

Buckinghamshire Public Rights of Way – Planning & Development advice

Aims

This paper aims to provide developers with guidance on public rights of way (PROW) matters in order to enhance walking, cycling and horse riding opportunities, ensure compliance with the law and ultimately smooth the passage of planning applications through the planning process. It is an addendum to the Buckinghamshire Rights of Way Improvement Plan 2008-18 and will extend beyond April 2018 if a replacement Plan is delayed.

Further planning advice on PROW is available in Defra Rights of Way Circular 1/09, chapter 7. Pre-application PROW advice is available for applications in Buckinghamshire at no charge - please email row@buckscc.gov.uk. Further local contacts can also be provided in order to consult with the Ramblers or British Horse Society prior to applying to make any changes to the network.

Introduction

The PROW network is an important part of the sustainable transport network that links communities together via vehicular highways and public footways. They provide safe opportunities for walking and cycling and a healthy alternative to the car for journeys to school, work, shops and local services. PROW should be seen as a positive benefit to development schemes, being able to add significantly to quality of life as well as improving public space and amenity.

Developers should give thought at an early stage to:

- how the existing PROW are affected by the development proposals;
- assessing and minimising impact on the existing PROW network; and
- enhancing existing surfaces and improving overall network connectivity.

'The effect of development on a public right of way is a material consideration in the determination of applications for planning permission...'

Defra Rights of Way Circular 1/09, para 7.2.

Preliminary investigations

PROW are highways that include footpaths, bridleways, byways open to all traffic and restricted byways, and have the same protection as adopted vehicular highways. They are recorded in a legal document called the Definitive Map and Statement (DMS) which provides conclusive evidence of a route on the ground. The map is held at County Hall, Aylesbury and can be viewed by appointment (definitivemap@buckscc.gov.uk). It is also possible to view routes on the Rights of Way section of the County Council website, but this is not always kept right up-to-date.

The existence or alignment of a PROW and the extent of adopted highways can be established through the Local Land Charges Search process – please visit the County Council website for more information. It is worth bearing in mind there may also be higher rights or additional routes in existence which are not yet recorded on the DMS. If a claim has been made for an additional route or status change, these are listed on the County Council website. It is important to highlight that in many instances a path on the ground may not always represent the true legal definitive route. It is therefore essential to check the legal line and width of a PROW as this will be the route assessed in a planning response.

Failure to make the checks outlined above may result in costly delays to a development or delay the sale of a property until the matter has been resolved.

Diversions and extinguishments under section 257 Town & Country Planning Act 1990

The County Council can make an Order to divert or extinguish a PROW if it is:

'...satisfied that it is necessary to do so in order to enable development to be carried out.'

Section 257 (1) Town & Country Planning Act 1990

This means that the diversion of a PROW should be an early consideration in the development process to allow enough time for a PROW to be legally diverted before development affecting the path is substantially complete. This involves designing a new route to a standard to which the Highway Authority is content. A legal Order will be advertised on site and in a local newspaper during a 28 day public consultation period. Providing no objections are received, the Order can be confirmed. If the public object, the matter will be referred to the Secretary of State for determination. Development that affects a PROW must not start until the highway authority is satisfied with the alternative provided.

Advice on Local Authority responsibilities and Application types

- Planning applications – These should be directed to the relevant District Council planning authority: Aylesbury Vale, Wycombe, South Bucks or Chiltern. Minerals and waste planning applications go to the Development Control Team at Buckinghamshire County Council: dcplanning@buckscc.gov.uk.
- Section 257 TCPA 1990 path diversions/stopping up – these are managed by Buckinghamshire County Council in the Aylesbury Vale District area, but for all other Districts they are managed by the respective planning authority. The power of a local authority to use section 257 only comes into force once planning permission has been granted, but developers can apply prior to permission being granted. The Council loses its power to confirm an order under section 257 if a development has been substantially completed; therefore development should not be substantially completed until the Order is confirmed. The cost for a diversion through the County Council is £1540 plus newspaper advert costs; all works required to open up the new route are at the expense of the applicant. £100 of the £1540 needs to be paid when the application is made and can be paid by cheque.
- Temporary path closure – Temporary Traffic Regulation Orders (TTROs) – Buckinghamshire County Council has powers to close PROW for up to 6 months, following payment of £1690 and providing 3 months' notice of the closure date. Extensions for a temporary closure can be sought for longer than 6 months, but these require approval from the Department for Transport; therefore 1 months' notice should be provided to the County Council prior to the initial 6 month closure expiring to allow sufficient time to secure the extension. TTROs are for safety and emergency use only whilst developments occur; they can be in place concurrent to a formal

