
PLANNING AND RIGHTS OF WAY

BACKGROUND

Public Rights of Way (PRoW) are highways and are protected by law in exactly the same manner as any other highway such as a High Street or dual carriageway. They are recorded in a document called the Definitive Map and Statement (DM) which is conclusive evidence for the routes it shows, but there may be higher rights (e.g. bridleway rights on a route shown as a footpath) or additional routes in existence which are not yet shown.

Also a path on the ground may not always be in the same position as the legal line of the path, and may have a different width from that visible on the ground. It is therefore essential to check with the Right of Way Team to find the true width and location of a Right of Way.

There will be four different types of PRoW:-

- Footpaths (FP) – for people on foot only
- Bridleways (BR) – for people on foot, riding or leading horses or riding a bicycle
- Restricted Byways (RB) – as bridleways but also for horse drawn vehicles (formerly RUPPs)
- Byways Open to All Traffic (BOAT) – for any class of user, similar to a country lane or road.

A development may affect any one of these PRoW where:-

- it crosses or is adjacent to an application site
- it will or may be used as pedestrian or vehicular access (*temporary or permanent*) to the site
- an access road (*temporary or permanent*) crosses a PRoW

DEVELOPMENT & PLANNING PERMISSION

Granting of planning permission does **not** grant the right to close or alter in any way (i.e. change the surface, width, location etc.) a PRoW (even temporarily). It is an offence to obstruct a PRoW until an order has been made and confirmed.

If a development, such as new houses, will affect a PRoW in any way it is essential that the Rights of Way Unit at County Hall is consulted.

To prevent conflict of use on a permanent new road which is proposed to either

- be on the same route as a PRoW, an order would be required to divert the PRoW; or
- cross a PRoW, an order would be required to extinguish a small part of the PRoW

No development should result in any loss to the PRoW network. In practice, HCC would wish to see additional benefits to the network in the area affected by development. Diverting a Footpath or Bridleway onto an estate road is not acceptable.

If a FP/BR needs to be diverted/closed so that development can take place, the Planning Authority who granted the planning permission (i.e. District, Borough or County Council) will need to make and confirm the legal Order (Public Path Order) under the Town & Country Planning Act 1990 [TCPA]. Higher rights need to be diverted by the Secretary of State under Town and Country Planning Act 1990, (or s116 of the Highways Act 1980 [HA] for a diversion outside the area of development. The planning policies of the relevant District Council will need to be checked as to their policy on width. The County Council's policy recommends that there shall be a minimum legal width of 2m for FP's and 4m for BR's; however, a width greater than this may be required if the original path was wider.

The County's order of preference for how a PRow should be treated when planning permission for development is considered is as follows:-

1. Development occurs around the existing PRow and does not affect it
2. Divert temporarily (*minerals only** s.261 TCPA) – with guarantee of reinstatement!
3. Divert permanently (s.247, s.248, s.257 & s.258 TCPA, s116 HA)
4. Extinguish (s.257 & s.258 TCPA, s116 HA)

If a temporary closure is required for development, a Traffic Regulation Order (TRO) can be made to close the PRow for up to 6 months. These orders are made by the County Council.

**Because of the temporary nature of mineral developments there are specific ways of temporarily closing or diverting public rights of way for long periods of time which are not available for other types of development.*

The appropriate course of action will be different in every case and early discussion with the Rights of Way Team is essential.

HERTFORDSHIRE COUNTY COUNCIL CONTACTS

Please contact in the first instance officers in the Rights of Way Team on the numbers given below

Broxbourne East Herts	(01992) 555232
Dacorum	(01992) 556281
St Albans Welwyn Hatfield	(01992) 555290
Hertsmere Three Rivers Watford	(01992) 555280
North Herts Stevenage	(01992) 556186