



Development Design Guide

Appendix 9 – Public Rights of Way Considerations

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Public Rights of Way

The aim of this guidance is to define standards and give associated practical advice so that all involved in the planning and development process consider Public Rights of Way (PRoWs) at an early stage in the planning and design process, and more importantly incorporate provisions for rights of way into any scheme in line with Defra guidance and planning policy.

1 Background

The Public Rights of Way network can form an integral part of any large development by providing a functional and sustainable link to shops, services, schools and also for recreation by linking urban areas with the countryside. They provide a sustainable asset for public access across the County passing through all types of development areas; agricultural, residential, leisure and commercial, including mineral and waste sites.

Public Rights of Way are recorded on the Definitive Map of Public Rights of Way, which is a legal document. This document records footpaths, bridleways, byways and restricted byways.

- Footpaths are open to walkers only.
- Bridleways are open to walkers, horse riders and pedal cyclists.
- Restricted Byways, are open to walkers, horse riders and drivers/riders of non-mechanically propelled vehicles (such as horse drawn carriage and pedal cycles)
- Byways are open to all classes of traffic including motor vehicles but used by the public mainly as footpaths or bridleways;

Information recorded in the Definitive Map and Statement is conclusive evidence in law as to existence, position, status, width and limitations or conditions.

In spite of being a material consideration in the determination of planning applications, public rights of way have historically often been disregarded in the development process, giving rise to a whole range of problems later on in the process, including the blighting of properties on completion. This document aims to rectify this problem.

To ensure that the rights of way network remains fit for purpose when development take place it is essential that the PRoWs are considered at the earliest opportunity. This is to ensure that the PRoWs compliments rather than conflicts with site design and surrounding network.

The advice in this document aims to inform and advise in situations where Public Rights of Way need to be considered and taken account where development proposals impinge upon them.

2 Government Advice, Design and Planning Considerations

National Planning Policy Framework (NPPF), Feb 2019

Paragraph 98,

“Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”

Defra Rights of Way circular 1/09:

Paragraph 7.1

“Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed”

Paragraph 7.8

“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.”

Defra Circular 5/94 Planning out Crime:

Paragraph 25

“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”.

3 Planning considerations

The applicant is advised to ensure that the exact definitive legal alignments of any PRow is determined and considered at the earliest opportunity prior to submission. This is particularly important as the present walked and/or provided route may not be legally correct. Additionally there could be claimed rights of way crossing the site that do yet appear on the definitive map.

It is equally essential that the Definitive Map is consulted prior to commencement for development that does not require planning permission, such as agricultural buildings, to ensure the definitive line is not obstructed by the development.

4 Design considerations

To ensure any path within or affected by development is fit for purpose and adds long term value to that development, the following should be considered and incorporated into the design as necessary:

- Consider who will use the right of way, and why, in order to maximise convenient non-motorised travel.
- Endeavour to provide a route for the path on its existing recorded alignment. Only if this is not practicable should a diversion or extinguishment be considered.
- Paths should be routed through public open space and segregated from estate roads and footways wherever possible, so that they are well overlooked and pleasant to use.
- All new paths should be open and available to as many people in the community as possible. The needs of disabled people and those less able should be catered for at the outset by careful consideration of surfacing, widths and gradients. All routes should be free from barriers that limit access.
- Details of how the path will be treated should be provided with the planning application including width, surface and boundary information (see section 7 below).

5 Legal considerations and constraints

The granting of planning permission alone does not give the applicant the right to interfere, obstruct or divert a PRow. No development should take place on or near a PRow unless the appropriate statutory legal process (where necessary, as detailed below) has been successfully completed. 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. This advice is paramount and should be included as **a standard informative on planning consultation recommendations and set out in the model conditions.**

Any necessary diversion should improve the route, although construction of a PRow, regardless of its status, would normally be in accordance with standard specifications as advised by the County Council.

The development may achieve an overall improvement in the network by providing missing links. Such opportunities will always be pursued in consideration of a planning application and the new path dedicated and added to the Definitive Map (under Section 25 of the Highways Act 1980), as opposed to remaining as an informal unrecorded route.

