



BEDFORD
BOROUGH COUNCIL

Public Rights of Way

A Guide for Farmers
and Landowners

This is a guide to Bedford Borough Council's protocols regarding issues commonly associated with Public Rights of Way. The aim is to help understand some of the legislation which applies to Public Rights of Way and how Bedford Borough Council is obliged to apply legislation to various issues.

The Highways and Rights of Way team will provide advice and information in relation to Public Rights of Way issues. We will help to try to resolve any issues efficiently and with courtesy. In cases where disputes cannot be resolved without formal enforcement any right of appeal or complaints procedure will be explained, with details of the process and the likely timescale.

This information is intended as a guide only and is not an exhaustive list of Public Rights of Way legislation and case law. You should always seek independent legal advice on any aspect covered in the document as it is not intended as a substitute for that advice.

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Barbed Wire

Barbed Wire across a Public Right of Way:

A barbed wire fence placed across a Public Right of Way, is considered to be an obstruction and also a danger to members of the public and should be removed.

If a barbed wire fence is required for stock control or agricultural purposes, the Council can help by providing advice on a suitable crossing point and can legally authorise a new means of passage across the public right of way. Without this authorisation, an offence is being committed.

Highways Act 1980 sections 137 and 149.

Barbed Wire alongside a Public Right of Way:

Barbed wire adjacent to a path can be considered to be a nuisance if it is likely to injure people or animals lawfully using the Right of Way. If this is the case, the landowner should remove the barbed wire. Failure to do so could result in action in the Magistrates' Court.

Highways Act 1980 Section 164

Bird Scarers and Rights of Way

Scarers are intended to frighten birds, not visitors to the countryside. Try to avoid taking path users by surprise. Try to avoid positioning auditory scarers adjacent to Rights of Way. Consider warning users of their presence. Remember that horses are easily frightened and can bolt or unseat their riders. Look to lessen the potential danger by taking these safety precautions:

- Maximise the distance between the scarer and the road or bridleway.
- Point the scarer away from nearby roads or bridleways.
- Where appropriate use a baffle
- Consider erecting temporary signs to warn riders. Remember to remove these after use.

The Environmental Protection Act 1990



Bulls and dangerous animals

It is an offence, subject to certain exceptions, for the occupier of a field crossed by a Right of Way to allow a bull to be at large in it. The exceptions are:-

1. Bulls not more than 10 months old; and
2. Bulls which are not of a recognised dairy breed and which are at large with cows or heifers. Dairy breeds are Ayrshire, British Friesian, British Holstein, Dairy Short Horn Guernsey, Jersey and Kerry.

Any bull over the age of 10 months is prohibited to be on its own in a field crossed by Public Right of Way, and any such bull which is of a recognised dairy breed is prohibited even if accompanied by cows or heifers.

Similarly, if there is any question about the temperament of a bull or temperament of any other animal which is known to the keeper of that animal, it should not be allowed in a field where a Public Right of Way passes. If injury occurs to a member of the public using the public path then an offence may have been committed and the occupier could be liable.

Wildlife and Countryside Act 1981 Section 59 Animals Act 1971 Section 2

The HSE provides further guidance on cattle and public access in England and Wales at <http://www.hse.gov.uk/pubns/ais17ew.pdf>

Crops on Public Rights of Way

Also see **Ploughing and crops on Public Rights of Way**.

Cross Compliance

If a landowner or occupier breaches legislation in relation to Public Rights of Way they may also be in breach of the Department for Environment Food and Rural Affairs (Defra) Good Agricultural and Environmental Condition Standards (GAECs) and Statutory Management Requirements (SMRs). Defra requires that these standards are met by landowners or occupiers in order for them to qualify for the Single Payment Scheme (SPS). If a landowner or occupier fails to comply with an enforcement notice issued by the Council in relation to Public Rights of Way, details of the offence will be sent to the Rural Payments Agency (RPA) and their SPS may be affected. The Council will undertake to do this only as a last resort and every effort will be made to resolve the problem by mediation first.

