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Public Guidance Note 26

DEVELOPMENT AND PUBLIC RIGHTS OF WAY

Advice Notes for Designers, Developers and Planners



Introduction

- This is an advice note for developers and their agents whose site may be affected by a Public Right of Way (PROW).
- It aims to inform and advise in situations where PROW need to be considered and taken account of where development proposals impinge upon them.
- PROW are a material consideration in the determination of planning applications, however, they are often disregarded or overlooked during the development process. This can lead to a whole range of issues later on in the process. This document aims to rectify this and minimise the potential for issues at a later date.
- It is important that designers, developers, planners, and rights of way officers work in partnership to accommodate PROW within new developments to maintain and enhance their value to local communities.



Background

- Public Rights of Way are recorded on the Definitive Map of PROW, which is a legal document. This document records footpaths, bridleways, restricted byways, and Byways Open to All Traffic. Footpaths are for use by walkers; bridleways by walkers, horse riders and pedal cyclists; restricted byways, over which the public have rights to travel on foot, horseback and with non-mechanically propelled vehicles such as pedal cycles and horse-drawn vehicles. Byways being ways open to vehicular traffic but used by the public mainly as footpaths and bridleways. Be aware that other unrecorded rights of way may exist.



- Information recorded on the Definitive Map and Statement (DM&S) is conclusive evidence in law as to position, status, width and limitations or conditions.
- The copy of the Definitive Map is held by Shropshire Council, and Rights of Way information is also available to view on the Council's website www.shropshire.gov.uk/outdoor-partnerships/countryside-access-and-public-rights-of-way/the-definitive-map/

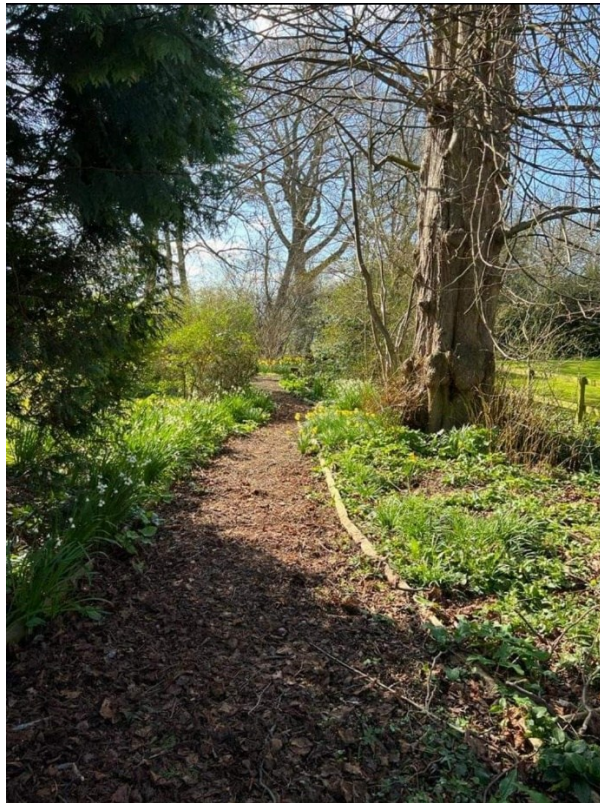
Planning Process & Rights of Way

The effect of development on a Public Right of Way is a material consideration in determination of a planning application.

- The Highways Act 1980 places a responsibility on all Councils to protect Public Rights of Way.
- It is vital that developers liaise with local planning officers and Public Rights of Way staff at an early stage to avoid delay at a later stage in the process.
- Designers and developers should determine the exact legal line of the path before designing any development – check with the Rights of Way Team, particularly as desire lines on site may not be correct.



- No matter the size of your development it is important to address the effect it may have on the Rights of Way network at an early stage. Failure to do so could lead to significant issues and delays later on.
- Public Rights of Way provide safe, quality environments for movement and access to local facilities and promote sustainable, active travel, physical activity, community interaction and mental well-being. They reduce reliance on the car, contribute to combatting climate change and reducing air pollution. Not only are public rights of way a material consideration in the determination of any planning application, protecting and enhancing public rights of way can increase the attractiveness of any development.



