

## **SPG4 Public Rights of Way**

### **Introduction**

- 4.1 The guide is intended to provide basic information for developers and designers about the importance of Public Rights of Way which may be affected by development.
- 4.2 Development is defined under Town and Country Planning Act 1990 as 'the carrying out of building, mining or other operations in, on, over or under land or the making of any material change in the use of any building or land'.

### **National and Local Guidance**

#### **Circular 2/93 'Public Rights of Way'.**

- 4.3 The Government considers that developers that are likely to affect Rights of Way are a material consideration in the determination of planning applications. It requires local authorities to ensure that the effect as a right of way is taken into account.

The circular states that;

- 4.4 Where it is decided to grant permission for development affecting a right of way, consideration should be given at the detailed stage to whether a new line for the route can be provided which would be generally acceptable to the public. The use of estate roads for this purpose should be avoided wherever possible and preference given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.

- 4.5 The grant of planning permission does not enable developers to obstruct a public right of way. Development affecting a right of way, should not be started, and the right of way should be kept open for the public use, until the necessary order for the right of way has come into effect.

#### **Circular 5/94 'Planning Out Crime'**

- 4.6 The layout design and location of public rights of way often affects peoples perception of the safety of a route. The fear of crime has a negative effect on the use of rights of way. Therefore correct lighting and appropriate siting of fences and walls is very important.
- 4.7 Good design can overcome peoples fears, perceptions and future nuisances created by unrestricted access.
- 4.8 The Police Architectural Liaison Officer can give free advice on techniques to design out crime. The Police can award a secured by Design Certificate for developments which attain the recommended level of design and security. Secured by Design can be used to advertise the merits of a development.

#### **The Recreational Paths Network**

- 4.9 Accessibility is a crucial element in allowing the public to enjoy fully the recreational opportunities of the countryside. The area contains a large number of individual footpaths, and there is some scope to link these together to improve access. It is also important to provide linkages from built up areas to open spaces, woodland, riverside and water areas and the wider countryside. The aim

will be to promote circular routes of differing lengths to provide a variety of interesting walks which reflect the varying needs and abilities of users.

- 4.10 People are unlikely to make full use of the recreational paths network unless they are confident that they are following the correct route and that their walk will be unimpeded. It is therefore important when dealing with relevant planning applications, to seek to protect existing recreational paths, improve existing ones and negotiate new links in the network.
- 4.11 The Council will seek to cater for the needs of walkers, cyclists, horse riders and people with disabilities within the recreational path network either on footpaths, cycleways and bridleways or on shared use paths where suitable. The Policy framework is embodied in Policy R6 of the Local Plan which seeks to protect and secure better access to the open countryside. This activity is in line with North Lincolnshire Council's commitment that all rights of way should be legally defined, properly maintained and well publicised by 2005. This commitment and targets for its implementation are included in North Lincolnshire council's Milestone Statement that was formally adopted by North Lincolnshire Council on 23rd March 1999.

### **The Definitive Map and Statement**

- 4.12 The definitive map and statement is a legal record of all the rights of way that exist within North Lincolnshire. As the Highway Authority for the area North Lincolnshire Council is legally responsible for keeping the map and the statement up to date.
- 4.13 It is important to note that the definitive map does not include claimed paths or anomalies which

can cause developers considerable difficulties. These should be identified early on in the process by a request to the Rights of way Section.

- 4.14 The map and statement are conclusive proof as to the existence, status, width and position of a public right of way. It can be changed but only by a confirmed legal event such as a diversion order. The fact that a legal right of way is shown on the definitive map does not exist on the ground is not evidence that no right of way exists.
- 4.15 Local residents may have used the area for some considerable time and may wish to claim a right of way. We suggest that developers should contact the Highway Authority, Parish Council and the local community to identify such cases.
- 4.16 The definitive map and statement can be viewed at:
- The Directorate of Environment and Public Protection,  
Church Square House,  
P O Box 42,  
Scunthorpe,  
North Lincolnshire,  
DN15 6XQ
- 4.17 It is vital that anyone developing land should check and confirm at the earliest opportunity the effect of their development upon the public rights of way network. Developers and indeed anyone purchasing a property are advised to confirm if a site is affected by a public right of way. This can be done through the land charge search process.
- 4.18 Obstructions to the rights of way network even in ignorance may lead to enforcement action, prosecution and blighted property.

### **Order Making**

4.19 Local Planning Authorities have the power to make public path orders under Section 257 of the Town & Country Planning Act 1990 for the stopping up or diversion of footpath and bridleways when necessary to enable a planning consent to be implemented.

4.20 It is essential that consultations between planning officers, developers and public rights of way officers takes place at the earliest opportunity. Public rights of way must be left on their current alignment if possible. Diversion or stopping up should only be considered to enable the development to take place. Where an order is required it is more likely that it will take up to a year to take effect. It may take longer where North Lincolnshire Council has required action to be undertaken. In this situation the order will not become legal until the necessary works have been completed. Until that time the original definitive line must be kept open at all times.

4.21 When determining an application for a diversion or stopping up North Lincolnshire Council need to be satisfied that it is necessary (not just desirable or preferable) for the path to be altered in order for the planning permission to be carried out. As some footpaths and bridleways already run across gardens and along driveways it is not sufficient to suggest that because the path runs through a development site it should be diverted or stopped up. The granting of planning permission cannot be conditional upon a path being stopped up or diverted and neither does the granting of planning permission constitute permission to close or divert a public right of way.