Dangerous Land adjoining a Public Right of Way

From time to time the Council encounters unfenced dangers on adjoining land which present hazards to path users. The Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him to remove or adequately fence the danger. The Council can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice the Council may carry out the work and recover the costs from the owner.

Highways Act 1980 section 165.

Definitive Map

Definitive Maps are the legal record of the public's rights of way. The Council is responsible for the upkeep of the Definitive Map. If a way is shown on the Definitive Map then this is conclusive evidence of public rights along the way unless there has been a legally authorised change.

There may also be additional public rights over land which have not yet been recorded on the definitive map or there may be rights which have been incorrectly recorded. The Definitive Map can be modified by legal order if evidence of alleged rights of way is discovered or to correct errors in previously recorded information.



Dogs on Public Rights of Way

Dogs are allowed on Public Rights of Way but they should be kept under close control at all times. There is no requirement in law for a dog to be on a lead. A path user who allows a dog to wander off the Public Right of Way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path or to worry livestock the owners are advised to keep the dog on a lead.

Landowners and occupiers have a duty to ensure that their dog does not threaten or harm other people on a Public Right of Way. If a dog causes unreasonable interference (i.e. more than a minor inconvenience) to the use of a Right of Way it could be classed as a nuisance under common law. The protocol Bedford Borough Council has adopted is to deal with nuisances reported to them by advising the person responsible to 'abate' (stop causing) the nuisance. If the person responsible refuses or fails to do so the Council will serve legal notice.

Restrictions can be placed on dog ownership if the animal is found to be out of control, orders can be made regardless of whether or not the dog has actually injured someone. It is an offence for "...any unmuzzled ferocious dog..." to be at large on a Public Right of Way.

It is an offence to use a guard dog at premises other than a dwelling or agricultural land, unless the dog is tied up securely or is being controlled by its handler at all times. Legislation advises "a person shall not use or permit the use of a guard dog at any premises unless a notice containing a warning that a guard dog is present is clearly exhibited at each entrance to the premises". All incidents of people being bitten by a dog reported to the highway authority will be logged and reported to the police.

Dangerous Dogs Act 1989

Guard Dogs Act 1975 section 1(3)

Electric Fences

Electric Fences across a Public Right of Way

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction to the Public Right of Way and both a nuisance and a danger to members of the public wishing to use the Public Right of Way. The protocol the Council has adopted in these matters is firstly to ask the owner of the electric fence to remove it immediately, or if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the Council as it would constitute a new structure (see Stiles and Gates). If the owner fails to agree to either of these courses of action the Council will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature, the Council will consider prosecution for obstruction.

Highways Act 1980 section 137, 137Z, and 149.



Electric fences alongside a Public Right of Way

Where an electric fence runs alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If, in the opinion of the Council this is the case, then the Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so, the Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the Council removing the fence and recovering costs from the owner.

It is advisable not to use electric fencing alongside a bridleway. If it should be absolutely necessary to run an electrified fence at right angles to a bridleway gate, sufficient space must be available for a rider to manoeuvre a horse whilst it passes through the gate. This is absolutely essential to avoid any chance of the horse touching a live wire whilst opening or closing the gate. Additionally, the electric fencing should be insulated within the vicinity of gate and for a sufficient length each side of the gate opening. The fence must also have the appropriate signage.

If the owner refuses or fails to comply with this requirement, the Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the Council removing the fence and recovering costs from the owner.

Highways Act 1980 section 165.

Encroachment

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred or alleged to have occurred the Council has a duty to investigate and the following action will be taken. Consideration will be given to whether the encroachment has actually occurred and is materially affecting the way or may do so in the future. This may require considerable research including historical research to establish the legitimate width of the highway (see Width of Public Rights of Way). If it is demonstrated to the Council's satisfaction that encroachment has occurred but it is not materially affecting the path or the rights of users the Council may regard it as "de minimis" (the law is not concerned with trifles). In these circumstances the Council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the encroachment has been found to the Council's satisfaction to be materially affecting the Public Right of Way and the rights of users the following approach will be taken to have it removed. Firstly, the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment within a reasonable time-scale to be determined by the Council. If this fails to secure the removal of the encroachment, the Council will commence enforcement action in respect of the obstruction (see Obstructions).

