

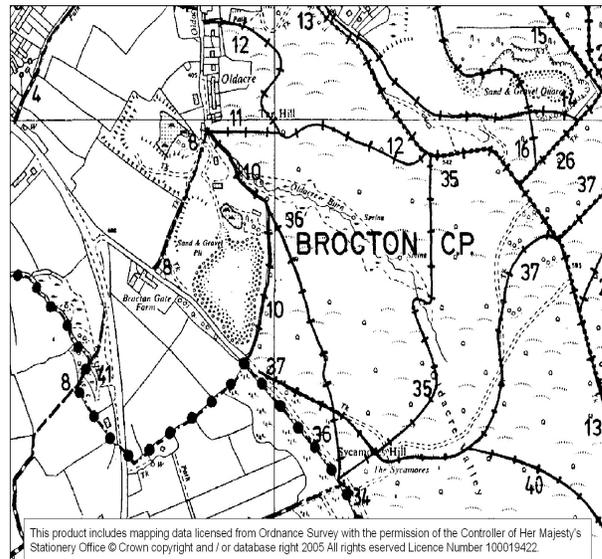
DEVELOPMENT & RIGHTS OF WAY Appendix F

Development may affect existing public rights of way. It is accepted that development has to take place, but how it takes place and how it is planned can materially affect the quality of life for people who use the rights of way. It is vital to ensure that developers and local authorities work in partnership to protect any existing public paths and to enhance the existing path network.

This Guide is intended to provide basic information about public rights of way and the requirement to ensure that they are not extinguished, diverted or obstructed during the course of development without the prior consent of the highway authority.

The Definitive Map and Statement

The Definitive Map and accompanying Statement is a legal document showing all public rights of way. The Map and Statement are kept up to date by the Highway Authority. (See attached extract from Definitive Map below.) The Map does not show claimed routes which can cause developers considerable difficulties. (See note below - Claimed Routes.)



The inclusion of a right of way is conclusive evidence of the existence of that right of way whatever its physical state may be. However, the reverse is not true. A way not shown on the Definitive Map can still be a right of way although its status would need to be proved.

There are three categories of public path shown on the Definitive Map. These are:

- Public Footpath (denoted by - - -) over which the right of way is on foot only.
- Public Bridleway (denoted by ++++) over which the right of way is on foot, on horse or on bicycle. Cyclists must give way to walkers and riders.

- Public Byway Open to All Traffic (denoted by -v-v-) over which the right of way is on foot, horse or bicycle or by motor vehicles.

Definitive Maps and Statements are available for public inspection at Staffordshire County Council and District Council offices.

Claimed Routes

Apart from cases where a new right of way has been specifically created, routes can become public rights of way through dedication of the right to the public by the landowner.

In a few cases, the dedication is express, i.e. the landowner consciously and deliberately makes a public right of way. But in most cases the dedication is presumed from evidence of the way made by the public.

To establish that a way has become a right of way by means of presumed dedication it is necessary to show firstly that there has been uninterrupted use as of right by the public (not necessarily the same people all the time) over a period of 20 years.

Although 20 years' uninterrupted use by the public establishes a presumption that the way has been dedicated to the public, the presumption can be contradicted by evidence showing that there was no intention to dedicate on the part of the landowner, at the time. This could be evidence of an interruption of the public's use of the way, but such an interruption would have to be shown to have been both effective in preventing public use and clearly known to the public using the way.

Where the public may allege that they have had 20 years' uninterrupted use of a way, they may submit an application under Section 53 of the Wildlife and Countryside Act 1981, to add the path to the Definitive Map. A register of such applications is available on the County Council's website: www.staffordshire.gov.uk. It is also advisable for developers to ascertain whether any such routes cross the site before submitting a planning application.

The Effect of Planning Permission on Rights of Way

It is essential that developers ascertain what rights of way cross the site at the earliest opportunity. This can be confirmed through the land search process.



Solutions to problems that the existence of rights of way could cause should be sought before a planning application is submitted; otherwise the development may be delayed or worse, be thwarted completely. Furthermore, obstruction of a public right of way may lead to enforcement action, prosecution or blighted property. Diverting or changing a public right of way should only be a last resort, and, wherever possible, the right of way should be incorporated into the development as a positive feature.

Diverting or Extinguishing Rights of Way

The granting of outline or detailed planning permission does not constitute permission to close, divert or obstruct a public right of way affected by development. Where it is necessary to divert or extinguish a right of way to allow permitted development to take place, the authority for such a closure or diversion is granted by an Order under Section 247 or 257 of the Town and Country Planning Act 1990. Where an Order is required it is likely to take approximately 10-12 months to determine, provided there are no objections to the proposal.

Orders made by the Local Authority under S257 of the Town and Country Planning Act 1990

Before making an Order under Section 257 to divert or close a path, the local planning authority, in making the Order, and the Secretary of State, when confirming an Order, must be satisfied that it is necessary to do so to enable the development to be carried out and that the development is:

1. In accordance with a planning permission that has been granted; or
2. Permitted development under a general or special development order; or
3. To be undertaken by a government department.

The Orders are made by the planning authority which granted the permission. In most cases, this will be the District or Borough Council. No other authority has to be consulted.

Public Path Orders are subject to extensive statutory requirements for consultation, publicity and provision for representations or objections. Opposed Orders cannot be confirmed by the Secretary of State and have to be referred to the Secretary of State for confirmation, who may call a Public Inquiry to resolve the matter.



Orders made by the Secretary of State under S247 of the Town and Country Planning Act 1990

The Secretary of State also has powers to authorise by Order the stopping up or diversion of any highway (vehicular routes, bridleways, footpaths), if he is satisfied it is necessary to enable the development to be carried out.

A developer who seeks to persuade the Secretary of State to make the Order may be required to meet the expenses incurred by the Secretary of State or the Highway Authority in making alternative routes or paying compensation to third parties.

An Order cannot generally be made unless planning permission has first been obtained.

What if the Path has already been built over?

Whilst the granting of planning permission does not authorise interference with rights of way, such interference does occur from time to time. Orders can be made under Sections 247 or 257 to realign routes, where necessary, provided that some of the authorised development remains to be carried out, but if it has been completed then the powers under the Town and Country Planning Act 1990 cannot be used.

Powers under the Highways Act 1980 have to be used to deal with the situation.

Sections 118 and 119 of the Highway Act 1980

Diversion Orders are made under Section 119 of the Highways Act 1980 and certain criteria have to be met. The new routes must start and finish on the same highway as the existing route, or on a highway leading to it, and must not be substantially less convenient to the public. The effect on adjoining landowners and the public's enjoyment of the route must also be considered.

Extinguishment Orders are made under Section 118 of the Highways Act 1980. The only grounds for making an Extinguishment Order is lack of need, except for rail crossings when safety can be considered. The obstruction caused by the development must be disregarded in assessing whether the path is needed for public use.

Temporary Closure Orders

The Highway Authority has powers to make a temporary Road Traffic Regulation Order to restrict use of a right of way to avoid danger to the public whilst works are being carried out.



Temporary closure Orders either last for six months, or, in certain cases, for three weeks if it is necessary to close the path as a matter of urgency. Wherever possible, the Highways Act requests that alternative routes be provided.

Cost of Orders

Charges are imposed to cover the costs of administration and advertising associated with any Order. The local planning authority will advise on the level of charges.

Useful Contact

For more information on rights of way issues, contact:

Rights of Way Section,
Environment & Countryside Unit,
Development Services Directorate,
Staffordshire County Council,
Riverway,
Stafford.
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