

## Public Guidance Note 25

### Managing Rights of Way after Planning Permission is Granted Advice to Developers and Property Owners

This guidance note is intended for people who have had planning permission granted for a development that affects, or will affect, a public right of way or where such a development falls within permitted development. It will outline the relationship between planning and highway regulation and will tell you what you must do to keep within the law and avoid enforcement action, prosecution and the devaluation of your property.

#### Planning Permission and Public Rights of Way

Planning Permission does not give you the authority to close, build on, or alter a Public Right of Way.

Whilst the presence of the right of way and the need to protect it was probably included in your decision letter as an “informative” rather than a “condition”, this does not mean you do not have to act. Guidance from Central Government tells local authorities that in most cases, conditions should not be used in relation to affect rights of way. This is because the protection of rights of way is governed by separate legislation and to do so would in effect be a duplication of regulation and because it is not within the applicant’s power to guarantee that any application to amend a right of way would be successful.

Planning Permission gives the approval of the planning authority, in principle, and on land-use grounds only; it does not necessarily give you the right to build. It is, for instance, possible to gain planning permission for a development on someone else’s land, without their agreement or permission. Clearly the granting of Planning Permission in such an instance would not give you the right to build on it.

#### What happens if I just build on the Right of Way?

You will be committing a criminal offence. There are several offences relating to the disturbance or obstruction of a public right of way for which the highway authority is able to take enforcement action. You will have to restore the legal line of the right of way. Alternatively, you may be required to apply for, and meet the costs of, a Legal Order to alter it and accommodate any new route within your own property. Alternatively, you may need to negotiate with adjoining owners for permission to divert onto their land; this might include payment of compensation to them. If it is not possible to move the route due to the nature and location of the development, or because of objections, the highway authority has the power to require the removal of any obstruction and the restoration of the route at the Owner’s expense. This might even mean the demolition of a building and having been given planning permission would not be a defense. If you come to market the property, the presence of an obstructed right of way will almost certainly make the property un-saleable. The locations of public rights of way are usually included in local searches made by potential purchasers and very few people will agree to buy a property built illegally on a right of way.



### What do I need to do?

If you have not already done so, you should contact the Public Rights of Way Team at the earliest opportunity **before** you start building or do anything that might affect the route. You may need to make an application to divert or extinguish<sup>1</sup> the right of way.

It is significantly more difficult to make changes to a public right of way once it has been built on. Also, rather like the planning process, the legal alteration of a right of way is a public process and anyone can object to the proposal. People are much more likely to object if you have already blocked or damaged the right of way.

### What will the Public Rights of Way Team do?

Officers will be able to consider your proposal and the degree to which the right of way is affected. They will be able to advise you of the best course of action, the costs involved, likely timescales and the chances of success.

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.

### 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<sup>2</sup> 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 Public 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.

### See also

PGN 04 Unlawful Obstruction and Public Rights of Way  
PGN 07 Development and Public Rights of Way

<sup>1</sup> Extinguishments are a last resort and are very difficult to secure. Shropshire Council will usually ask that an alternative is provided.

<sup>2</sup> The legal record of Public Rights of Way