Fencing Public Rights of Way

It is not an offence to enclose a Public Right of Way with a hedge a fence or a wall but it is strongly advised that owners or occupiers should contact the Council first. This is to ensure that there is no encroachment onto the legal width of the route and that the materials for the proposed fencing are appropriate.

Hedges and Trees adjacent to Public Rights of Way Boundary

Hedges and trees to the side of a Public Right of Way are the responsibility of the owner or occupier. The Council can require the owner or occupier to cut back any part of a hedge, tree, shrub or other vegetation which overhangs a right of way, if it endangers or obstructs the passage of legitimate users.

Highways Act 1980 Section 154

There are also specific provisions which allow action to be taken by the Council when a Byway Open to All Traffic or a Restricted Byway is being damaged by the exclusion of light and air due to adjacent hedges or trees.

Highways Act 1980 Section 136

Gates

See **Stiles and Gates**.

Hedges and Trees adjacent to Public Rights of Way

In most circumstances the responsibilities of the Council do not extend to the maintenance of hedges and trees at the side of Public Rights of Way. Regular seasonal vegetation clearance by landowners is advisable. Where a hedge overhangs or obstructs a Public Right of Way, the Council has a right to remove so much of the overgrowth as to prevent the obstruction to pedestrians and equestrians. Additionally, the Council has a power to require the owners of overhanging hedges and trees to require them to lop or cut-back the hedge within a period of 14 days.

Highways Act 1980 section 154.

If a Byway Open to All Traffic or a Restricted Byway is being damaged by the exclusion of light and air due to adjacent hedges or trees, the Council has a power to seek an order at a Magistrates' Court to require the owner to cut back sufficient of it to prevent such damage. However, before employing this power, the Council will discuss the matter with adjacent landowners and request the hedges or trees be cut back or agree to carry out the work in conjunction with the owner as part of a larger project.

Highways Act 1980 section 136.

Also see **Tree Branches and Limbs across Public Rights of Way**.

Liability to Path Users

Landowners:

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to path users by the negligence of the owner or occupier. For example, if a stile were to collapse under a walker or if a path user were to be injured by an electric fence placed across a path, then the injured party may pursue a claim against the occupier of the land.

Occupiers Liability Act 1957.

Bedford Borough Council:

As Highway Authority, the Council is responsible for the surface of Public Rights of Way. In certain circumstances the Council will be liable for injury caused to persons using a Public Right of Way if the injury is due to a negligent act with regard to the surface of the path.

Misleading Signs and Notices Erected on Public Rights of Way

Misleading and unlawful signs can deter people from lawfully exercising their right to use public paths and the Council has a duty to prevent such occurrences. Unlawful signs erected on a Public Right of Way can be removed by the Council. Signs erected affecting a Public Right of Way but on adjacent land can be dealt with on application to the Magistrates Court. The Magistrates may impose a fine or order the offender to remove the sign on pain of a continuing fine for each day it remains.

Highways Act 1980 section 132.

National Parks and Access to the Countryside Act 1949 section 57.



Obstructions

Obstructions and Encroachments which can be Readily Removed:

The Council has a duty at statute law to remove all obstructions and encroachments to Public Rights of Way (The Highways Act 1980). The Council also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Bedford Borough Council has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. Depending on circumstances, offenders are normally given upto 14 days to comply. This informal notice will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the Council will remove the obstruction and recover costs from the landowner.

The Council has a protocol of considering prosecution for obstruction for any subsequent offence as well as taking the direct action outlined above.

Highways Act 1980 section 137 & 143.