- **Defra Rights of Way Circular 01/09** advises that paths should be retained on their existing routes wherever possible. Equally, the Town and Country Planning Act 1990 section 257 states that diversions should only be made if it is considered that it is 'necessary to do so to enable development to be carried out'. There is every expectation therefore that the existing Public Right of Way should stay where it is, particularly in large development sites, where the layout of the new build should be designed to accommodate the path alignment.



- Planning permission alone does not give the applicant the right to interfere, obstruct or divert a Public Right of Way. A development, insofar as it affects a Public Right of Way, should not be started prior to the issue of a Public Path Order and the right of way must be kept open and unaltered for public use, unless or until the necessary public path order has come into effect.



Diversions and Extinguishments under Section 257 of the Town and Country Planning Act 1990

- Public Rights of Way can only be diverted or closed by a Legal Order. Such Orders are made mainly under Section 257 of the Town and County Planning Act 1990 and some others under Section 261 of the 1990 Act for the temporary stopping up of highways for mineral workings.
- These Orders are subject to a full public consultation process and follow a separate application process to that required for planning consent. **The granting of planning consent or the imposition of a planning condition does not stop up a highway.**
- Where it appears necessary for an application to be made for a Public Path Order (PPO), the developer will be alerted to this by way of an Informative from the relevant Planning Authority. The costs associated with the legal process of a PPO are the responsibility of the developer.
- PPO's do take considerable time to complete due to the legal processes involved. All Orders involve consultation with Rights of Way user groups and the public at large via notices on site and in the press.



- The diversion or extinguishment of a right of way should be considered as the last option. Where possible, developers should seek to accommodate rights of way within their development.
- If it is considered necessary to divert a Public Right of Way, the onus is on the developer to consult on the diversion proposal prior to planning permission being granted and early engagement and consultation with the local community is advised. Communication through Parish and Town Council's and local user groups should assist in this regard.
- Contact details for the relevant local Council Member, Ramblers' Association, Footpath Association and Bridleway Association can be obtained from the Council's Rights of Way Team.

NB: In order to process any applications, the Council will need copies of all consultation correspondence.

- Orders made under the TCPA are subject to a period of public consultation, during which anyone can raise an objection. If objections are received and not withdrawn then confirmation of the order can only be determined by an Inspector appointed by the Secretary of State, who may hold a public local inquiry before reaching a decision. If there are no objections, the Order may be confirmed as an unopposed Order by the Order Making Authority. It could therefore be several months before the outcome of an order is determined.
- Most Section 257 Orders do not come into effect until confirmed and certified, this confirms that the new route is acceptable on the ground. This certificate can only be issued once the diverted route has been inspected and approved by the Council as Highway Authority. It is therefore important to keep the Council updated on progress of development so that the necessary inspection can be carried out as soon as the path is complete.
- **Defra Rights of Way Circular 01/09** advises that where the development affecting a way has been completed before an order to divert or extinguish the way has been confirmed, the Planning Act powers cannot be used to divert the path. It is then necessary to resort to trying to secure a diversion under Highways Act 1980 powers, under which it can be considerably more difficult to secure a diversion and requires different legal tests to be fulfilled. It should be noted that development is regarded as completed if the work remaining to be carried out is minimal.
- All existing Public Rights of Way across a development site must be kept open and available until an Order becomes operative by the diversion route being made available.



Summary of Procedure for a Public Path Diversion Order

This is the procedure for a Public Path diversion Order under the provisions of the Town & Country Planning Act 1990.

- Consultations with the local users and councils- Developer to consult **pre** planning permission.
- Order Making and Advertising (once planning permission is granted).
- Objection Period (4 weeks).
- Confirmation of Public Path Order.
- Construction of new path (if no objections).
- Certification that new path has been constructed satisfactorily.
- Order comes into effect.
- Until an Order is confirmed the original route of the path must remain open and available through the development site.
- If an Order receives objections which are not withdrawn then the Order making Authority (OMA) will forward the Order to the Secretary of State for determination either by written representations, a Hearing or Public Inquiry.

