

Development and Public Rights of Way

Advice note for developers
and development
management officers

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Purpose

- This is an advice note for developers and their agents whose site may be affected by a Public Right of Way (as opposed to adopted estate paths) and also for local Planning Authorities and Highway Authority (Essex County Council) staff.
- It aims to inform and advise in situations where Public Rights of Way need to be considered and taken account of where development proposals impinge upon them.
- This note has been prepared by the Definitive Map Service in the Essex County Council's Environment Sustainability Highways Directorate. The Definitive Map Service is responsible for maintaining and updating the Definitive Map of Public Rights of Way.

Background

- Public path networks 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. In spite of being a material consideration in the determination of planning applications, historically public rights of way have 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.
- 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 and byways and restricted byways. Footpaths are for use by walkers; bridleways by walkers, horse riders and pedal cyclists; byways being ways open to vehicular traffic but used by the public mainly as footpaths and bridleways; and restricted byways, over which the public have limited byway rights.
- Information recorded in the Definitive Map and Statement is conclusive evidence in law as to position, status, width and limitations or conditions.

- This document draws on DEFRA Circulars 01/09`Rights of Way`, 5/94`Planning out Crime`, The Rights of Way Act 1990 and the Countryside and Rights of Way Act 2000
- A contact list for relevant officers is given at the end of this document.

Checking the Definitive Map from the start of the development process

- The overlap between the planning process and public path order process has been illustrated in the flow diagram contained in **Appendix 1** of this note. (The diagram refers to outline permissions where there are reserved matters but is equally applicable where there is full planning permission with conditions).
- It is crucial that Public Rights of Way are considered from the very start of a proposed development. If this is overlooked, then Public Rights of Way issues can result in very significant delays later on and even render properties unsaleable. Legal powers do exist to demolish buildings that obstruct Public Rights of Way. On development construction sites, where buildings are in the construction phase but not occupied, use of these powers by the highway authority cannot be ruled out.
- Prior to submission of the planning application **it is essential that you ask to view the Definitive Map** with the relevant Borough/ District/County Officer who will also offer specific advice. There may, for example, be claimed paths not marked on the map that could affect the development site. A record of formal claims is maintained at County Hall, Chelmsford and can be viewed on the County Council Public Rights of Way website.
- Even for developments that do not require planning permission in respect of agricultural units, it is equally essential that the Definitive Map is viewed prior to commencement. Many problems have arisen in the past by irrigation reservoirs being constructed across the Definitive routes of paths because the Definitive Map was not viewed at the outset.
- Planning permission alone does **not** give the applicant the right to interfere, obstruct or divert a Public Right of Way. A development, insofar as it affects a Public Right of Way, 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. This advice is paramount and should be included as **a standard informative on planning consultation recommendations and set out in the model conditions.**
- Specimen wording on the format/content of such recommendations is available from the Definitive Map Service.

- **At the respective Outline and Reserved Matters stages of the planning process, full consideration must be given to how an amendment to the development layout may impact on a public path.** The Definitive Map Service/Area Public Rights of Way must therefore be consulted when Reserved Matters arise or when they are **subject to revision.**

Current paths

- The Highways Act 1980 places a responsibility on all Councils to protect Public Rights of Way. Public Rights of Way are also a material consideration in the determination of any planning application.
- Circular 01/09 advises that paths should be retained on their existing routes wherever possible. Equally, the Town and Country Planning Act 1990 section 257 states that diversions should only be made if it is considered that it is `necessary to do so to enable development to be carried out` . There is every expectation therefore that the existing Public Right of Way should stay where it is, particularly in large development sites, where the layout of the new build should be designed to accommodate the path alignment.
- `Footway` - a frequently misused and misunderstood term means the pavement/path running along the side of a carriageway over which the public have a right of way on foot only. It is not a footpath. A footway is essentially a part of a carriageway and is therefore not a highway in its own right.
- If however a diversion is essential, then the alternative route should not be on estate roads and paths unless there is no other option. It is vital that developers liaise with local planning officers and Public Rights of Way staff at an early stage in order to avoid delay at a later stage in the process.
- Circular 01/09 further advises that the grant of planning permission does not entitle developers to obstruct a Public Right of Way. Additionally, the requirement to keep a Public Right of Way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights. In a case where two or three houses, for example, already benefit from access along a public path and an application is made for an existing dwelling, it would be necessary to consider the material change in impact in terms of increased vehicular movement, etc.
- Any necessary diversion should improve the route, although construction of a Public Right of Way, no matter its status, would normally be in accordance with standardised

