

Arresting development

The continuing growth of our built environment means rights of way are constantly being challenged by developers hungry for more real estate. So how can you ensure your favourite footpath isn't bricked over and what are your legal rights?

Who's responsible for controlling development? In England and Wales it is the responsibility of the planning authority, usually the district council, London borough council or National Park authority. Decisions on individual planning applications are based on the authority's development plan which is in turn based on statutory provisions and guidance provided by the Department for Communities and Local Government. These plans will vary depending on the authority; National Parks will focus more on the preservation of the natural environment, whereas an urban district council may focus more on the needs of industry and housing.

Is the existence of a public right of way enough to prevent a development? No. Public rights of way are very important but so is development. When considering a planning application the planning authority must weigh up many factors, one of which is the effect the development will have on public rights of way. The planning authority has powers to make an order to divert or extinguish the right of way to enable the development to take place. Good design, though, should accommodate rights of way as a safe and convenient feature of the development.

So, how do I find out if a proposed development will affect a public right of way? You should inspect the planning application which is held by the planning authority. Rights of way affected by development are a material consideration in the planning process. If no rights of way are mentioned, and you think they do exist, check the definitive map which is held by the surveying authority (county council or unitary authority). The inclusion of a path on the definitive map is legal proof of its existence. If a path is not on the definitive map but is visible on the ground it may still be a public right of way. Check with the definitive map team and then inform the planning authority.

What if I object to a proposed development because it adversely affects my use of a right of way? Having inspected the planning application and considered the effect the development will have on the right of way, make your objections to the planning authority. It is essential to register any concerns about the effect on the right of way while planning permission is being considered. A short period – 14 to 21 days – is allowed for comments; planning authorities are expected to decide applications within eight weeks.



As a path user, on what grounds can I object? Developments can affect rights of way users in many ways so objections can be wide ranging. They can physically obstruct the path, change its character by enclosing it or spoil a view. Even rights of way some distance from development may be affected. For example, a new supermarket may increase traffic flow so making a road crossing more hazardous, or a wind farm on a prominent hill may spoil the view from many paths in the area.

If planning permission is granted, does the developer have the right to interfere with a public right of way? No. This can only happen when the appropriate legal order has been confirmed to extinguish, divert or temporarily close the path. However, such a legal order can be made at any time while the authorised development is still to be carried out.

Do I have a right to object to such orders? Yes. Such orders have to be advertised and objectors to permanent orders have a right to be heard before an independent inspector. However, at this stage the only ground for objection is that the diversion or extinguishment is not necessary to enable the development to take place. This is not an opportunity to revisit objections to the development itself.

What if the path is built over before this process is completed? If the development is complete and the right of way was not legally diverted or extinguished then it is an illegal obstruction and you should inform the highway authority. They are responsible for keeping all public paths free from obstruction and so should take steps to restore the public's right of passage.

My local path has a notice saying it is temporarily closed. What does it mean? Rights of way close to, but not directly on, land which is subject to development may have to be temporarily closed for safety reasons. Traffic regulation orders (TRO) can close rights of way for up to six months if it is felt that user safety will be compromised either by the development or some other emergency situation. If it is necessary to close the right of way for longer than six months the local authority can apply to the Secretary of State for an extension.