

Private Streets FAQ

What is a highway?

A Highway is an area of land which the public at large have the absolute right to use to 'Pass and Repass without let or hindrance'.

Any area of land where this right exists therefore have equal status irrespective of the use made of it or its appearance. The status of Parliament Street for example is identical to that of a public footpath across a field.

How does a Highway right arise?

Highway rights arise either through use or as a result of the Highway Authority creating them.

What is the difference between a private street and a highway?

Roads/footways and footpaths can ONLY exist in one of three distinct legal types:-

1. A highway maintainable at the public expense
2. A highway maintainable at private expense
3. A private street/footway or footpath

No 3 is one which the public have no rights to use unless permission is given by the owner. ie these have the same status as a path or drive at someone's home.

The difference between 1 and 2 is who maintains them. In all other respects they are identical.

The above means:-

- It is the RIGHT of the public to use a road/footway/footpath that is crucial not who maintains it

What powers does the Highway Authority have?

As Highway Authority, the City of York Council have Statutory duty to protect the public's right to use a highway even if we are not responsible for maintaining the highway in question. This means:-

- ❖ we must act against anyone who tries to prevent an individual either on foot or in a vehicle (if appropriate) from travelling through the particular highway concerned.

If we do not then we can be taken to Court and fined a substantial sum. It does not matter if the person interfering with the highway rights is the owner of the land or not.

- ❖ we must make sure that the highway can be used in safety.

We have powers to require the owner to undertake the necessary repairs. If we are unable to get these repairs done – because the owner cannot be traced for example – then we must undertake the work. A legal charge can be put on the land so that if it the owner ever can be traced or the land is sold these costs can be recovered.

On a highway that is not maintainable at public expense highway law still applies and therefore the Police can prosecute drivers for speeding, not having lights, etc.

So what is the difference between a Highway and a Public Right of Way?

In law - absolutely nothing – both are highways with the Public Right of Way being maintained by the general public.

How does a Highway become a highway maintainable at public expense?

By one of the following:

- Age
- Being maintained by the Highway Authority on a regular basis
- By a deliberate action under the Highway Act 1980

Age

- ❖ Any carriageway that existed on or before 1835 is automatically a highway maintainable at public expense
- ❖ Any footpath that existed on or before 1959 is automatically a highway maintainable at public expense

Who owns a Highway?

With very few exceptions highways that we maintain are not actually owned by the Council. The only exception is where a piece of land was specifically purchased in order to build a road, etc. The law assumes – unless there is evidence to the contrary, that a highway is owned by the frontagers on each side up to the centre line of the highway.

The presence of highway rights automatically means that landowner rights are not able to be used . However in the case of a privately maintained highway, the landowner retains rights to decide who may enter that land

for the purpose of laying pipes, etc and other non highway related activities.

Who owns the Highway boundaries?

The highway extends from one boundary feature on one side to another boundary feature on the opposite side. Only in exceptionally rare instances does the extent of the Highway include those boundary features. This means that walls and hedges alongside a Highway are owned by those persons along whose frontage they are situated.

Obstruction of the Highway caused by hedges, trees and other vegetation is an offence under the Highways Act 1980 and owners can be told to remove that obstruction. Powers exist (and are regularly used) for the Highway Authority to undertake the removal of the obstruction where the owner fails to cooperate, and to recover the costs from the owner.

The law on obstruction of a Highway overrides any protection afforded to a hedge under the Hedgerow legislation or any protection afforded by a Tree Preservation Order under the Town and Country Planning Act.

Can I park on a highway?

In law no one has any right to park upon any highway in this country. All Parking is an obstruction of the basic right of anyone to Pass and Repass without let or hindrance.

Parking on any part of the highway – including a verge or a footway is an obstruction of that highway under Section 137 of the Highways Act 1980.

If the parking occurs on a privately maintainable highway then the owner of the land over which that highway runs has the right in Civil law to prosecute the driver for trespass.

Parking on a verge or footway may cause damage to that verge or footway. If this occurs it is the driver of the vehicle that is responsible for the consequences not the owner of that vehicle or the person that the driver is visiting. Parking on a verge or footway is not a specific offence in law so recovery of costs incurred in repairing the damage is a Civil matter through prosecution in the Courts of the person causing the damage.

If the carriageway adjacent to a verge or footway is covered by a waiting restriction then that restriction applies to the full width of the verge or footway (unless the relevant Order says otherwise). Vehicles parked upon that verge or footway are committing the same offence as if parked on the carriageway.

Can I put a gate on a Highway?

So long as the Highway concerned remains a highway the **ONLY** grounds for putting a gate across a highway – and then it must never be locked – is to control livestock.

If it is desired to put a locked gate across a highway then the highway rights on that land have to be removed first.