specifications as advised by the County Council's Area Highway Managers. The development may also provide the opportunity for the creation of new paths to provide missing links to achieve an overall improvement in the network. Such opportunities will always be pursued in consideration of a planning application and the new path dedicated to form part of the Definitive Map, as opposed to an informal route. The last section of this document deals specifically with the diversions/closure procedure.

- At the planning application stage if a Public Right of Way is likely to be affected, this must be advertised on site as a material consideration under the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419). A standard notice is being prepared for use across the whole of the County of Essex, (subject to recommendation by EPOA).

Acceptable standards for existing and new Public Rights of Way

- All new Public Rights of Way must be designed to meet their intended use and minimise risk of crime and misuse. Accommodation of existing public paths into a development layout must not result in those routes becoming enclosed alleyway paths and new buildings should be designed accordingly to provide surveillance/policing of the way.
- New and diverted public paths should be inclusive of Secured by Design principles taking into account the importance of natural surveillance which may be used as a material consideration in refusing planning permission and a public path order. The Essex Design Guide provides specific guidance on standards. (*Link to the Essex Design Initiative website:www.the-edi.co.uk and then click on publications*)
- Prior to planning permission being granted, the highway authority (relevant officers from the Area Highways Office and Definitive Map Service) will check the site and make recommendations and also suggest appropriate conditions relating to the affected public paths and the proposed alternative routes. Advice will also be given about required construction specifications.
- As a matter of general principle, unbound/unsurfaced footpaths in residential areas are not acceptable, whilst bridleways should be surfaced appropriately for horse and cycle use.
- The required width for a new/diverted footpath is 2 metres, which is Essex County Council policy. A width of 3 metres is required for a bridleway.

- Paths should have a longitudinal gradient not steeper than 1 in 20 and cross gradient not steeper than 1 in 40. Steps should be avoided.
- No barriers for example gates, chicanes should be erected without the prior consent of the Highway Authority. In a new development area, there would be no justification for inclusion of stiles on a diversion or an newly created route or created route, in the interests of access for all.

Effect on existing paths near the development site

- New housing provision can lead to significant additional use of existing Public Rights of Way near the development site. This additional intensive use can cause problems if such Public Rights of Way are not appropriately surfaced and drained.
- The relevant planning authority in consultation with the Highway Authority will assess the impact of the development. Where it is significant, it may seek a financial contribution from developers to ensure that existing Public Rights of Way in adjoining urban fringe areas are appropriately upgraded to accommodate the additional use, dependent upon status and ownership of the Public Rights of Way and the agreement of any third party owners. Any contributions to upgrade a public path would only be sought from the developer where it is known that the upgrade is achievable and where the third party owner(s) are in full agreement. Such improvements, where appropriate, may be secured by a Section 106 Town and Country Planning Act 1990 Agreement (which can include a public path creation agreement) or by a suitably worded condition where appropriate. Specimen clauses for insertion to secure Public Rights of Way as part of a development scheme are available from the Definitive Map Service.
- In adjoining rural areas, this improvement would be directed to the additional provision of paths – for example, bridleway creation – as opposed to surface treatment. It is not the intention that rural Public Rights of Way should necessarily be hard surfaced.