Obstructions which are longstanding:

Longstanding obstructions of Public Rights of Way are regularly encountered. The obstructions have often occurred through the ignorance of the landowner, the failure of the planning process or both. Indeed, many such obstructions are historical and have been inherited by the current owners. In these circumstances the Council will deal with the problem in the following manner:

Where the obstruction is minor it must be removed by the owner. If the owner fails to remove the obstruction within a period of time deemed reasonable by Council officers, enforcement action using powers available under section 143 of the Highways Act 1980 will be taken and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender. If the offence recurs prosecution of the offender will also be considered. The Council will only consider a request to divert the path following the removal of the obstruction.

Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.

If the owner fails to acknowledge the problem, or does not co-operate with the Council to remedy it either by diverting the path or removing the obstruction then this failure should be given considerable weight. In these circumstances consideration should be given to prosecution and seeking a magistrates order to remove the obstruction.

If an application to divert the path fails, then the Council would expect the original route to be made available by the owner. If the owner fails to do this then the Council would consider prosecution and seek a Magistrates Court order to remove the obstruction.

Obstructions which are more recent:

From time to time obstructions occur during or as a consequence of development. Very often the offender has received advice from the Council and planning officers but has chosen to ignore it. In these circumstances, greater weight should be given to the behaviour of the offender before considering any proposal to divert the path.

Obstructions which can be readily removed will be dealt with by taking direct and immediate enforcement action using powers available under section 143 of the Highways Act 1980 and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender and consideration should be given to prosecution.

Where the obstruction is more substantial and it is costly and less practical to remove it then consideration should be given to prosecution and seeking a Magistrates' Court Order to remove the obstruction.

Highways Act 1980 section 137 and 137A.

Ploughing and Crops on Public Rights of Way

Ploughing and other Agricultural Apparatus:

Where ever possible ploughing of Public Rights of Way should be avoided. In some circumstances occupiers of land are entitled to plough Public Rights of Way if it is not reasonably convenient to avoid them. However, this only applies to cross-field Public Footpaths and Public Bridleways. All field-edge Public Rights of Way and cross-field Restricted Byways and Byways Open to All Traffic (BOATs) should never be ploughed.

Where a cross-field Public Footpath or Public Bridleway is ploughed it must be reinstated within the time limit set out in Right of Way Act 1990, otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use to not less than the statutory minimum width. In respect of Public Footpaths the minimum width is 1m and for Public Bridleways 2m. The statutory time limit is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling.

Rights of Way Act 1990 section 134.



Crops:

Where a crop (other than grass) has been planted or sown on the land crossed by a Public Right of Way the occupier has a duty to ensure that the line on the ground of the Public Right of Way is indicated to not less than the minimum width (1m for Public Footpaths and 2m for Public Bridleways). Additionally the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence.

Rights of Way Act 1990 section 137A.

Enforcement of Ploughing and Cropping Protocol:

Interference of Public Rights of Way by ploughing and cropping is a major problem and the Council has adopted the following protocol to deal with it.

For a first offence, the Council will explain the law to the offender and an informal interview will be carried out which will be recorded in writing. At the end of the interview the offender will be issued with a copy of the interview form. Subsequently the offender will be allowed 7 days to re-instate the path. Upon expiry of that period if the path has not been reinstated to a satisfactory standard the Council will serve formal legal notice upon the offender requiring them to reinstate the path within a further 7 days. If the path is still not reinstated satisfactorily the Council will engage contractors to carry out the necessary works and recover costs from the offender.

On occasions where an occupier has responded to the first informal interview request but then repeats the offence in subsequent years, the Council will immediately serve formal legal notice requiring the reinstatement of the path within 7 days as set out above.

On occasions where an owner or occupier re-offends after service of formal legal notice the Council will again serve legal notice and, additionally, will consider prosecuting the offender. All recipients of enforcement notices in any one year will be sent letters setting out the law and reminding them of their obligations before the next cropping season commences.

