

DEVELOPMENT AND PUBLIC RIGHTS OF WAY:

GUIDANCE NOTES FOR DESIGNERS, DEVELOPERS AND PLANNERS

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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 the relevant Council (see Appendix A), 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 Council's Rights of Way Service.
- Consult with local communities, user groups and the 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.
- Any 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. The Council operates a presumption that all routes should be free from barriers that limit access.
- Apply to the 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 Council's Rights of Way Service.
- A path must be kept open and clear of obstructions throughout the development.
- A path cannot be moved until a Public Path Order is confirmed.

Development and Public Rights of Way

1. The aim of these notes is to provide guidance for designers, developers and planners on best practice for incorporating public rights of way within developments. They include the latest 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 should be sought directly from the Rights of Way Service at the Council.
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, for simple recreation and for the practical necessities of life. Increasing emphasis is now being placed on paths as a sustainable and healthy alternative to the motor vehicle for local journeys allowing people to avoid the busy road network.
4. **Note:** It is important that designers, developers, planners and rights of way officers work in partnership to accommodate public rights of way within new developments in order to maintain and enhance their value to local communities. If this is achieved successfully, there are benefits to be gained by all.

The Definitive Map

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. Look at 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”*.
7. 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 relevant Councils. Rights of Way information will also be available to view on the Council’s website.

Consultations

8. It is recommended that developers make contact with the local community and user groups at an early stage. Discussion at this stage can avoid objections later. This can most easily be done via the local Parish Councils, Parish Meetings etc.
9. **Note:** An objection to the treatment of a path in a planning application is a valid objection.
10. Contact details for the relevant local Ramblers' Association, Footpath Association and Bridleway Association can be obtained from the Council's Rights of Way Service.

Government Advice, Design and Planning Considerations

11. **Note:** The effect of development on a public right of way is a material consideration in determination of a planning application.
12. **Planning Policy Guidance Note 13:** A key objective on transport (Department of the Environment 2002) is to "*promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling*". The preservation of public rights of way within developments contributes directly and very effectively towards meeting this objective.
13. **Places Streets and Movement, Office of the Deputy Prime Minister 1998:** "*Positive discrimination in favour of direct routes for pedestrians or cyclists has to be built into the plan from the outset because fitting them in later will be difficult, if not impossible.*"
14. **Defra Rights of Way Circular (1/09) Version 2, para 7.8, Department for Environment Food & Rural Affairs, 2009:** "*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.*"
15. **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*".



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

16. **Note:** 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.
17. 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.
18. If a diversion of a public right of way is unavoidable, an alternative route should be provided which is wholly or in the main separate from proposed estate road footways, so that the path maintains its identity. When a path meets an estate road and the way forward is not immediately clear the route loses its identity and becomes difficult to follow. Therefore staggered junctions should be avoided or be slight enough to enable users to see the continuation of the path ahead. The re-routing of a path along footways, or its extinguishment, should be avoided on all but the very smallest of development sites where there is no scope to provide a separate route.



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

19. In the case of public bridleways, special care will be required in the design of the alternative route so as to prevent use by motor vehicles, without hindering horse riders and cyclists. Officers at the Council can recommend suitable designs for such prevention measures. It must also be born in mind that, if the route incorporates an adopted estate road, the use of footways by horse riders and cyclists is unlawful.
20. **Note:** 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 commensurate with its predicted new level of usage should be provided.

Construction and Surfacing

21. 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 Highway Authority during the planning application stage. In the case of large developments where use of the path network is likely to be significant the expectation will be that paths will require an all-weather wearing course. More details and standard drawings can be found at :- www.leics.gov.uk/index/6CSDG.htm
22. Medium sized and large 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.

23. In these circumstances paths which are currently unsurfaced will need to be upgraded to cope with the raised usage. The type of surface may vary depending on expected use but may well require an all-weather wearing course similar to those provided within the development.
24. 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

25. Existing or diverted public footpaths, as with footways and footpaths offered for adoption, should have a surfaced width of 2 metres. Existing or diverted public bridleways should be provided with a surfaced width of 3 metres. If paths are not routed through open space then they should be provided with clear, unencumbered verges to facilitate good visibility and an open aspect for users. (See table below for summary).
26. The following minimum widths should 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

27. Widths may be reduced over short lengths in exceptional circumstances. For a footpath the route may be reduced to a minimum of 1.2 metres where it passes an obstacle, for a maximum distance of 6 metres. For a bridleway this would be a minimum of 2 metres.
28. Developers must consider the responsibility for the future maintenance of the path. This should be made clear in the planning application. It is possible that adoption may be considered.

Moving a Public Right of Way

29. 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.

30. Applications for an Order under this legislation should be made to the local authority dealing with the planning application.
31. ***Rights of Way Circular (1/09):*** “where there is reasonable expectation that planning permission will be forthcoming then proposals for any stopping up or diversion of a public right of way can be considered concurrently with the proposed development.”
32. 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

33. This is the procedure for a Public Path diversion Order under the provisions of the Town & Country Planning Act 1990.
 1. Consultations (pre planning permission)
 2. Order Making and Advertising (once planning permission is granted)
 3. Objection Period (4 weeks)
 4. Confirmation of Public Path Order
 5. Construction of new path (if no objections)
 6. Certification that new path has been constructed satisfactorily
 7. Order comes into effect
34. Until an Order is confirmed the original route of the path must remain open and available through the development site.
35. 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

36. A public path can be restricted to allow works to be undertaken or to avoid danger to the public. 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.