Acceptable Standards for Existing and New Public Rights of Way

- **Circular 5/94 paragraph 25 Planning out Crime** states: “Attractive pedestrian links and cycleways can be formed through amenity open space”. - “Wherever possible, footpaths and alleyways should be wide, clear of hiding places, well-lit and should follow a direct route”.
- Narrow paths which run behind houses, between close boarded fences are not desirable and if proposed, within a planning application will illicit objections from the Council. These paths are not easily overlooked and can be perceived as a haven for anti-social and possibly, criminal activities. Acute changes of direction in the path should also be avoided so that no threatening blind spots are created.





- Developers should endeavour to design a layout so that public paths form part of the public open space which is well overlooked. A grass strip of reasonable width should be provided either side of the public right of way so that the path does not appear narrow and threatening. The resulting green corridors could form part of the development's allocated open space thus assuring the continued maintenance of the grass verges by the appropriate authorities. If paths are pleasant and well maintained, they are more likely to be walked and become "self-policing".



- The alternative route should not be on estate roads and paths unless there is no other option. **Defra Rights of Way Circular (1/09)** “In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic.”
- Unbound/unsurfaced footpaths in residential areas are not acceptable, whilst bridleways should be surfaced appropriately for horse and cycle use. Construction and surfacing of Rights of Way within the development must be carried out to a standard and specification which is acceptable to the Council. Details of the final construction and surfacing of the rights of way must be agreed with the Rights of Way Team during the planning application stage.



- If the development is such that it will cause a significant increase in the use of an existing right of way which does not require diverting but is within the development site, then a new surface appropriate to its predicted new level of usage should be provided.
- The required unfenced width for a new/diverted footpath is 2 metres, a width of 3 metres is required for a bridleway and 4 metres for a Restricted Byway.
- No barriers, for example gates or chicanes, should be erected without the prior consent of the Highway Authority. In a new development area, there would be no justification for inclusion of stiles on a diversion or a newly created route, in the interests of access for all.



- It is important to note that each proposal will be assessed on a case-by-case basis. When assessing the width and surface finish of any proposed path, consideration will be given to the individual circumstances surrounding each proposal.

NB. Please note that no works to improve a public right of way may be carried out without prior consultation and approval by the Public Rights of Way Team. Should you wish to discuss any works to an existing or proposed path, please contact the Public Rights of Way Team.



Improvements to the Rights of Way Network

Network enhancements and improvements are welcomed and may, where appropriate be secured by way of a planning condition or obligation under a Section 106. It is important to note that any legal change in status requires the landowner to enter into a legal agreement with the Council.

Formal dedication of a Right of Way, or additional rights over an existing right of way are achieved under Section 25 of the Highways Act 1980. Under these provisions, the Council can enter into a formal agreement with anyone having the necessary capacity to dedicate. This means the freehold owner. Rights of Way dedicated to the public under Section 25 of the Highways Act 1980 exist in perpetuity and can only be removed by way of a formal legal order.



Summary/Do's & Don'ts

Do	Do Not
➤ Discuss your proposals with the Rights of Way Team as a matter of priority.	➤ Simply incorporate PROWs into estate roads or adopted footways.
➤ Deal with public rights of way at the early stages to avoid delays at a later stage	➤ Confine the PROW between hard boundaries such as tall fences and walls.
➤ Seek to retain the existing definitive line of the PROW where possible.	➤ Install new structures/start work/make changes to the surfaces without consulting with the Rights of Way Team first.
➤ Consider introducing additional rights such as bridleway rights over a footpath	➤ Unofficially close a PROW while development is taking place.
➤ Consult with the community / relevant amenity groups on any PROW proposals.	➤ Assume an order under Section 257 TCPA will be successful

Temporary Closure Orders

A public path can be restricted to allow works to be undertaken or to avoid danger to the public whilst works are being undertaken. The closure or diversion must be temporary and allow the re-opening of the original route. Such Orders must not be used in lieu of a permanent Order. The Council administers the Temporary Order and will require a minimum of six weeks advance notice plus payment of a fee.





Further information and advice on any aspect of Development and Public Rights of Way can be obtained by contacting the Rights of Way Team at Shropshire Council. Please email: outdoor.recreation@shropshire.gov.uk.

