Nottingham City Council

GUIDE TO PUBLIC RIGHTS OF WAY, PLANNING AND DEVELOPMENT

Adopted: 20 July 2010 (updated November 2013)



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Foreword

Councillor Jane Urquhart, Portfolio Holder for Transport and Area Working

Public rights of way play a key role in providing a sustainable transport option to the citizens of Nottingham. They provide access to local amenities, for recreation, to open spaces and a way of getting from one place to another. Whether it's walking or cycling as part of your daily commute or for recreational enjoyment, health or exercise, we can all sometimes take public rights of way for granted. This guidance will help those involved with the design and implementation of new developments to understand the important function of public rights of way and the law that protects them.



1. Introduction

This Guidance should help prevent public rights of way (PROW) from being overlooked or not being properly addressed in the planning process. This is essential reading for anyone involved with a new development that involves consideration of whether planning permission should be granted, whether the site or property has any PROW over or adjoining it and how these public rights should be lawfully treated. One important point to remember; it is a criminal offence to obstruct or otherwise interfere with a PROW without the authority to do so.

2. What is a PROW?

A PROW is a way over which the public has a right to pass and re-pass, and therefore it is a highway. The PROW does not refer to the physical highway itself (i.e. the tarmac, stone etc) but to the public rights that exist over it. A PROW does not have to be metalled or have street lights. It can be as simple as a muddy “desire line” across a piece of land. Once established in law, a PROW is a public highway, regardless of who owns it or who maintains it. PROW are just like roads; they provide the public at large with a way of getting from point A to point B, either by foot, cycle, horse or horse drawn carriage. PROW are protected by highway law and legislation and include the following public highway rights:-

- public footpath = a way over which the right of way is on foot
- public bridleway = a way over which the right of way is on foot, horse back, leading a horse, pedal cycle and in some instances to drive animals
- byway open to all traffic (BOAT) = is a carriageway and therefore a right of way for vehicles, but one used mainly for the purposes for which footpaths and bridleways are used
- restricted byway = a way over which the right of way is on foot, on horse or leading a horse and on a vehicle (other than mechanically propelled) including pedal cycles and horse drawn carriages

3. What is a Private Right of Way?

Not to be confused with public rights, private rights are generally used by a distinct group of people (as opposed to the public at large) to access private property or private land.

4. What is a Permissive Right of Way?

A permissive right of way is a “way” over which the public have the permission of the landowner to use. The permission may be withdrawn at any time.

5. Relevant Local Policies and Strategies

5.1 A number of specific policies and strategies provide for the protection and enhancement of PROW. The Nottingham Local Plan (November 2005) Policy T12 states; “planning permission will not be granted for development which would obstruct or adversely affect a public right of way unless satisfactory provision is made for an alternative alignment”. The City Council considers it is in the public interest to ensure that PROW are generally not lost as a result of development and will seek to ensure suitable alternative routes where loss is inevitable. Where development affecting a PROW does take place, the procedures set out in the Town and Country Planning Act 1990 for the stopping up or diversion of the PROW must be followed (see section 17 below).

The Local Transport Plan (LTP3) sets out the City Council’s programme for improvements to support the five National Transport Goals. Again, all new PROW (or changes to existing PROW) must be carefully designed to meet these Goals. These are;

- Support Economic Growth
- Reduce Carbon Emissions
- Promote Equality of Opportunity
- Contribute to Better Safety, Security and Health
- Improve Quality of Life and a Healthy Natural Environment

5.3 The Rights of Way Improvement Plan (ROWIP1, November 2007) provides that PROW must be considered, fully, whenever changes to the network are proposed; for example changes that occur from planning, development and land use change.

