PUBLIC RIGHTS OF WAY

Guidance for Planners and Developers

1. Introduction

Public rights of way (PROW) are significant highway assets, highly valued by local people. They are a material consideration in planning applications. They are protected by legislation and play an important role in delivering local and national policy aims, particularly sustainable transport, health improvement and enjoyment of the local landscape.

None of this information about a path can be changed without a legal order. There may be other public rights of way that exist, but which are not recorded on the Definitive Map and Statement – the fact that a path is not shown on the Map and Statement is not evidence that it is not a PROW. Developers should be aware that commencing work on a site – even just submitting a planning application – might prompt local people to claim that there is a PROW over the site.

All recorded PROW can be viewed on our Rights of Way Interactive Map on our website at www.cambridgeshire.gov.uk/rightsofway and it is essential that developers, designers and planning officers check at the earliest opportunity to see whether the area that is under consideration for development is affected by any recorded PROW and/or claimed paths.
This guidance has been drafted in accordance with the County Council’s statutory Rights of Way Improvement Plan (RoWIP), which contains a Statement of Action relating to planning and development:

“Countryside access provision should be safe for users. Where significant potential conflict with motor traffic or railways can be demonstrated, then measures to reduce risk will be considered. Where rights of way are subsumed within urban development, then planners will be encouraged to ensure that path design is open and unthreatening. Safety-critical path infrastructure will be regularly inspected.”

The RoWIP can be viewed at: http://www.cambridgeshire.gov.uk/download/downloads/id/2851/rights_of_way_improvement_plan

The County Council’s Local Transport Plan also contains adopted policies of relevance to planners and developers and this document can be viewed at: http://www.cambridgeshire.gov.uk/info/20006/travel_roads_and_parking/66/transport_plans_and_policies

DEFRA Rights of Way Circular 1/09 also contains statutory guidance on Planning permission and Public Rights of Way and can be viewed at: https://www.gov.uk/government/publications/rights-of-way-circular-1-09

2. Key Criteria

The following points should be borne in mind for minor and all other size development proposals:

- The impact of the development of a small area on a PROW running through the site can be disproportionately adverse.
- PROW should be retained on their existing lines if at all possible as positive outcomes for the local community and should not be incorporated into access drives and gardens.
- PROW should also remain unenclosed where possible.
- If it is not possible to develop the site otherwise, the PROW may be divided from the rest of the site in accordance with advice from the County Council.
- Development proposals may have to be re-assessed to ensure that sufficient area within the site is allowed for the path.
- PROW can be temporarily closed to allow works to take place, or permanently diverted to enable development to take place at the expense of the developer. Please see sections 4 and 5 below for details of these procedures.
- Statutory definitions of small scale and major development are shown in Annex 1.

3. Larger Development Schemes

Where a substantial development such as a new housing estate or road scheme is proposed, the County Council should be consulted at the earliest opportunity so that any changes to the PROW network that may be necessary can be assessed. Advice will then
be given as to the most appropriate ways to integrate PROW into the development. We welcome suggestions from developers, particularly those that improve provision and connectivity for the wider community and will be pleased to advise on proposals from the earliest stages of any proposed scheme.

We require anyone who is undertaking major development to submit documentation for approval before they commence any works on site, detailing all amendments to all public rights of way that are affected by the development, together with a schedule of timing of any temporary and/or permanent PROW closures, diversions, stopping up or creations. This is because all amendments to the PROW network are planned and agreed in advance to the commencement of the development, to enable the development to proceed smoothly, and relevant timelines and closures to be communicated to stakeholders including Parish Councils for dissemination to local communities.

PROW should be retained on their existing alignment preferably through public open space with appropriate landscaping. If the legal diversion of any PROW is necessary, the County Council should be consulted at the earliest opportunity.

PROW should be considered as an integral part of the highway network through and beyond the development site in accordance with government and local transport policies. They should be seen as additional to the proposed network of estate roads, and should not be diverted to run alongside these. The public should be encouraged to use PROW as routes for everyday journeys on foot, horseback or cycle by physically improving suitable PROW to make them safe, convenient and inviting to pedestrians, equestrians and cyclists. Local facilities to be provided within the development should be sited close to PROW to encourage walking/cycling access to the facilities in accordance with current government health policy.

Where a PROW is to be enclosed between fences or boundaries extra land will have to be set aside for the path, for access for maintenance of the route and boundaries, and to ensure that the boundary remains clear of the route. A minimum of 2.5 metres must be left for footpaths and 5 metres for bridleways enclosed by at least one boundary. Hedges and other vegetation must be planted at least 2 metres away from the route to ensure that future growth does not obstruct the path. PROW should not be enclosed by close boarded fencing to both sides; this creates an uninviting route which is difficult to maintain and unwelcoming to users.

PROW links into the adjoining countryside should be provided from the development, to encourage sustainable access from the surrounding area for pedestrians, cyclists and
equestrians, and to allow residents/workers in the
development easy access to the adjacent countryside or
amenities, in accordance with current government policy.
Such links also help to improve connections between developments and surrounding
villages for walkers and cyclists, and encourage easier circular routes for all users
including equestrians. A small additional link can make a big difference to the PROW
network for an area. Planning conditions or agreements are used to ensure the creation of
PROW. This can be achieved by:

- Over land owned by the developer, a PROW can be dedicated through a section
  106 Agreement. If the PROW is to be maintained by the Highways Authority, the
  County Council must be a party to this Agreement.