Public Rights of Way

There are four categories of Public Rights of Way:

1. Public Footpaths – where the public has a right of way on foot and with a wheelchair, pushchair or pram.
2. Public Bridleways – where the public has a right of way on foot, on horseback, leading a horse, with a wheelchair, pushchair or pram, and on a bicycle.
3. Byway Open to All Traffic (BOAT) – where the public has a right of way on foot, on horseback, leading a horse, with a wheelchair, pushchair or pram, on a bicycle, in a motorised vehicle or non-motorised vehicle and driving animals.
4. Restricted Byway – there are no Restricted Byways in the Borough.

As public highways, Public Rights of Way enjoy the same protection, provided by the Highways Act 1980 as “proper roads”. They also enjoy additional protection provided by other legislation namely the National Parks and Access to the Countryside Act 1949, Countryside Act 1968, Wildlife and Countryside Act 1981, Rights of Way Act 1990 and Countryside and Rights of Way Act 2000.



Ropes across Public Rights of Way

Where a rope has been placed across a Public Right of Way, the rope will be removed by officers and the owner will be informed. If removal of the rope will cause livestock to stray, rather than remove the rope immediately, the landowner will be contacted and will be asked to remove the rope. Where there is a failure to comply with the request to remove the rope or the offence re-occurs after Council Officers have removed the rope and advised the landowner that they have done so then the Council will consider prosecution of the offender. The Council will also remove the rope if encountered by officers on subsequent occasions.

Highways Act 1980 section 162.

Shooting

It is an offence to shoot from or over a Public Footpath or Right of Way or near buildings. It is important to be aware of the entry and exit points of the Right of Way and not to shoot through gaps in the hedge or near anything else that obscures the view of a Right of Way.

It is an offence to disrupt users of a Public Right of Way. When shooting near Rights of Way it is sensible to halt shooting whilst people use Rights of Way and ensure they have left the area before you resume shooting. Whilst it may be safe to take a shot, ensure that the person is not in earshot so as not to cause offence. If you are involved in a driven shoot for example, try to place a member of the shoot at either end of the route to watch for users of the Right of Way. The 'watcher' should sound a horn or blow a whistle to stop the drive. The watcher should politely ask the person to stand and wait until guns are unloaded and pointing at the ground. The person is then able to continue to use the Right of Way.

Stiles and Gates

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The Council's duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing such structures.

The Council has a discretionary power to extend this grant and will, in normal circumstances, provide a 100% grant by arranging to carry out all the work at no cost to the landowner. This discretionary grant will be withdrawn if landowners fail to co-operate or are obstructing other Public Rights of Way.

Highways Act 1980 section 146.

If an occupier of land wishes to install additional gates on Public Footpaths or Public Bridleways they must apply in writing to the Council for authority to do so. Authority will not be given for any additional stiles. To erect stiles or gates without authority is an unlawful obstruction and is a criminal offence (see Obstructions). The only circumstance for which the Council can provide authorisation for the erection of a new gate is that the structure is required to prevent the ingress or egress of animals onto agricultural land.

Highways Act 1980 section 147.

Stiles and gates cannot be erected for security or other purposes and may be regarded as obstructions to the highway (see Obstructions). Additional gates cannot be erected on Byways or BOATS. Where a field gate crosses an enclosed Public Right of Way (e.g. a lane bound by hedges) it should remain unlocked even if there is a stile or pedestrian gate alongside it. The locking of the field gate will generally be construed as an obstruction to the highway and dealt with as such.

There is an exception to this however: If the path in question leads directly to a vehicular highway and the locking of the field gate will prevent livestock escaping onto the road no action will be taken in relation to the locking of the gate provided that an alternative means of access, such as a kissing gate, pedestrian gate or bridle gate, is provided alongside.



Surfaces of Public Rights of Way

“Ownership” of the surface: Bedford Borough Council is the Highway Authority and as such, the surface of any Public Right of Way is “vested” in the Council. Effectively, the Council owns the surface in most cases. (*See below: Enclosure of a Public Right of Way).