6. Importance of PROW

PROW are important for accessing local amenities, recreation, access to open spaces and provide a sustainable way of getting from one place to another. The City Council believes PROW contribute to removing the dependency on private car use especially for local journeys and for delivering sustainable development. In Nottingham, PROW provide:

- A sustainable way of accessing shops, public transport / local amenities
- Safer Routes to School
- Access to open spaces / wider countryside
- A car free environment for walking, cycling and riding
- A cheap and effective way of keeping fit and healthy
- The most direct way of getting around locally on foot and cycle

7. What are the benefits of dealing with PROW as early as possible?

7.1 Making enquires and asking the right questions to the right people as early as possible can help save time, frustration and unnecessary delays in starting the development. Imagine the following scenarios:

7.2 Scenario one: you have commissioned an architect to draw up the necessary plans and are ready to submit the planning application to the Local Planning Authority and expect to commence on site in around six months. The proposed development is advertised on site and in a local newspaper. However, you are unaware that a public footpath crosses the site. It may be because you did not check the Definitive Map and Statement (which is the Council's legal register of PROW in their area). Because you are unaware of the public rights over the site, you did not tick the relevant box on the planning application form and therefore the Notices advertising the application did not state that the development will affect a PROW. This omission means that consultation for the proposed development was not consistent with The Town and Country Planning Act (General Development Procedure) Order 1995 and therefore requires re-advertising.

7.3 Scenario two: a member of the public who has regularly used a footpath (that is not currently shown in the Map and Statement) for twenty years to cross the development site sees the planning Notice advertising the proposed development. They make an application under the Wildlife and Countryside Act 1981 to the Highway Authority for the unrecorded footpath to be recorded in the Map and Statement as a PROW. This may halt the development until the application has been fully investigated and the Highway Authority makes its decision on whether the footpath is a PROW. The Highway Authority has twelve months to make a decision on the application.

7.4 At best, both these scenarios will result in a delay to the proposed development. It is therefore essential that all PROW and any other paths, tracks or ways are taken into account as early as practically possible.

8. The role of the Local Highway Authority and Local Planning Authority

8.1 The City Council is the Local Highway Authority[1] and Local Planning Authority for the City of Nottingham. This allows good communication between the two Authorities, enabling early discussions to take place on proposed developments and how to deal with PROW at the pre-design and pre-planning application stage of the proposed development (see section 13 below: Designing PROW).

8.2 Section 130(1) of the Highways Act 1980 places a statutory duty on the Highway Authority to assert and protect the rights of the public over its

[1] Including the duties of the Surveying Authority (see section 9.1 below)

highways and to prevent as far as possible their closure or obstruction. The Town and Country Planning system regulates development in the public interest. It is the system by which we enhance and protect our environment, whilst at the same time allowing the development necessary for our economic and social well being to take place in an acceptable and regulated manner. The Local Planning Authority is responsible for deciding whether a proposed development, which can be anything from an extension to a property to a new shopping centre, should be approved and that all proposed developments are sustainable in terms of the movement of people to and from them.

8.3 On receipt of a planning application, where there are highway implications, the Planning Authority will consult the Highway Authority who will highlight the affect of the proposed development on any PROW. For example, it may be necessary to stop up (permanently close) or divert the PROW to enable the development to be carried out (see section 17 below: powers to permanently stop up or divert a PROW). Should a stopping up or diversion order be necessary, the planning decision notice should include the following advisory Note to the developer:

8.3.1 *"The development will require the [stopping up] [diversion] of the PROW which is a separate legal process to the planning application. No part of the development hereby permitted (or any temporary works or structures) must obstruct the PROW until the areas of PROW shown on the plan with reference* (insert plan ref here) *have been formally [stopped up] [diverted]* (delete words in square brackets where necessary). *Please discuss this with the Highway Authority".*

8.4 Not only is it a criminal offence to obstruct a PROW before this has been done but it may make it impossible for the City Council or the Secretary of State, as the case may be, to make or confirm the stopping up or diversion order.

9. The Definitive Map and Statement of PROW

9.1 So that everyone, including walkers, riders, local residents and landowners alike, know which paths or ways are public rights of way, Parliament has required local authorities, known as Surveying Authorities, to record those rights on special maps and statements, known as Definitive Maps and Statements. All known public footpaths, bridleways and restricted byways should, by law, be recorded in the Map and Statement.