- For the creation of PROW over land not owned by the developer, the County
  Council will negotiate with the relevant landowners to create PROW. An index-
  linked cash sum should be provided by the developer in a section 106
  Agreement to cover these costs. The legal costs of establishing a path in this
  way vary considerably, according to the number of landowners involved and
  whether a compulsory Creation Order is necessary where compensation will be
due to the landowner. For details of the charges please see the Cambridgeshire
  Highway Records Guide at:
  http://www.cambridgeshire.gov.uk/info/20081/roads_and_pathways/116/highway
  _records. The amount of compensation due will vary widely according to local
  circumstances in each case.

- The Community Infrastructure Levy (CIL) is a charge that the Local Planning
  Authority may levy on a development and funds from this are used to support
  development by providing infrastructure that local areas need, including
  transport infrastructure that include changes to the PROW network.

- Early consultation with the County Council, planning department and Parish
  Council is vital.

The County Council charges fees for pre-application advice. The fees are charged on a
sliding scale set according to the size of the development, details of which are available at
http://www.cambridgeshire.gov.uk/info/20012/arts_green_spaces_and_activities/199/defini
tive_map_and_statement. Fees for major projects fees are negotiable depending on the
work involved. A monitoring fee can be negotiated if required. Work on legal orders
necessary to divert/create/extinguish PROW is charged separately and details of these
fees will be supplied as part of the advice.

Major development is defined at Annex 1 to this document. Further Guidance Notes are
available to developers of major schemes upon request and these are listed at Annex 2.

4. Temporary Diversion or Closure of PROW

A PROW can be temporarily closed or diverted under Section 14(1)(a) of the Road Traffic
Regulation Act if works are to be undertaken on or near the route that would pose a
potential danger to the public, or likelihood of serious damage to the PROW. If a
temporary closure is necessary in connection with a development proposal you should
contact the County Council’s Street Works Team on 0345 045 5212 or email street.works@cambridgeshire.gov.uk or visit www.cambridgeshire.gov.uk/info/20081/roads_and_pathways/109/highways_licences_and_permits where the relevant application forms can be downloaded. Applications of this type should be submitted to the County Council at least three months in advance of when the closure will be necessary to allow the necessary administrative procedures to be undertaken. If a permanent alteration to the line of a route is also required please note this needs to be co-ordinated in advance – see section 5 below.

5. **Permanent Diversion or Stopping-up of PROW**

If a permanent diversion or stopping-up is necessary you should contact the A&C Team at assetsandcommissioning@cambridgeshire.gov.uk or telephone 0345 045 5200.

- The granting of planning permission does not serve to permanently stop up or divert a PROW affected by development, a PROW can be diverted to enable development to take place under sections 247 and 257 of the Town & Country Planning Act 1990. Diversion or the stopping of a route under these provisions should only be considered as a last resort, where no other options to produce a satisfactory layout are possible.

- If a diversion or stopping-up will be necessary, the process of consulting on the proposed change should be undertaken at the earliest opportunity. This must be at the same time as the planning application is at the consultation stage so that potential objections can be addressed.

- Alternative provision for the path should be made wherever possible, which must be done to the County Council’s (acting as the Highway Authority) satisfaction. They should take the opportunity to improve provision for communities as noted above. The A&C Team will be pleased to work with developers and advise them on their proposals.
The County Council would aim to make the diversion/stopping-up order as soon as the Planning Permission or Development Consent Order is granted. The application should be made to the County Council, who will undertake consultations. Views of consultees will be taken into account, and amendments may be suggested to the proposed diversion as a result. The County Council must also agree to the diversion, as it will become responsible (on behalf of the Highway Authority) for the maintenance of the new route.

The County Council can process an application within six months from the point when it is able to start processing it in straightforward cases where no objections are received. However the process is open to objection and if objections are received this may trigger a public local inquiry and result in a considerable delay to part of the development.

The developer must carry out all works necessary to bring the new route of the path into a suitable condition for public use and is normally required to reimburse all expenses incurred by the County Council in promoting the order.

6. Creation and Upgrading of PROW

In addition to the mechanisms outlined above where paths can be diverted or stopped up, existing routes can be upgraded to a higher status and new routes can be established to improve access where required.

- A PROW can be established or an existing one upgraded through a legal Agreement under section 25 of the Highways Act 1980 between the landowner and the County Council. These can take around six months from the point when the County Council is able to start processing them to completion in straightforward cases.

- If there is a public need for a new route, the County Council has a power to create a new path by Order under section 26 of the Highways Act 1980, however these can take in excess of one year from start to finish, as the landowner may be entitled to compensation which has to be negotiated.

- The County Council also has a power to establish new Cycle Tracks where necessary in connection with large developments to help make sustainable modes of transport a viable and attractive alternative to the private car.
Annex 1a – Statutory Definition of Major Development

a) the winning and working of minerals or the use of land for mineral-working deposits;
b) waste development
c) the provision of dwellinghouses where –
   i) the number of houses to be provided is 10 or more; or
   ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (c) (i);
d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
e) development carried out on a site having an area of 1 hectare or more.

Annex 1b – Statutory Definition of Minor Development

- Proposals for up to 24 residential units
- Proposals for between 100 and 500 square metres of commercial floor space
- Proposals for between 100 and 500 square metres of commercial floor space
- Change of use up to 500 square metres
- Proposals for Small Mixed use developments of up to 10 dwellings and 100 square metres commercial use floor space

Annex 2 – Further reading (documents available electronically upon request)

Guidance on managing construction traffic when haul roads cross Public Rights of Way

Highway Design Guidance for new housing developments (produced for the construction of Cambourne)

Specification and designs for path surfaces, bridges, waymarking/signposting, enclosing paths and landscaping

Guidance for particular types of development: Wind turbines; Mineral Workings and Landfill Development; Golf Courses