Where a PRow passes through a development there are three possible effects:

- **No effect on legal alignment.** Whilst the legal alignment of the path may not be affected by the proposal, it may introduce other elements that need consideration such as possible introduction of new boundaries across (and adjacent to) the path, removal of existing defunct boundaries and an effect on usage and surface treatment. (See Section 7 below).
- **Temporary effect on legal alignment.** As with the above, the legal alignment of the path may not be permanently affected by the proposal but it may introduce other

permanent elements that need consideration and/or authorisation as detailed above. Additionally the path will require a temporary closure (TTRO) by way of an Order under Section 14 of the Road Traffic Regulation Act 1984. (See boxout below).

- **Permanent effect on alignment.** In instances where it is desirable to relocate or extinguish the PRow within the proposed development it will be necessary to apply for and successfully gain a legal order under one of the following pieces of legislation.
 - Section 257 of the Town and Country Planning Act 1990.
 - Section 119/118 of the Highways Act 1980

Additionally, there may also be a requirement to temporarily close routes within the site whilst the development works are undertaken. Again, see the boxout below.

A Temporary Traffic Regulation Orders (TTRO) under Road Traffic Regulation Act 1984 can only be considered if the route of the public right of way to be closed will be reopened on its existing line. A TTRO cannot be used on a public right of way, if at any time, until a permanent Order is confirmed, the original line of the right of way will be permanently obstructed and that following completion of the works requiring a temporary closure, the original line of the footpath will not be opened up.

6 Community benefit

Where the scale and location of a development will encourage increased usage of the local network the Council will look to secure an appropriate planning obligation under an S106 agreement. The agreement will identify specific timescales for any provision, specification of routes proposed, any maintenance regimes, financial contributions or improvements proposed to the network.

Public Rights of Way can often provide valuable links between communities and local facilities such as schools, shops and pubs. New developments may place pressure on existing paths but provide an opportunity for localised enhancement by better design or contributions towards off site mitigation or improvements.

7 Guide to furniture, boundaries & surfacing.

Furniture – gates, gaps, bollards, road crossings (kerbs/surfacing)

Structures that interfere with the public's unrestricted passage on rights of way must be authorised by the Highway Authority before installation and cannot be decided or conditioned by a planning decision.

Any new structure across a right of way can only be installed with the authorisation of the highway authority, under S147 of the Highways Act 1980. Such structures will only be

authorised for the express control of farm stock and to ensure accessibility, all new furniture must comply with the current BS5709. Gates are the preferred type of furniture, and stiles will only be authorised in extremely rare circumstances.

Whilst furniture can be included in legal orders made under S119 of the Highways Act 1980 there is no provision in Section 257 of the Town and Country Planning Act 1990, the above mentioned S147 is the appropriate recourse to authorise furniture in these instances.

Bollards/chicanes and similar structures to assist with user safety can only be installed if authorised by the Highway Authority under Section 66 of the Highways Act 1980.

Widths and Surfacing

Unless recorded in the Definitive Statement, subsequent Legal Order or defined by existing historic boundaries, it shall be assumed that the widths of public rights of way are:-

- Footpath 2m
- Bridleway 3m
- Restricted byway 3m
- Byway Open to All Traffic 5m

Where it is desirable to enclose a right or way within new boundaries, extra width should be provided to ensure clear unencumbered verges to facilitate good visibility and an open aspect for users, and to negate the effects of encroachment by adjacent vegetation.

- + 0.5m per side for low open fences, such as post and rail or post and netting fences etc and walls
- + 1.0m per side for all hedges and high, close boarded fences etc and walls. This includes security fencing such as palisade, paladin and chain-link fencing etc.

Urban paths: Should have a sealed surface and be incorporated within a green corridor, with an appropriate protected width [see above]. Dropped kerbs, tactile paving and appropriate markings should be provided where a PRow meets the Highway.

Urban edge paths: They will typically have a surface dressing [see above] to ensure they remain usable all year round, yet the surface should use materials that blend the path into their rural surroundings. These paths need to be clearly marked and signposted.

Rural Paths: These paths will have a natural surface that is level and well drained. They will need to be waymarked.

With all these paths it is important that they feel safe and open and are not fenced in by close high boundaries and have clear lines of sight, with blind corners being kept to a minimum.

For more information please contact countryside.access@cumbria.gov.uk