diversion (s257 Order) being processed and can be used to close a PROW prior to the new alignment being provided. Applications should be made to Buckinghamshire County Council by emailing definitivemap@buckscc.gov.uk; details of any alternative route should be provided and 3 months' notice for a closure must be observed; full payment in advance is required and can be made by cheque.

- Section 119 Highways Act 1980 diversions – these are diversions normally used outside the planning process and are only appropriate where it is **not** necessary for the path to be diverted '*in order for the development to be carried out*'.
- Section 25 Highways Act 1980 Creation Agreements - Developers can enter creation agreements with Buckinghamshire County Council to create new PROW to enhance the network across the site. There is generally no charge for these agreements, but each situation will be considered on its own merits and a charge may be levied if deemed appropriate.

Network Protection

Buckinghamshire County Council has a duty as Highway Authority under section 130 Highways Act 1980 to assert and protect the rights of the public to use and enjoy the PROW network. This includes enforcement through prosecution or serving of a Notice where a developer obstructs a PROW which has not been deleted or diverted by legal Order. It is therefore in a developer's interest to ensure PROW matters are resolved to avoid a project being delayed or having a property blighted.

Planning Considerations

A developer should consider:

- Upgrading a PROW in order to offer multi-user opportunities that connect new residents by walking and cycling to local shops, amenities and other transport modes, such as bus stops.
- Maintaining the amenity of a PROW in terms of its width, directness, attractiveness and convenience: routes should be wide, direct, pleasant and give users confidence in an environment that enjoys natural surveillance. Narrow, fenced-in corridors should be avoided.
- Making enhancements that enable greater disabled access, such as upgrading surfaces or installing new British Standard gates.
- New links to the PROW network can be provided as part of the development to improve sustainable travel within and around the new development, linking with other formal off-road transport corridors, such as footways, cycle lanes and 'green corridors'. If a public footpath is to be used as a cycleway then an upgrade to a public bridleway or conversion to a cycle track is required to avoid the developer inheriting the insurance liability for cyclists; there is a cost attached to these works which must be met by the developer. The public cannot cycle on a Public Footpath.

Improving the construction of PROW – better surfaces, bridges and gates

Depending on the size of the development, financial contributions will be sought to provide PROW improvements in order that an application meets policies and

guidelines in the Local Plan, National Planning Policy Framework and Buckinghamshire Local Transport Plan 4.

The type of surfacing will depend on the situation and likely use of the route by the public (walking and/or cycling) and level demand as a result of the development. Normally, urban paths with a high demand will require surfaces that meet adoptable standards. A typical asphalt footpath construction abutting a vehicular highway is outlined in Fig.1.

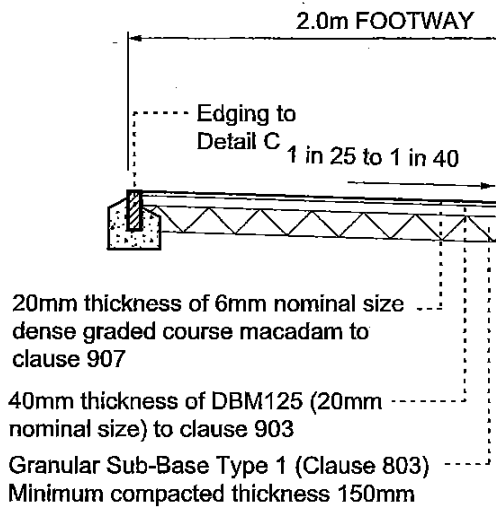


Fig. 1 - typical asphalt footpath construction with concrete edging

Open, landscaped areas should include grass verges with a width of at least 0.75 metres on either side. A typical asphalt cycleway construction is outlined in Fig 2.

