

DEVELOPMENT AND PUBLIC RIGHTS OF WAY

GUIDANCE NOTES FOR DEVELOPERS
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Development and Public Rights of Way

1. These notes provide guidance for designers, developers and planners on best practice for incorporating public rights of way within developments. They include Government advice from the Department of the Environment Food and Rural Affairs (Defra).
2. This guide is most relevant for housing and industrial development. For other types of development which affect public rights of way such as golf courses, mineral extraction and road developments, advice may be sought by contacting footpaths@leics.gov.uk
3. Public Rights of Way have always been a valuable public resource giving people access to the countryside, parks, open space, local shops, services and places of work.

The Definitive Map

4. The Definitive Map is the legal document which records the location of all known Byways Open to All Traffic, Restricted Byways, Bridleways and Footpaths. Be aware that other unrecorded rights of way may exist. Copies of the Definitive Map are held by the County Council at County Hall and also at Local Planning Authority Offices. Rights of Way information can also be viewed on the County Council's website: www.leics.gov.uk/paths.
5. Designers, developers and planning officers must satisfy themselves at the earliest opportunity of the exact legal position of any public right of way which will be affected by development. Check the Definitive Map and do not rely solely on a site survey.
6. The document "**Validation of Planning Applications**" and **associated Circular 2/08 (paragraph 40)** specifies: "*all public rights of way crossing or adjoining the proposed development site must be marked on the plan to be submitted with the full planning permission*".

Design

7. Narrow enclosed paths are not desirable and if proposed within a planning application will attract objections from the County Council. Such paths are not easily overlooked and can be perceived as a haven for anti-social activities. Sharp turns in the path should be avoided to ensure that no threatening blind spots are created.



“The wrong way” – This narrow, enclosed path runs behind close boarded fencing and is unattractive and threatening to the user. Such paths can be difficult to maintain, litter strewn and unsightly, making them a haven for anti-social and criminal behaviour.

8. Paths should ideally be routed through public open space which is well overlooked. If it is not possible to do this then a grass strip of at least one metre width should be provided either side of the public right of way so that the path does not appear narrow and threatening.
9. The resulting green corridors could form part of the development's allocated open space to be managed by the appropriate landscape/open space management company. If paths are pleasant and well maintained through public space they are more frequently walked and become 'self-policing'.
10. If a diversion of a public right of way is necessary, an alternative route should be provided which is in the main, separate from proposed estate road footways, so that the path maintains its identity.
11. The re-routing of a path along footways, or its extinguishment, should be avoided where possible.



“The right way” – This path has been routed through public open space, is well overlooked and pleasant to use.

12. In the case of public rights of way which do not require diverting development will still, in most situations, cause a significant increase in use. Development also changes the character of rights of way and consequently raises reasonable public expectations that they should be capable of being used in all weathers. Therefore such paths will usually require provision of tarmacadamed all-weather surfaces.

Construction and Surfacing

13. Construction and surfacing of rights of way within the development must be carried out to a standard and specification which is acceptable to the County Council, as set out in the Leicestershire Highway Design Guide.
14. More details and standard drawings can be found at:-
<https://www.leicestershire.gov.uk/environment-and-planning/planning/6cs-design-guide>
15. Developments may have a significant affect on the level of use of the surrounding network of public rights of way particularly where they may become important routes to neighbouring shops, schools, services and places of employment.

16. Section 106 Agreements will be used, where appropriate, in accordance with Circular 1/08 “Planning Obligations” in order to secure the upgrading of such routes to an appropriate standard.

Widths

17. The following minimum widths for public rights of way apply:

<u>Status of path</u>	<u>specified width to be surfaced</u>	<u>width of grass verges on either side of path (min.)</u>
Footpath	2.00 metres	1.00 metre
Bridleway	3.00 metres	1.00 metre
Restricted Byway	4.00 metres	1.00 metre
Byway	4.00 metres	1.00 metre

Signage

18. Developers will be required to erect sign posts (fingerposts) where public rights of way are intersected by new roads. It may also be necessary for them to install waymark posts in order to make clear to the public the route a right of way takes through open space. More details and standard drawings for fingerposts and waymark posts can be requested by emailing:-

footpaths@leics.gov.uk

Moving a Public Right of Way

19. A valid planning permission does not constitute permission to close or divert a public right of way. The authority for such closure or diversion is usually granted by an Order made under Section 247 or 257 of the Town & Country Planning Act 1990. Applications for an Order under this legislation should be made to the Local Planning Authority dealing with the planning application.
20. The Order making Authority can carry out preliminary consultations, draft the Order and prepare the notices under the appropriate Regulations (Town & Country Planning Public Path Orders Regulations 1993) during the planning process. A Local Planning Authority can only make the Order once planning permission has been granted.