Public Path Orders

Public Rights of Way can only be diverted or closed by a Legal Order. Such Orders are made mainly under Section 257 of the Town and County Planning Act 1990 and some others under Section 261 of the 1990 Act for the temporary stopping up of highways for mineral workings. These Orders are subject to a full public consultation process and follow a separate application process to that required for planning consent. The grant of planning consent or the imposition of a planning condition does not stop up a highway. In other words, it is not

possible to grant planning permission conditional on securing a Public Path Order. However, where it appears necessary for an application to be made for a Public Path Order, the developer will be alerted to this by way of an Informative from the relevant Planning Authority. The costs associated with the legal process of a Public Path Order are the responsibility of the developer.

- Public Path Orders do take considerable time to complete due to the legal processes involved. All Orders involve consultation with Rights of Way user groups and the public at large via notices on site and in the press.
- Ordinarily application for an order under the Planning Act powers will be made to the District or Borough Council as the Local Planning Authority, other than matters relating to mineral extraction and waste, in which case the County Council will be the relevant Order making authority.
- Allow for a minimum time period of at least 7/8 months from date of application. If there are unresolved objections, the procedure can then take up to 9/10 months or more, as the Order must be determined by the Secretary of State.
- There can never be a guarantee that any diversion proposal will be successful, even though planning permission has been granted. This is why early preparation and informal consultation is essential and discussion about a diversion should take place at the same time the planning application is being prepared.
- All existing Public Rights of Way across a development site must be kept clear until an Order becomes operative by the diversion route being made available.
- There should never be a need to close a public path without the agreed alternative route being provided. The onus is on the developer to accommodate the public path in the development layout.
- Where a path is to be retained on its Definitive line, it must not be disturbed whilst the development takes place. In limited circumstances it may be possible to secure a temporary closure under powers other than the Planning Act on safety grounds, but again the Definitive route must be capable of being reinstated by the expiry date of the Order and a statutory consultation process is involved.
- Circular 01/09 advises that where the development affecting a way has been completed before an order to divert or extinguish the way has been confirmed, the Planning Act powers **cannot** be used to divert the path. It is then necessary to resort to trying to secure a diversion under Highways Act 1980 powers, under which it can be

considerably more difficult to secure a diversion. Development is regarded as completed if the work remaining to be carried out is minimal.

- Section 261 of the Town and Country Planning Act 1990 makes provision for temporary diversions, which is particularly relevant to mineral extraction sites. Such temporary diversions may be long term in nature – 20 or 30 years for example – but the Original Definitive line must be restored at the end of the process.

How can Public Rights of Way officers help?

- Officers can advise on the existence and status of definitive Public Rights of Way across a development site, how they should be best deal with, and the relevant procedures to follow.

Contacts

Further information and advice on any aspect of Development and Public Rights of Way can be obtained by contacting the **Definitive Map Service**, Environment, Sustainability and Highways at County Hall Chelmsford on 01245 437563 or by email: garry.white@essex.gov.uk.

For developers, there will be occasions where there will be a need to discuss issues on site. A list of contact details for the respective areas of the county is included below. Local Public Rights of Way officers will have detailed knowledge on Public Rights of Way in their area and would be pleased to provide any guidance as required.

Mid Area Highways Office (covering Braintree, Chelmsford and Maldon districts)

Contact: highways.midarea@essex.gov.uk

Tel: (01245) 240000

East Area Highways Office (covering Colchester and Tendring districts)

Contact: highways.eastarea@essex.gov.uk

Tel: (01206) 838600

West Area Highways Office (covering Brentwood, Epping, Harlow and Uttlesford districts)

Contact: highways.westarea@essex.gov.uk

Tel: (01277) 642500

South Area Highways Office (covering Castle Point, Basildon and Rochford districts)

Contact: highways.southarea@essex.gov.uk

Tel: (01268) 297500

Key Reference Documents

- Rights of Way Circular 01/09 (available on the Defra website at <http://www.defra.gov.uk/wildlife-countryside/issues/public/index.htm>)
- Essex Design Guide – ECC
- Estate Road Construction Manual – ECC
- Rights of Way Improvement Plan – ECC (due for publication shortly – website link to be advised)

Appendix 1

**Checking planning applications for Public Rights of Way (PROW) implications and process for preparing Public Path Orders made under Section 257 Town and Country Planning Act 1990
Process Diagram**





