

Development and Public Rights of Way Advice to Property Owners

This guidance note is intended for people who have had planning permission granted for development that affects, or will affect, a public right of way.

Background

Public Rights of Way (PROW) are recorded on the Definitive Map, 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 Open to All Traffic being ways open to vehicular traffic but used by the public mainly as footpaths and bridleways.

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 Permission and Public Rights of Way.

The effect of development on a PROW is a material consideration in determination of a planning application.

- The Highways Act 1980 places a responsibility on all Councils to protect PROW's.
- Planning permission alone does not give the applicant the right to interfere, obstruct or divert a PROW. A development, insofar as it affects a PROW, 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.

Consultation with the Rights of Way Team (ROW)

- Where a proposed development may affect a PROW the planning department will usually consult the Rights of Way Team as part of the planning process.
- Officers will respond confirming whether a route is likely to be affected and consider the effect the development may have on the rights enjoyed by the public.
- If unsure as to whether a right of way is affected an officer can undertake a site visit to establish the correct line of the route on the ground. There will usually be a fee for this service to cover costs.



- Where a route is affected the Rights of Way Team will occasionally object to the application but will more usually request that specified measures are taken to protect the public rights before the development is started.
- Officers have a duty to protect the rights of the public, but they are also there to help you achieve your goals whilst accommodating those rights. Although they cannot guarantee you success, they will be able to work with you throughout any legal process. Only in rare cases will officers not be able to propose ways that the right of way might be accommodated to allow a development to take place.

What if the Proposed Development will Obstruct a Public Right of Way?

- If a proposed development will permanently affect a route, for example, because it will be built upon, the developer will need to secure a legal diversion or extinguishment ¹ of the route before development begins.
- The application will usually be made under the provisions of the Town and Country Planning Act 1990, and in certain circumstances under the Highways Act 1980.
- Applicants should expect to pay fees in the region of £4,600 plus actual advertising costs for a straightforward application. In some cases, costs will be less and where an application is contentious or complex costs may be greater. (Please refer to Guidance notes No 9- Public Path Orders Cost Schedule)

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- Officers 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.

Until the right of way is permanently diverted or extinguished any planning conditions concerning the right of way must be fully complied with and the developer must ensure that: -

- No change to the surface of the right of way is made without consultation with the council.

- There is no narrowing of the width of the right of way available for use by members of the public.
- No building materials are stored on the right of way.
- No damage or substantial alteration, either temporary or permanent, is caused to the surface of the right of way.
- No additional barriers/fencing, either temporary or permanent, are placed across the right of way.
- The safety of members of the public using the right of way is ensured at all times.

Temporary Closures

It is possible for a right of way to be closed temporarily whilst building works are carried out. The applicant will need to pay a fee to cover costs and Officers will be able to provide further details. Upon completion of works the route will have to be reopened on its definitive line.

What if the Public Right of Way is not directly built on but is still affected by the proposed development?

- This situation often arises where, for example, a footpath runs along a track leading to a site which is to be developed resulting in increased vehicular traffic either during construction or after the development is completed.
- No works to improve a public right of way may be carried out without prior consultation and approval by the Rights of Way Team. Should you wish to discuss any works to an existing or proposed path, please contact the Rights of Way Team.
- We will normally highlight any concerns during consultation and will specify any measures that need to be taken to mitigate any detrimental effects. Sometimes an indirect effect on a right of way will be so detrimental that we object to the application or require a diversion.

Unrecorded Rights of Way

- Most of the rights of way highlighted through the planning process are recorded on the Definitive Map of Public Rights of Way but occasionally there may be an unrecorded right or an alleged right that would be affected. This might be highlighted during consultation, or you may just be aware that there is a used path on the land that is not legally recorded. It is vital that in these cases you discuss the matter with the Rights of Way Team.
- Development is one of the most common triggers for claims to record such rights and once recorded they will have all the legal protection of a highway; regardless of whether it has since been built upon. We recommend that, at least until further investigation can be carried out, you treat unrecorded or alleged rights of way as if they were legally recorded.

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.

