

Public Rights of Way Service



Guidance: Public Rights of Way along unadopted Roads

Introduction:

Roads usually fall into two categories:

Adopted Roads: The majority of roads are (in the language of the Highways Act 1980) “highways maintainable at the public expense” meaning that there is a right of way for the public along them and that they belong to and are maintained by a highway authority. In nearly all cases an adopted road will include the footway/pavement. On the Island, the highway authority is the Isle of Wight Council and many of its functions are undertaken by its contractor, Island Roads.

Unadopted/Private Roads: These are not maintained by a highway authority. In most cases they provide access to residential properties and are often along an unmade rough surface.

FindMyStreet (<https://www.findmystreet.co.uk/>) is a very useful website for searching for a particular road to ascertain its status and to confirm the maintenance responsibility.

Public Footpaths and Bridleways along unadopted roads:

There are many instances on the Isle of Wight where public footpaths and bridleways (recorded on the definitive map and statement) run along unadopted roads which provide private access to properties.

Public footpaths and bridleways should not be confused with adopted footways/pavements. Pedestrian rights (i.e. footpath use) would have originally come into being as a result of use on foot (and by horse, in the case of a bridleway) over a period of time and the public would have accepted the type of surface which then existed.

Footpaths provide a right of way for the general public on foot and Bridleways provide for use by horse and by bicycle. However, in respect of motor vehicle access, the use of a unadopted road is exercising a private right of way i.e. only the residents and their licensees (e.g. visitors, deliveries etc.) are entitled to use it. The Isle of Wight Council is under no obligation to maintain the surface to a standard suitable for private use with motor vehicles nor is it required to bring it up to a better standard.

Ownership of an unadopted road and repairs:

In many instances, ownership of an unadopted road is unknown and there is not an identifiable person to approach with regard to repairs. In this case, each property is deemed to own the road up to the centre point for the extent of their frontage. Deeds to a property usually provide for a formal right to use an unadopted road with vehicles together with an obligation to contribute towards repair and maintenance.

Damage caused by the public on foot (and by cycling and horse riding in the case of a bridleway) is minimal, if any is caused at all. The damage is nearly always caused by the owners of the properties (and their licensees) exercising their private right of way with motor vehicles on an unsealed surface. The damage caused by motor vehicles during wet and cold weather can be quite dramatic.

Policy:

The Public Rights of Way Service advises that owners of all properties that an unadopted road serves should take responsibility for their private use and the damage that they are causing to the surface.

In many cases (particularly where an owner of the road cannot be located) residents form an association with a view to seeking contributions from all property owners to form a fund to keep the surface in repair. Detailed guidance and general advice on private roads can be found in a book entitled Private Roads: The Legal Framework by Andrew Barsby.

If residents wish to take steps to carry out works, then the Service should be contacted with details prior to commencement. In addition to providing the necessary consent to proceed, we may be able to provide guidance and to make a nominal contribution and/or provide materials to reflect the public benefit.