

Development and Public Rights of Way
Advice to Developers
Stopping up and Diversion of Highways

Orders under Section 257 of the Town and Country Planning Act 1990

NB – If the highways involved include an all-purpose highway (or part of one) with or without affecting footpaths, bridleways or cycle tracks, the application can be made to the Department for Transport BY THE APPLICANT.

Introduction

The granting of planning permission does not give a right to interfere with, obstruct or move a public right of way, the obstruction of which is a criminal offence.

Public Rights of Way can only be altered by legal order and it is important that they are considered at an early stage in the development process. A failure to take them into account may cause significant delays and may make properties unsalable.

The Government considers that the effect of development on rights of way is a material consideration in the determination of planning applications and it asks local authorities to ensure that the effect that development has on them is taken into account.

Consultation with the Council

City of Wolverhampton Council is both the Planning Authority and the Highway Authority although these two functions rest with different departments within the Council.

Where development might affect a right of way, we would recommend finding out the correct, legal line of the path (this may not be exactly how the path is used in practice). The most up to date information about the rights of way network is available at our offices at Culwell Street, Wolverhampton, WV10 0JN and it is important that the Definitive Map of Public Rights of Way is consulted at the earliest opportunity. Anyone can make an appointment to view the Definitive Map or alternatively a rights of way search can be carried out by post or email, although there may be a fee for this service.

Consultation with the local community

It would be appropriate to consult with local residents and users of the route before submitting a formal proposal to the Council, so that their comments/recommendations can be sought at an early stage, thereby reducing the chances of objections after costs have been incurred. We suggest:

Erecting a notice beside the section to be diverted/extinguished, explaining the proposal and seeking comments and suggestions from those who use the route. Include a large scale plan showing the current rights of way network in the area (we may be able to assist in this respect).

Contacting local representatives of interested user groups and asking for their input. We will be able to supply contact details for representatives of the Ramblers' Association, the Open Spaces Society and the Cyclists Touring Club (in the case of bridleways).

What if the proposed development will obstruct a public right of way?

If a proposed development will permanently affect a route, for example, because it will be built upon, the developer will need to secure a legal diversion or extinguishment of the route before development begins. The application will usually be made under the provisions of the Town and Country Planning Act 1990 or the Highways Act 1980.

Until the right of way is permanently diverted or extinguished, any planning conditions concerning the right of way must be fully complied with and the developer must ensure that:-

- No change to the surface of the right of way is made without consultation with the Council
- There is no narrowing of the width of the right of way available for use by members of the public
- No building materials are stored on the right of way
- No damage or substantial alteration, either temporary or permanent, is caused to the surface of the right of way.
- No additional barriers/fencing, either temporary or permanent, are placed across the right of way
- The safety of members of the public using the right of way is ensured at all times.

It is possible for a right of way to be closed temporarily whilst building works are carried out. The applicant will need to pay a fee to cover costs. Further information can be provided. Upon completion of works, the route will have to be reopened on its definitive line.

What if the public right of way is not directly built on but is still affected by the proposed development?

This situation often arises where, for example, a footpath runs along a track leading to a site which is to be developed resulting in increased vehicular traffic either during construction or after the development is completed. We will normally highlight any concerns during consultation and will specify any measures that need to be taken to mitigate any detrimental effects.

What if the applicant is unclear about the exact line of a public right of way after a search of the Definitive Map?

If, after making a search of the Definitive Map and consulting with the Rights of Way officer a developer is unsure as to whether or not a right of way is affected, an officer can undertake a site visit to establish the correct line of the route on the ground. There will usually be a fee for this service to cover costs.

If a developer suspects there might be a used route within the boundary of the development that is NOT shown on the Definitive Map (for instance if there is evidence of a well walked path or people object to a path being blocked) it is vital that they discuss it with the Rights of Way officer at the earliest opportunity.

Please note that Orders under Section 257 can only be made IN ADVANCE of development being carried out. Orders cannot be sought retrospectively. Powers in such circumstances may be available under the Highway Act 1980.

Procedural advice

The following information may be of use to you when submitting your application. The procedures we use are as follows:

STAGE 1	Receipt of application form and payment
STAGE 2	Report to Members for authorisation to make application to Legal Services for a draft order
STAGE 3	Informal notices to Utility Companies
STAGE 4	Following Members approval, application form and all associated documents sent to Legal Services
STAGE 5	Legal Services arrange for notices to be placed in a local newspaper and The London Gazette. A notice will also be placed on site. Copy of the draft Order circulated to interested parties
STAGE 6	28 day objection period (notices checked on site)
STAGE 7	If no objections, the order is made and re-advertised.
STAGE 8	Six weeks High Court Challenge. (If no objections are received by the end of this period, a letter of confirmation is sent to the applicant and the stopping-up may commence)

If an objection is received and cannot be resolved, then a public inquiry will be held.