



# PINS NOTE 24/2014

To: All Inspectors (England and Wales)

Date of Issue: 23 December 2014

Currency: review at 6 months after issue

## PLANNING APPLICATIONS AND APPEALS AND PUBLIC RIGHTS OF WAY

### Background

1. Inspectors may be told that a public right of way crosses the site of an appeal, or that the proposed development directly affects a public right of way. [\*Rights of Way Circular 1/09 \(version 2\)\*](#)<sup>1</sup> advises that such matters are a material consideration in the determination of applications for planning permission.
2. Public rights of way are, for the most part, categorised as:
  - a public footpath;
  - a bridleway (for use by walkers, horse riders and cyclists), or;
  - a byway open to all traffic (walkers, horse riders, cyclists and motorised traffic) or;
  - a restricted byway (a new category introduced by the *Countryside and Rights of Way Act 2000* for walkers, horse riders and non-mechanically propelled vehicles).
3. Public rights of way are covered by the *Highways Act 1980* and the *Wildlife and Countryside Act 1981* and a decision on a planning application or appeal does not affect the rights across the site – that is, a planning decision will not override the rights of the public to use the way over the site. This applies both to routes which are recorded on the Definitive Map and Statement and those which are unrecorded (i.e. a route which may, in the light of historic evidence gathered, be claimed as a public right of way in the future).
4. If it is claimed that the proposed development would obstruct or effectively extinguish a public right of way then this should not be regarded as unimportant. However, even if it is considered that

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<sup>1</sup> Applies to England only. For Wales refer to Annex D of [Circular 5/93 \(Welsh Office\)](#)

closure or diversion of a path would not be unacceptable, this would have to be pursued through other procedures. These procedures are generally available under Section 257 of the Town & Country Planning Act 1990 – see paragraphs 9 and 10 below.

### ***Rights of Way Review Committee Guidance***

5. The Rights of Way Review Committee (RWRC) has prepared [\*Practice Guidance Note 6: Planning and Public Rights of Way\*](#). The note highlights the legislative and planning policy context applicable to incorporating public paths into sites proposed for development. You may find this advisory note a useful source of background knowledge if you are dealing with:
  - an appeal where the site is crossed by a public right of way or where the proposed development would affect the line of a public right of way; or
  - an appeal which is linked to a public path stopping up or diversion order.
6. The RWRC brings together a wide range of bodies and organisations concerned with public rights of way in England and Wales. It is an informal, non-statutory committee set up to review matters relating to public rights of way in England and Wales. The purpose of this series of advisory Practice Guidance Notes is to offer practical guidance on aspects of rights of way legislation.
7. For the avoidance of doubt, these are 'best practice' notes prepared by the RWRC. They do not have the status of a government circular or other advice issued by Defra or its predecessors. Neither do they have the status of advice issued by PINS either as [\*Advice Notes\*](#) or as part of PINS' Rights of Way [\*Consistency Guidelines\*](#).
8. The RWRC guidance may be referred to in representations, or at a hearing or inquiry. If it is claimed that some aspect of the process or the behaviour of one of the parties has not complied with the advice in one or more of the RWRC Practice Guidance Notes then this is not a serious or fatal flaw in itself. However, it may be appropriate to ask in what way the guidance has been departed from and how this has seriously prejudiced the position of the aggrieved party. If prejudice can be demonstrated then this should be addressed on its own merits, not simply because it was a departure from the Practice Guidance Notes. If it is not raised, as a public document it is perfectly legitimate that an Inspector is aware of it and may have it in mind. However, if its content may give rise to a matter that is material to a decision or recommendation, natural justice requires that the parties are given the opportunity to comment.

### ***Planning Permissions and Rights of Way Considerations***

9. Local planning authorities may make an Order under s.257 of the 1990 Act to stop up or divert a public right of way, where a planning application has been made **and** the authority are satisfied that, if

they were to grant planning permission, it would be necessary to stop up or divert the route for the permission to be implemented. Section 12 of the Growth and Infrastructure Act 2013<sup>2</sup> amended s.257 of the 1990 Act so that Orders may now be made after a planning application has been submitted, but before permission has been granted.

10. Similar powers are vested in the Secretary of State under s.247 of the 1990 Act. Section 253 of the 1990 Act enables the Secretary of State for Environment, Food and Rural Affairs<sup>3</sup> to make and advertise a draft Order where an application has been made to her under specific circumstances, or the applicant has appealed under s.78 of the 1990 Act. Occasionally therefore s.247 Orders will be linked to s.78 appeals. Section 11 of the Growth and Infrastructure Act 2013<sup>4</sup> amended s.253 of the 1990 Act so that Orders may now be made under s.247 after a planning application has been submitted, but before permission has been granted.
11. It is open to the local planning authority not to confirm an Order made under s.257 where, although it would be necessary to close the route in order to implement the planning permission, the consequences of closure for the users of the route would be unacceptable. That is, the procedure is not simply a “rubber stamping” exercise at a later date by the local planning authority. Accordingly, the implications for the users of the way should be regarded as a material consideration in coming to the planning decision. Parts V and VI of RWRC *Practice Guidance Note 6* includes useful discussion of such situations.
12. As advised at paragraph 7.11 of [Rights of Way Circular 1/09 \(version 2\)](#)<sup>5</sup>, it is not appropriate to use a planning condition which implies that a public right of way should be closed or diverted before development commences where this is an attempt to pre-empt a change to the public right of way which would not meet the tests of the appropriate legislation (Highways Act 1980 or Town and Country Planning Act 1990). Neither can a Section 106 obligation be used to secure the closure or diversion of an existing public right of way.
13. However, there may be exceptional circumstances where a Grampian style condition could be justifiable – for example, where a junction of a footpath with a road should be moved for highway safety reasons before a development is brought into use. Preferably, the point should have been raised by the parties and discussed as a highway safety matter at the inquiry or hearing. The proposed diversion would have to proceed on its own merits by way of an Order made under the appropriate legislation. Hence until the Order has been published and open to objection, and relevant evidence heard on the objections, there can be no certainty that an Order seeking such a

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<sup>2</sup> With effect from 25 June 2013

<sup>3</sup> The Welsh Ministers for applications and appeals in Wales

<sup>4</sup> With effect from 25 June 2013

<sup>5</sup> For Wales refer to Annex D of [Circular 5/93 \(Welsh Office\)](#)

change would be confirmed and, by extension, that the limitation imposed by the Grampian condition could be satisfied. (Inspectors should have regard to the guidance given in paragraphs 24-29 of *Procedure Guide 6 – Use of Conditions* on the use of Grampian conditions)<sup>6</sup>.

14. Please contact XXXX or XXXX if you have any queries on this Note.
15. PINS Note 940 is cancelled.

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Acting Chief Planning Inspector

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<sup>6</sup> In Wales, see Annex F of [Technical Advice Note 18: Transport](#)