“Disturbance” of the surface; The majority of Public Rights of Way do not have a bound or metalled surface and as such can be susceptible to damage by motor vehicles.

It is an offence to interfere with the surface of a Public Right of Way to the detriment of users. This means that a landowner or occupier may not dig up or even re-surface a Public Right of Way without the prior authorisation of the Council. Landowners or occupiers must ensure that their private use of the route; for example in motorised vehicles, does not damage the surface of the Public Right of Way. If damage is caused it must be re-instated by the landowner or occupier. (see also Ploughing)



How the Council will deal with this offence;

For a first offence the Council will explain the law to the offender and give advice about re-instatement of the surface. The offender will then be given an appropriate period* to re-instate the surface to the satisfaction of the Council. *The period given will be at the discretion of the Officer concerned and will be dependent on the level of damage and the remedial works required. If there is a danger to the public immediate re-instatement will be required.

If the offender fails to re-instate the path or if the re-instatement is unsatisfactory a notice will be served giving a reasonable period for the surface to be properly re-instated. Failure to comply with the notice will result in the Council's contractors carrying out the works with the costs being recouped from the offender.

If the offence recurs the Council will immediately serve a formal notice requiring re-instatement, and it will also consider prosecuting the offender.

Enclosure of a Public Right of Way;

Where a Public Right of Way crosses previously unenclosed land and the landowner or occupier encloses his land (e.g. by erecting a fence or planting a hedge alongside the path), he then becomes responsible for the maintenance of the surface of the route. He will also be responsible if an accident occurs due to problems with the surface.

If a path is enclosed in this way, particularly if the path is made very narrow, there can be problems with the surface falling into disrepair very quickly. If the surface does fall into disrepair the landowner or occupier will be required to make it good for example, by providing a better surface, carrying out drainage works or by increasing the width available.

Tree Branches and Limbs across Public Rights of Way

If a branch of a tree has fallen across a Public Right of Way such that the way is obstructed the Council has adopted the following protocol. Officers will contact the owner of the tree and request that the branch is removed within a predetermined time. If the owner fails to comply with this request the Council will serve notice on the owner of its intention to remove the branch and recover from the person the costs incurred.

Highways Act 1980 section 150 (4) (c).



Widths of Public Rights of Way

There is no general rule applying to the width of Public Rights of Way and the width is a matter of fact to be determined on each occasion based upon certain criteria. The width may be set out in an historical document or it may be the width of the way between boundaries such as hedges or fences. Alternatively the width may be that which the public have customarily enjoyed. In the absence of the foregoing the Council will require a reasonable width to be made available which would be sufficient for two users to pass. In the case of a Public Footpath, this can be regarded as 2 metres; in the case of a Public Bridleway 3 metres; and in the case of a Restricted Byway or Byway Open to All Traffic, 3 metres.

An encroachment into the width of a Public Right of Way is an obstruction and a criminal offence and the Council will deal with encroachments according to protocols (see also Encroachment, Obstruction and Enforcement).

Statutory default minimum widths apply to all Public Rights of Way but only in relation to ploughing and reinstatement following agricultural actions as set out in Rights of Way Act 1990. These are as follows (see also Ploughing and Crops).

Widths of Public Rights of Way		
	Field edge	Cross field
Public Footpath	1.5m	1m
Public Bridleway	3m	2m
Restricted Byway	3m	3m
Byway Open to All Traffic	3m	3m

Rights of Way Act 1990 Schedule 12A

Finding out more

If you would like further copies, a large-print copy or information about us and our services, please telephone or write to us at our address below.

Për Informacion

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Informacja

برای اطلاع

Za Informacije

Per Informazione

তথ্যের জন্য



01234 718003



Rights of Way

Bedford Borough Council

Borough Hall

Cauldwell Street

Bedford MK42 9AP



highways.helpdesk@bedford.gov.uk



www.bedford.gov.uk