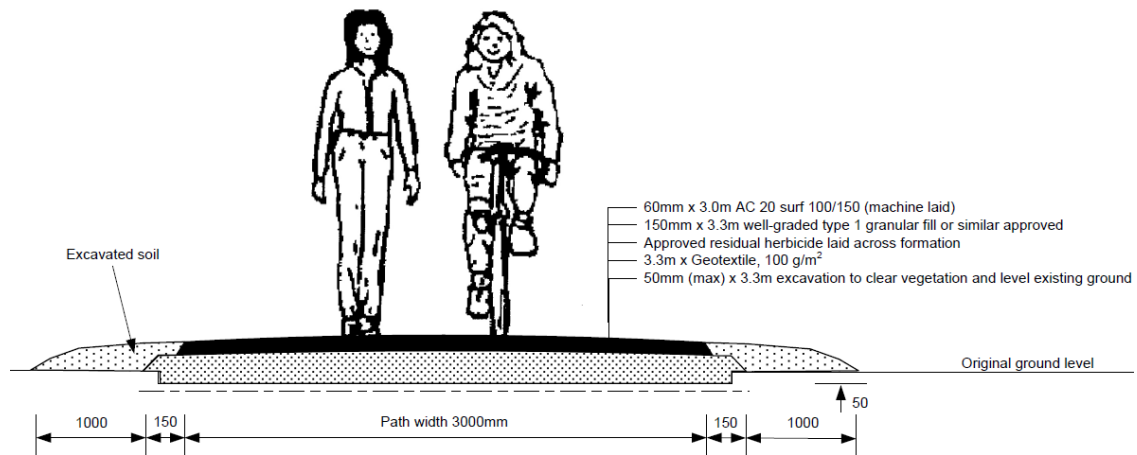


Fig. 2 - typical asphalt cycleway construction

In circumstances with particular equestrian sensitivities, a rubber-crumb, 'flexipave' surface may be more appropriate.

Normally, in order to comply with Equality Act 2010 legislation and to be suitable for walkers, cyclists and horse riders, a bridge specification should meet the standards outlined in *Design Manual for Roads and Bridges, vol. 2, section 2*

(special structures), part 8, BD29/04. Example foot and bridleway bridges are outlined in Fig. 3a and 3b below:

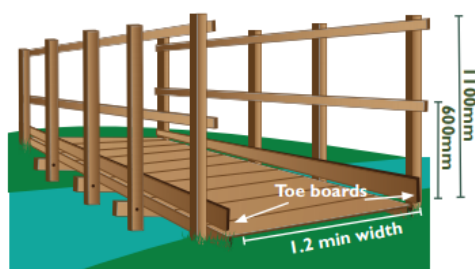


Fig. 3a – Typical footbridge design



Fig. 3b – Typical bridleway bridge design



Fig. 3c - Footbridge



Fig 4c - Footbridge

Disabled Access

Applications should always comply with the Equality Act 2010. There are specific, PROW related, British Standard design guidelines (BS 5709:2006) ensuring better access for the less able. The 'least restrictive option' requires, for example, 1 metre gaps at site boundaries, or pedestrian gates if stock control is required. Moving, changing, or introducing new gates on an existing PROW will require separate highway authority permission under Section 147 Highways Act 1980 (provided free of charge). Roadside kerbs should be dropped and bridges ramped to allow access for wheelchairs and mobility scooters.

Political support within the planning process

The ROW network is a valuable resource in both urban and rural environments. It is one element of the county's sustainable transport network connecting communities together for every day journeys and a healthy way to access green space. The planning process is an important and often a rare opportunity to improve these opportunities for local communities, enhancing existing paths and creating new routes. I hope this guidance provides a guide to enable you to successfully incorporate ROW into your development, and by doing so, improve the sustainability of communities within Buckinghamshire.

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