4.22 As Highway Authority, North Lincolnshire Council can only use the powers of section 257 of the Town and Country Planning Act while the development is taking place,

thereafter any changes can only be made under the Highway Act legislation.

4.23 Where it is agreed that a diversion or stopping up order is necessary the full cost of making the order will be borne by the developer.

4.24 Temporary Diversions/Stopping up orders can be applied for to North Lincolnshire Council to allow works to be undertaken or prevent a danger to the public. It is important to remember that this restriction is only temporary and the route must be reopened. These orders cannot be used in lieu of a permanent order and will take 8-10 weeks to implement. Again the developer will be expected to pay the costs of producing and implementing the order.

## Layout and Design Guidance

4.25 It is essential that public rights of way on new developments provide direct, secure and attractive routes. They should be considered at the design stage and preserved in an enhanced existing alignment if possible.

4.26 In most circumstances a public footpath affected by a development will be dealt with at the detailed stage of planning permission. However, North Lincolnshire Council may request details of how the footpath will be dealt with at the outline stage of the planning process utilising the powers given in the Town & Country Planning General Development Order.

4.27 This states:  
 "where the authority  
 ..... are  
 of the opinion that in the

circumstances of the case the application ought not to be considered separately from all or any of the reserves matters that shall within the period of one month beginning with the receipt of the application notifying the applicant that they are unable to determine it unless further details are submitted specifying the further details that they require.

- 4.28 Developers are advised to ask the planning and rights of way sections if they intend to deal with the rights of way issues as outlined or detailed before an application is made.

### Design Requirements

- 1 North Lincolnshire Council considers that the character of a footpath is important. If its present character is rural in nature then it is appropriate that the developer should make available a strip of land adjacent to the path for landscaping. The width of this landscaped strip may vary accordingly to local circumstances.

Another alternative may be to develop any open space provision required along the route of the public right of way.

- 2 Where it is not possible to retain a public right of way on its existing definitive line it is essential that developers apply the same width and landscape standards to the new route.
- 3 Where a public right of way links to the urban area it may be appropriate to seek widening, resurfacing and lighting to make it a more attractive and secure route. Where lighting is thought to be necessary an early discussion with the Council's

street lighting engineer is advisable.

- 4 Narrow paths running between houses and enclosed eg by fencing or hedges, will not be acceptable. These paths are not overlooked and will eventually become dark, damp 'canyon' type paths. People will be unwilling to use such paths as it is generally perceived that these represent areas for anti social and criminal activities.
- 5 Acute changes in direction of paths should also be avoided so that no blind spots are created. Such routes may adversely affect householders privacy and security and appear threatening to users.
- 6 Whenever possible, footpaths and alleyways should be wide, clear of hiding places and well lit and should follow a direct line.
- 7 When considering the need to divert a footpath through a new development, routes which pass through private gardens, or incorporated into access drives should be avoided.
- 8 Public footpaths should be a minimum width of 1.5 metres and bridleways a minimum width of 3 metres. However, within new developments wider paths are likely to be required to reflect the anticipated increase in their usage.
- 9 Public rights of way should always be separated from the road network and other than short distances it will seldom be appropriate for a footway to be a public right of way.
- 10 When a public right of way is diverted it should be constructed at least to the same specification

as the original. However, North Lincolnshire Council will insist where appropriate, that the surface of the path is upgraded and widened and lit to reflect any anticipated increases in usage. In these circumstances North Lincolnshire Council will require the public right of way to be constructed to the appropriate adopted standard. In every case this will be a matter for discussion between the developer, the planning officer, the Network Maintenance section and the Public Rights of Way section.

- 11 It is vitally important that when considering either an existing right of way or a new route that the needs of disabled people are taken into account. Again the developer should have early discussion with everyone concerned or consult the Field Fare Trust or the British Telecom Access For All design guide.
- 12 In addition where appropriate North Lincolnshire Council will require developers to erect kissing gates, pea barriers and access barriers designed to restrict motor cycles and cycles. North Lincolnshire Council will advise on where barriers are necessary and can provide advice on their design. Barriers should not be erected without discussion with the Rights of Way officers. They are classified as obstructions unless they are licensed by North Lincolnshire Council.
- 13 Sometimes a major development will not only affect the Rights of Way on the site. Often the construction of new housing can have a significant impact on the surrounding Rights of Way network by increasing their usage. North Lincolnshire Council will assess the impact of a development on the surrounding

Public Rights of Way network and where this is felt to be significant will seek a financial contribution from the developer.

- 14 The upgrading of a path outside the development site will where appropriate be secured by the use of section 106 agreements in accordance with circular 1/97 "Planning Obligations".

## Summary

For best practice follow the checklist below:

- 1 Take account of National and Local Planning Guidance.
- 2 Check if a Public Right of Way claim or anomaly affects the development site.
- 3 Consider if a new Public Right of Way can be incorporated into the site.
- 4 Design the layout to take account of any existing Public Rights of Way.
- 5 Leave sufficient time to implement temporary/permanent changes to the Public Rights of Way network.
- 6 Talk to the Public Rights of Way officers regularly to ensure that problems are avoided.