

Development and Public Rights of Way

Guidance for Planners and Developers



PUBLIC RIGHTS OF WAY Guidance for Planners and Developers



1. Introduction

Cambridgeshire has over 3,000km of Public Rights of Way (PROW) consisting of footpaths, bridleways, restricted byways and BOATs (Byways Open to All Traffic). They form an integral part of the county's highway network and are a highly valued asset for local communities. They are also a material consideration in planning applications¹. They are protected by legislation and play an important role in delivering local and national policy aims, particularly in terms of sustainable transport, active travel, health improvement and enjoyment of the local landscape.

The County Council holds the Definitive Map and Statement of Public Rights of Way, which is the legal record of all recorded routes. It provides conclusive proof of the existence of the routes that are shown on it and of their status, position, width where recorded, and occasionally other details such as the existence of stiles or gates or other conditions.



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.

¹ Rights of Way Circular (1/09) <https://www.gov.uk/government/publications/rights-of-way-circular-1-09>

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 by clicking [here](#).

The County Council's Local Transport Plan also contains adopted policies of relevance to planners and developers and this document can be viewed [here](#).

DEFRA Rights of Way Circular 1/09 also contains statutory guidance on Planning permission and Public Rights of Way and can be viewed by clicking [here](#).

2. Key Criteria

The following points should be borne in mind for all development proposals, whatever their size:

- 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, parking 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.

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. Early interaction with the County Council will ensure any changes to the PROW network that may be considered necessary, can be assessed in order that advice may be provided as to the most appropriate ways to integrate PROW into the development. The County Council can provide pre-

application advice or information can be provided such as copies of the Definitive Map and Statement, Town/Village Greens or Commons Registers. Further information regarding the services the County Council provides and our schedule of fees can be found at www.cambridgeshire.gov.uk/highwaysearches.

We welcome suggestions from developers, particularly those that improve provision and connectivity for the wider community and will be pleased to advice on proposals from the earliest stages of any proposed scheme.



We will require anyone who is undertaking major development, either as part of the outline planning submission or through a suitable condition to submit documentation outlining proposed changes for approval before they commence any works on site. The documentation should detail all amendments to any public rights of way that are affected by the development, together with a schedule detailing the timing of any temporary and/or permanent PROW closures, diversions, stopping up or creations. This is to ensure that any amendments to the PROW network are planned and agreed in advance of 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.

Where a development is likely to have an impact on the surrounding PROW network due to increased footfall or loss of light for example, then it may be considered appropriate for the development to contribute towards the improvement of those paths. This will be either through the direct implementation of an agreed scheme by the developer or through section 106 Agreement funding provided to the County Council. Again, this should be discussed with the County Council 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, private driveways and streets and should be provided wholly or in the main, separate from them. The re-routing or incorporation of a path along footways, or its extinguishment, should be avoided on all but the very smallest of development sites where there is little or no scope to provide a separate path. The public should be encouraged to use PROW 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 central and local government health policy.

4. General Advice

Where a PROW is to be enclosed between fences or boundaries, extra land will have to be set aside for the path, to enable access for maintenance of the route and boundaries, and to ensure that any boundary vegetation remains clear of the route. The County Council will require, and may condition, the following requirements where paths are to be bordered by new dwellings or hedgerows.

Boundary	Off-set distance	Instances where reduced width may be considered
Wall or Close-boarded fence	0.5 metres	Reduced height
Established hedge or trees	1.5 metres	Suitable arrangements for the permanent management of the vegetation is in place and described
Fast-growing or new hedge or tree planting	2 metres	

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. Enclosed paths are normally less visible from adjacent land and natural surveillance is less likely from overlooking properties. Acute changes of direction in a path should be avoided so that no intimidating blind spots are created. Any proposal that includes these features are less likely to be supported by Planners, Cambridgeshire Constabulary and the County Council.