9.2 As part of Local Government Reorganisation in 1998, Nottingham City Council became the Surveying and Highway Authority for Nottingham City. The Authority acquired a new duty to keep their Definitive Map and Statement up to date and make changes accordingly. The Map and Statement is the legal record of known PROW in Nottingham. They are public documents that can be inspected free of charge during normal office hours by prior arrangement. Please use the contact details at section 18.

9.3 The Definitive Map and Statement should be the first, but by no means the only point of reference to establish whether a PROW exists over a site or

property. The depiction of a PROW on the Definitive Map is a record only of the existence of those rights. Other rights may exist but may not be recorded. Therefore a PROW may already exist over the land or property but may not be recorded. The Definitive Map and Statement are conclusive evidence in law only of the existence of the public rights shown.

10. The Register of Streets Declared Highways Maintainable at the Public Expense (The Adoption Records)

10.1 Section 36(6) of the Highways Act 1980 places a duty on the Highway Authority to prepare and keep up to date a list of all their highways that are maintainable at public expense (i.e. maintained by the Council's Highway Authority). This register includes carriageways, footways, footpaths, cycle paths, byways and bridleways.

10.2 This register, which is known as the Adoption Records, is accompanied by a series of plans showing the extent of the adopted highways, along with any adopted verges, grassed areas and public open spaces. The Adoption Records are a register of the Councils maintenance liability, they are not a register of what public rights exist over the highway, although it may be inferred that if the highway is adopted it will generally carry, at the very least, public rights on foot.

11. How can I check if a PROW exists over the site or property?

11.1 Government have made it quite clear that PROW are a "material consideration" within the planning process. Developers should be fully aware of their legal obligations not to obstruct or interfere with a PROW before they have the authority to do so. If a PROW is obstructed by any part of a development without authority to do so, the Highway Authority has powers to remove the obstruction and reopen the route for public use.

11.2 There are a number of checks you can make to determine whether a PROW exists over the site or property. The following is not an exhaustive list but will help in most cases.

11.3 Information held by the Highway Authority

- Make an appointment to inspect the Definitive Map and Statement; and
- Make an appointment to inspect the Adoption Records; and
- Check whether there is any documentary and/or user evidence that shows that a PROW that is not shown in the Map and Statement crosses the site or property; and
- Check whether there are any current or outstanding applications under the Wildlife and Countryside Act 1981 for a Modification Order; and

- Check whether there are any proposals to make a Public Path Creation Order under Section 26 of the Highways Act 1980; and

- Check whether there are any proposals to make a Public Path Creation Agreement under Section 25 of the Highways Act 1980; and

- Check whether there are any agreements for permissive public access over the site or property.

To inspect the Definitive Map and Statement and/or the Adoption Records please use the contact details at section 18 below.

11.4 On-Site Inspections

Make a thorough on-site assessment of any public activities that are currently taking place, or that have occurred historically over the site or property. In particular, look for any signs of "desire lines" where the public have crossed the site or property on foot, cycle or horse and remains of any stiles, hand gates, sign posts and other structures or furniture.

12. What should I do if the proposed development interferes with a PROW?

12.1 Before submitting an application for planning permission, it is the responsibility of the owner (or their representative) of the site or property on which the proposed development will take place to ascertain as far as practically possible whether any PROW exist over it and then to clearly mark these on the plans submitted with the planning application.

12.2 if it is necessary to stop up or divert the PROW to enable a proposed development to be carried out (see section 17 below) it is the responsibility of the owner (or their representative) to make an application to stop up or divert the PROW. The application may be submitted ahead of planning permission being granted. Please use the contact details at section 18 below.

13. Designing PROW

13.1 It is not uncommon for there to be a conflict of interest between the need to provide and protect PROW and the needs of those who live or work near them. The Council Plan 2012 – 2015 is fully aligned with the Nottingham Plan to 2020 (Sustainable Community Strategy) and sets out six Strategic Priorities to achieve the type of City we are all proud of. These Strategic Priorities include "World Class Nottingham" a key element of which is to improve accessibility to and across Nottingham; "Neighbourhood Nottingham within which key elements include improving both the attractiveness of housing offer, and physical access and infrastructure; "Safer Nottingham" to reduce crime, the fear of crime and anti-social behaviour; "Healthy Nottingham" to improve

health and well being. To help the City Council deliver these priorities, the following principles should be incorporated into all developments:

13.2 Secured by Design: this supports one of the Government's key planning objectives - the creation of secure, quality places where people wish to live and work. Research shows that SBD can reduce burglary and car crime by 50% and criminal damage by 25%.

