsibility towards upkeep and may actually prefer the access to remain fairly rough, as this reduces speeding and is rural in character.

Some public rights of way are also 'private streets', which are public highways which must be maintained privately, i.e. by the residents.

Procedure for repair and maintenance

Should a complaint be received about the condition of the surface of a right of way used as access to land or property, WBC will inspect the right of way and assess its safety and suitability for the public users. Should the assessment deem that work is required, then basic repairs will take place – for instance, basic regrading of the surface or filling of potholes. Where wear and tear is clearly primarily as a result of vehicular access to property or land, the residents will be asked for a contribution but there is no legal obligation to pay.

Should residents / landowners request a higher standard of maintenance, then this will have to be provided at their own cost. Because rights of way are highways, the District Council may have to stipulate certain specification details which are suitable for public highways.

WBC will contribute to work only where it would have been obliged to carry out basic repairs itself, and the amount of this contribution will equate to the cost of such basic repairs.

Residents / landowners may be asked to source a quotation themselves from suitable contractors, but WBC must approve the quotation and proposed specification prior to work taking place (this also has the added benefit that WBC can check that the quoted rates are reasonable). If approved, WBC then authorises the repair and requests that residents/ landowners obtain from the contractor an invoice to WBC for WBC's proportion of the contribution. Alternatively, WBC may order the works and invoice a representative of the residents/ landowners, who may then in turn recoup the other contributions.

WBC must inspect and certify the work on completion, in order to avoid any future liabilities resting on residents/ landowners. Note that a contractor must have £5m public liability insurance and be registered on the Streetworks Qualifications Register, if he is to work on a public highway. A method statement and traffic management proposals must also be submitted and approved by WBC in advance of the works being carried out. Quotations are required from three different contractors if the value of the work is over £5k.

Sometimes, residents / landowners wish to repair the surface physically themselves. They will not be liable whilst work is taking place, but WBC must inspect and certify the work on completion, in order to avoid any future liabilities resting on residents / landowners. Another method of dealing with repairs is for WBC to order materials and arrange for the aggregate company to deposit them on site, at a location to suit the residents/ landowners, and WBC's financial outlay is restricted to the purchase and delivery of the material. The residents /landowners then arrange to lay the material, but such an arrangement should be restricted to a temporary filling of potholes, because residents /landowners would rarely possess the machinery required to incorporate and compact the material across the whole surface. In both cases, the proposed work must be approved in advance by WBC.

If residents /landowners are able to set up an association, it is possible to enter into a legal agreement with the District Council under Section 278 of the Highways Act 1980, whereby the Council carries out agreed works and the association reimburses an agreed sum to the Council.

Notes on suitable materials and specifications

When ordering the materials, it is necessary to be sensitive to the local conditions e.g. sandy aggregate is more appropriate than limestone for acid areas such as commons. Limestone is suitable for chalk areas.

WBC will only authorise a surface which is consistent with its duty under Section 130 of the Highways Act 1980: "it is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which it is highway authority". In practice, this means that the District Council will need to consider both the amenity value and the ease of use the public right of way. A hard sealed surface such a tarmacadam is usually considered inappropriate in all circumstances, especially where there are public equestrian rights of way. Such sealed surfaces are also very costly to maintain once they begin to break up, and may produce hazardous hard edges when deteriorating; this is another reason why sealed surfaced are to be avoided. The best alternative would be a graded aggregate, suitably shaped to shed water, and compacted, because this is much more easily re-worked to restore a suitable surface. Sometimes, all that is needed to restore an old potholed aggregate surface is a redistribution of the surface material.

Note: there may be special cases for rights of way which cross West Berkshire Council-owned common land. The rights of way team will be able to provide details.

West Berkshire Council, Public Rights of Way Team, Planning and Countryside Service