PROW links into the adjoining countryside and amenities should be provided from the development, to encourage sustainable access to and from the surrounding area for pedestrians, cyclists and equestrians, and to allow residents/workers in the development easy access, 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 often make a big difference to the PROW network for an area.

Planning conditions or agreements are used to ensure appropriate provisions are made in the following ways:

- Over land owned by the developer, a PROW can be dedicated through a Section 106 Agreement or via a Public Path Creation 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. The amount of compensation due will vary widely according to local circumstances in each case. For details of the charges please see the Cambridgeshire Highway Records Guide at: www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/roads-and-pathways/highway-records
- 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.

The County Council charges fees for pre-application advice. 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 can be found on our website www.cambridgeshire.gov.uk/highwaysearches.

5. Using Public Rights of Way to access your development

Some development proposals involve the utilisation of a Public Right of Way as the primary access route into their site. This is predominantly via public byways but may also be through public bridleways or footpaths which may or may not share the route with a private farm track or access lane.

These routes are usually only maintained to the standard of a soft surface suitable for categories of users permitted on the public right of way.

In the vast majority of cases, the County Council will not own the land over which the PROW runs. The highway rights over the PROW are vested in the County Council as the Highway Authority, however the Authority does not own the subsoil beneath the surface. The County Council does not hold ownership information, therefore a developer will need to satisfy themselves that they have the appropriate rights or permissions to access their development via a PROW.

The PROW may not have a legally defined and recorded width in the Definitive Map and Statement, and the County Council may not be able to advise during the planning process

what the width would be. As the dimensions of a PROW may be unknown, the County Council would be unlikely to be able to guarantee that improvements to the PROW required to secure a road and/or footway to an adoptable standard that may be required by the Local Planning Authority (LPA) could be delivered. An applicant therefore proceeds with any development that might affect a PROW at their own risk and is encouraged to seek their own legal advice.

The Highways Authority has a duty to maintain PROWs in such a state as to be suitable for its intended use² (section 41 of the Highways Act). If the surface of the PROW is damaged as a result of increased private motorised vehicle usage, the Highways Authority is only liable to maintain it to a PROW standard. Those with private vehicular rights will therefore be liable for making good the surface of the Public Right of Way.

6. 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 <https://www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/roads-and-pathways/highway-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 required administrative procedures to be undertaken. If a permanent alteration to the line of a route is also required, this needs to be coordinated in advance – see section 7 below.

Temporary diversion around the perimeter of Phase 1 of the Northstowe new town development

Any works on the highway, including PROW, will require the booking of road space. It is a necessary step regardless of whether you have a temporary closure in place or not. Further details including the relevant application forms can be found on our website at

² Section 41 (Highways Act 1980)

www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/roads-and-pathways/highway-licences-and-permits/.

7. Permanent Diversion or Stopping-up of PROW

If a permanent diversion or stopping-up is necessary, you should contact the Highways Asset Information Team at HighwaysAssetManagement@cambridgeshire.gov.uk or telephone 0345 045 5212.

- The granting of planning permission does not serve to permanently stop up or divert a PROW affected by development. The Town and Country Planning Act 1990 gives the Local Planning Authority to power to divert or stop up PROW to enable development to be carried out. These powers are not available where development is considered 'substantially complete'³. Diversion or the stopping up 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.



Recently diverted Public Right of Way in Warboys

- It cannot be assumed that because planning permission has been granted, that an order under the provisions of the Town and Country Planning Act, for diversion or stopping up of a PROW will invariably be made or confirmed, as the process is open to objection.
- 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 done 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. The

³ The Planning Inspector Rights of Way advice note 9 - <https://www.gov.uk/government/collections/rights-of-way-advice-notes>

improvement of provision for communities should be incorporated into proposals as noted above. The Highways Asset Information 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. The 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 to completion 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.

8. 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.

9. Further Information

The County Council charges fees for pre-application advice. 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 can be found on our website www.cambridgeshire.gov.uk/highwaysearches.

The County Council's Rights of Way service can be contacted at highwaysassetmanagement@cambridgeshire.gov.uk