13.3 Building for Life: this is the national standard for achieving well-designed homes and neighbourhoods led by the Commission for Architecture and the Built Environment and the Home Builders Federation. Twenty criteria are used to evaluate the quality of a proposed development at both the pre-planning and post-construction phases, ensuring they are attractive, functional and sustainable.

13.4 World Class Places: this is the Government's strategy for improving the places where we choose to live, work and play. It recognises that the way neighbourhoods, places and buildings are planned, designed and managed matters to all of us in a number of ways. The built environment can influence crime, health, education, inclusion, community cohesion and well-being.

13.5 In this context, as a minimum, the following principles should be incorporated into the design of new PROW or where existing PROW are incorporated into a new development: -

- Consider PROW at the design stage, before you submit the planning application
- PROW should be as straight and as wide as possible, well lit, open and clear of hiding places
- Locate PROW away from side or rear of premises
- Locate PROW where natural surveillance is high
- Do not create a ‘tunnelled effect’ through narrow widths and/or high fences
- Ideally, routes for pedestrians, cyclists and vehicles should be combined
- PROW should be as short, straight and direct as possible, ideally with each end being clearly visible from the other.
- A network of separate PROW to unsupervised areas should be avoided

13.6 Consideration should be given to the future maintenance of PROW, their surfaces, adjacent verges, street furniture, structures and planting schemes. For example, will the PROW network be adopted and maintained by the Council and, if so, has this been discussed and the necessary agreements and/or documentation been approved? For further information please use the contact details at section 18 below.

14. What if the PROW will not be directly built upon but may still be affected by the proposed development?

14.1 There may be a need to use a PROW temporarily to access a proposed development site to deliver materials etc. It is a criminal offence to drive a mechanically propelled vehicle on a PROW so you must first obtain authorisation from the Highway Authority. For further information please use the contact details at section 18 below.

14.2 A public and private right of way may exist over the same route. Due to the likelihood of danger to the public from the works on or near the PROW an Application must be made (and approved) to the Highway Authority for a Temporary Prohibition Order under Section 14 of the Road Traffic Regulation Act 1984, before commencement of the works. However, the order cannot restrict private rights over the route, which will have to be dealt with separately. This should be highlighted as early as possible in the Planning Application process. For further information please use the contact details at section 18 below.

14.3 PROW do not respect planning application boundaries, and the PROW may lay partly within and partly outside the proposed development site. If it is necessary to stop up (see section 17 below) the part of the PROW within the site to enable the development to be carried out, this may result in the PROW being severed at the planning application boundary creating a “dead end” PROW, which may be subject to crime and anti-social activities. In these cases, it will be necessary to stop up the “dead end” part of the PROW through a separate legal process under Section 118 of the Highways Act 1980. This should be highlighted as early as possible in the Planning Application process. For further information please use the contact details at section 18 below.

15. What if the PROW is adjacent to or adjoining the site of the proposed development but is not directly affected?

Public safety is the priority. This situation may therefore require a Temporary Prohibition Order made under Section 14 of the Road Traffic Regulation Act 1984 for the full period when there is a likelihood of danger to the public brought about by works on or near the PROW. For further information please use the contact details at section 18 below.

16. What if the development is almost complete?

This depends on how complete the development is. In the case of Ashby & Dalby v the Secretary of State for the Environment (1980) it was concluded that an Order under the Town and Country Planning Act 1990 could be made if some of the authorised development was still to be carried out. In so far as it affects the PROW, if the development is substantially complete, an Order under the 1990 Act cannot be made or confirmed. In this case the powers under section 118 of the Highways Act 1980 may be used on the ground that

the PROW is ‘not needed for public use’. Any temporary obstructions caused by the development must be disregarded when assessing whether or not it is needed for public use. Alternatively, an application may be made to the Magistrates Court under Section 116 of the Highways Act 1980 on the ground that the PROW is ‘unnecessary’. For further information please use the contact details at section 18 below.