The procedure for a Public Path Diversion Order

21. This is the procedure for a Public Path diversion Order under the provisions of the Town & Country Planning Act 1990.
 - i. Consultations (pre planning permission)
 - ii. Order Making and Advertising (once planning permission is granted)
 - iii. Objection Period (4 weeks)
 - iv. Confirmation of Public Path Order
 - v. Construction of new path (if no objections)
 - vi. Certification that new path has been constructed satisfactorily
 - vii. Order comes into effect
22. Please note that some Planning Authorities do not confirm an order until such time as the alternative path has been constructed. In such cases the confirmation and bringing in to effect occur on the same date
23. Until an Order is brought into effect the original route of the path must remain open and available through the development site.
24. If an Order receives objections which are not withdrawn then the Order making Authority will forward the Order to the Secretary of State for determination either by written representations, a Hearing or Public Inquiry.

Temporary Orders

25. A public path can be diverted or closed on a temporary basis to allow works to be undertaken or to avoid danger to the public. The closure or diversion can only run for a maximum of 6 months and must allow the re-opening of the original route after expiry. Extensions may, in certain circumstances be considered but only if there is good reason to do so. After the first renewal, subsequent renewals must be forwarded to the Secretary of State for approval.
26. The County Council administers the Temporary Order and will require a minimum of eight weeks advance notice for both first time applications and any subsequent extensions, plus payment of a fee in advance. Further details can be requested from:-

Networkmanagement@Leics.Gov.Uk

Development & Public Rights of Way;
Key Points to Note

- Designers and Developers should determine the exact legal line of the path before designing any development – check with the Rights of Way Service at Leicestershire County Council particularly as desire lines on site may not be correct.
- Planners should satisfy themselves of the exact legal line of the path when dealing with a planning application and make sure that developers are aware of this information – check with the Rights of Way Service.
- Consult with the County Council at the design stage.
- Consider who will use the right of way and why, in order to maximise non-motorised travel.
- 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.
- Endeavour to provide a route for the path on its existing line. Only if this is not practicable should a diversion or extinguishment be considered.
- Details of how the path will be treated should be provided with the planning application including width, surface and boundary information.
- The needs of disabled people and those less able should be catered for at the outset by careful consideration of surfacing, widths and gradients. The County operates a presumption that all routes should be free from barriers that limit access.
- Apply to the Local Planning Authority for a Public Path Diversion Order (S.247/257 Town & Country Planning Act 1990) at the same time as the planning application and keep in touch with the Rights of Way Service.
- A path must be kept open and clear of obstructions throughout the development. The Highway Authority may take enforcement action if it is not.
- A path cannot be moved until a Public Path Order is formally brought into effect.

FURTHER READING

Government Advice, Design and Planning Considerations

27. The effect of development on a public right of way is a material consideration in determination of a planning application.
28. **National Policy Planning Framework, Para. 35** (Section 4 – Promoting Sustainable Transport) – “Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to:-
 - Give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;
 - create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians avoiding street clutter;
 - consider the needs of people with disabilities by all modes of transport”.
29. **National Policy Planning Framework, Para. 75** (Section 8 – Promoting Healthy Communities) – “Planning policies should protect and enhance public rights of way and local authorities should seek opportunities to provide better facilities for users, for example by adding links to the rights of way network.”
30. **Defra Rights of Way Circular (1/09) Version 2, Chapter 7, Department for Environment Food & Rural Affairs, 2009:**
31. *“Whilst the information supplied by an applicant should therefore make clear how the potential development will impinge on any rights of way local planning authorities will need to ensure that all rights of way affected by the development are identified and take into account any application for the addition of a path or way to the definitive map, any modifications that the highway authority itself may be proposing to make, the possible existence of any other rights on the ways shown on the Definitive Map and any ways not yet recorded on the Definitive Map.*
32. **The Circular also states that;** *“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.”*
33. **Circular 5/94 paragraph 25 Planning out Crime:** *“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”.*