17. Town and Country Planning Act 1990 Section 257: Powers to Permanently Stop Up or Divert a PROW

17.1 The City Council have discretionary powers to make Orders to permanently stop up or divert PROW[2] to enable development to be carried out. An Order under Section 257 of the 1990 Act may provide for the creation of an alternative PROW for use as a replacement for the one authorised by the Order to be stopped up or diverted or for the improvement to an existing PROW for such use. An application for an Order may be made at the same time as the application for planning permission although the Order cannot be confirmed (i.e. take affect) until planning permission has been granted.

17.2 Under Section 257 of the 1990 Act, the word ‘necessary’ means just that. For example it is not sufficient for the proposed development to consist only of gates and fencing or other enclosures or for the proposed development to consist of a change of use from a PROW to private garden (for example, extending the boundary of the garden to encompass the PROW). A private garden and a PROW can coexist. The Order must be necessary in the sense that, without the Order, the development could not be carried out.

17.3 It is not uncommon for an application for an Order under the 1990 Act to be made on the grounds of reducing crime, disorder or antisocial behaviour. The Courts and the Planning Inspectorate have made it quite clear that these matters, although regrettable, are not lawfully relevant for stopping up or diverting a PROW under the 1990 Act. The Council have separate powers to deal with crime, anti-social behaviour or nuisance arising on a PROW or resulting from its use. For further information please use the contact details at section 18.

17.4 The Highway Authority should not question the merits of the planning permission when considering making or confirming an Order under the 1990 Act. The fact that planning permission has been granted does not mean that the PROW will automatically be stopped up or diverted. However, the Authority must have good reasons to justify a decision to either not make or not confirm an Order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the PROW to members of the public generally or to persons whose properties adjoin or are nearby should be weighed against the advantages of the proposed order.

[2] If the proposed development affects a carriageway and/or footway (pavements) an application under Section 247 of the 1990 Act will have to be made to the Department for Transport. Please discuss this with the Council’s Highway Authority at the earliest convenience.

18. City Council contact details

John Lee, Senior Rights of Way Officer, Traffic Management, Development Department, Loxley House , Station Street, Nottingham NG2 3NG - telephone 0115 8765246 or email john.lee@nottinghamcity.gov.uk

19. Useful references

Annex C Department of Environment Circular 2 /1993

Building for Life: Commission for Architecture and the Built Environment and Building for Life Partnership 2008

Council Plan 2009 – 2012

Department of the Environment Circular 15/92: Publicity for Planning Applications June 1992

Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England November 2008

Guidance on Local Transport Plans Department for Transport July 2009

Local Transport Plan for Greater Nottingham 2006/7 to 2010/11 March 2006

Nottingham Plan to 2020

Nottingham Local Plan November 2005

Nottingham Rights of Way Improvement Plan (ROWIP1) November 2007

The Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013 SI No. 2201

Rights of Way Review Committee: Practice Guidance Note 6 Planning and Public Rights of Way Second Edition December 2007

Rights of Way Circular (01/09) Guidance for Local Authorities Version 2 Department of Environment Food and Rural Affairs (DEFRA) October 2009 www.defra.gov.uk

Secured by Design: Nottinghamshire Police Architectural Liaison Officer 0115 9672645

The Planning Inspectorate Rights of Way Section Advice Note 9 General Guidance to Inspectors on Public Rights of Way Matters 7th Revision October 2009

Town and Country Planning Act 1990

Town and Country Planning Act (General Development Procedure) Order 1995

World Class Places: Communities and Local Government 2009

www.communities.gov.uk/publications/planningandbuilding/worldclassplaces

www.securedbydesign.com/guides/index.aspx

www.planning-inspectorate.gov.uk

This publication can be made available in large print, braille, tape or computer disc and can be provided in alternative languages on request. Please contact Traffic Management on 0115 8765246.