

# Public Rights of Way, Planning & Development

## Guidance for developers



July 2017



Nottingham  
City Council

# Contents

<u>Section</u>	<u>Page no</u>
1 Introduction	2
2 The role of the Local Highway Authority and Local Planning Authority	2
3 Local Policies	2
4 The Definitive Map and Statement of PROW	2
5 The List of Streets Maintainable at the Public Expense	3
6 The benefits of dealing with PROW as early as possible	3
7 How can you check if a PROW crosses the development site?	3
8 What to do if a PROW crosses the development site	4
9 Orders under the Town and Country Planning Act 1990	4
10 What if the development is almost complete?	4
11 Temporary closure of PROW during the development	4
12 What legal orders, agreements and/or licences do you need?	4

## 1. Introduction

Public Rights of Way (PROW) play a key role in sustainable travel around Nottingham, including access to local amenities, open spaces, for recreation and getting from one place to another. Whether it's walking or cycling for recreation or health reasons, as part of a daily commute or horse riding with friends, sometimes we all take these routes for granted. This guidance will help those carrying out development to understand the importance of PROW, the law that protects them and how to deal with them lawfully under the planning process. Although this guidance is aimed primarily at PROW (footpaths, bridleways and byways) the same principles apply equally to carriageways, footways, pavements and all other highways.

PROW are a "material consideration" within the planning process. Planning permission is not permission to work or build on a PROW. This is a separate legal process and failure to obtain the correct authorisation before starting work may lead to additional costs, delays and enforcement action. To build or work on the PROW network you will need a legal order, an agreement and/or a licence, or a combination. The list on page 4 covers some of these so before you start work please check which ones apply to your development.

## 2. The role of the Local Highway Authority and Local Planning Authority

The Council is both the Local Highway Authority and Local Planning Authority for the City of Nottingham. On receipt of a planning application, where there are potential implications to PROW, the Planning Authority will consult the Highway Authority who will then advise how to proceed and what authorisation is required. For example, it may be necessary to stop up (permanently close) or divert (onto a new alignment) the PROW in order to enable development to be carried out.

## 3. Local Policies

The Nottingham Local Plan (November 2005) Policy T12 provides "planning permission will not be granted for development which would obstruct or adversely affect a PROW unless satisfactory provision is made for an alternative alignment". To view the Local Plan (and other planning related documents) see [www.nottinghamcity.gov.uk/planning-and-building-control/planning-policy/the-local-plan-and-planning-policy/](http://www.nottinghamcity.gov.uk/planning-and-building-control/planning-policy/the-local-plan-and-planning-policy/). When a PROW is affected by development, the procedures under the Town and Country Planning Act 1990 to stop up or divert the PROW must be followed.

The Council's Rights of Way Improvement Plans (ROWIP 1 and 2) provides that PROW must be considered, fully, whenever changes to the network are proposed, under the planning process. To view the ROWIP (and other transport related document) see [www.nottinghamcity.gov.uk/transport-parking-and-streets/transport-strategies-funding-bids-and-current-consultations/](http://www.nottinghamcity.gov.uk/transport-parking-and-streets/transport-strategies-funding-bids-and-current-consultations/).

## 4. The Definitive Map and Statement of PROW

So that everyone knows where PROW are, Parliament has required Councils to record them on Definitive Maps and Statements. However, due to Nottingham being an "excluded area"<sup>1</sup> not all PROW are recorded. Therefore, in Nottingham the Definitive Map and Statement should be the first, but not the only, reference point.

---

<sup>1</sup> Being an "excluded area" under the National Parks and Access to the Countryside Act 1949 meant there was no definitive map and statement for Nottingham until 1998.

## 5. The List of Streets Maintained at the Public Expense

Under the Highways Act 1980 the Council keeps a list of streets, carriageways, footways, footpaths, cycle paths, byways and bridleways that are maintained at the public expense (known as “the Adoption Records”). The list does not show public rights, only what’s maintained and repaired, although it may be inferred that if the highway is on the list of streets the public will have a right of way of some description.

## 6. The benefits of dealing with PROW as early as possible

Developers should be fully aware of their obligations not to obstruct or interfere with a PROW without lawful authority. If a PROW is obstructed by any part of a development without authority to do so, the Council has powers to take enforcement action, remove the obstruction and reopen the route. Making enquires as early as possible will therefore save you time, money and unnecessary delays.

## 7. How can you check if a PROW crosses the development site?

There are a number of checks you can make and the following, although not an exhaustive list, will help in most cases.

### Information held by the Highway Authority

- View the Councils online Definitive Map and Statement at <http://geoserver.nottinghamcity.gov.uk/streetregister/> (note: there may be other PROW not shown on the Map and Statement so please check with the Council before you start work); and
- View the Councils online Adoption Records at <http://geoserver.nottinghamcity.gov.uk/streetregister/> (note the register shows the extent of the adopted highway but not public rights. Errors do occur so check with the Council before you start work); and
- Ask the Council whether there is any documentary and/or user evidence that shows that a PROW or other highway that is not shown in the Map and Statement and/or the Adoption Records crosses the development site; and
- Check the Councils online register of applications made under the Wildlife and Countryside Act 1981 for a Modification Order at [www.nottinghamcity.gov.uk/rightsofway](http://www.nottinghamcity.gov.uk/rightsofway); and
- Check with the Council whether there are any proposals to make a Public Path Creation Order under Section 26 of the Highways Act 1980; and
- Check with the Council whether there are any proposals to enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980; and
- Check with the Council whether there are any permissive public access rights affecting the site.

### Site inspections

Check for evidence of any contemporary or historic public activities over the site. Look for worn “desire lines” where the public may have crossed the site on foot, cycle or horse, remains of any stiles, gates, sign posts and/or other structures.

## 8. What should you do if the development affects a PROW?

Before submitting your planning application, it is the developers’ responsibility to check whether any PROW cross the site and to reference these on the planning

application form and drawings. If there is any PROW crossing the site, you will need to apply for an Order (see below) to stop up or divert the PROW so the development can take place.

## 9. Orders under the Town and Country Planning Act 1990

On receiving a request for an Order, before agreeing to proceed with the Order<sup>2</sup>, the Council (or the Secretary of State) must be satisfied that it is “necessary” in order to enable development to be carried out in accordance with either planning permission already granted or in anticipation of planning permission being granted in due course. The word ‘necessary’ means just that; the Order must be necessary in the sense that the development could not proceed lawfully without the Order. Please Note: these Orders take a minimum of six months to come into operation.

## 10. What if the development is almost complete?

This depends on how complete the development is. In so far as it affects the PROW, if the development is “substantially” complete, powers under the 1990 Act cannot be used. Therefore, it is essential that the development does not start until you have discussed it with the Council and you have the authorisation to proceed in place.

## 11. Temporary closure of PROW during the development work

You may need to drive along a PROW to deliver materials to the site. It is an offence to drive a vehicle on a PROW without lawful authority. It may also be necessary to close a PROW temporarily due to work on or near the PROW and the likelihood of danger to the public.

## 12. What legal orders, agreements and/or licences do you need?

- **Licence to carry out temporary activities on the PROW:** includes placing skips, scaffolding, hoarding, fencing, materials on the PROW. For costs and advice email: [highway.management@nottinghamcity.gov.uk](mailto:highway.management@nottinghamcity.gov.uk)
- **Temporary Traffic Regulation Order:** temporarily restricts public use (walking, cycling and riding) over a PROW during construction/work. For costs and advice email: [highway.management@nottinghamcity.gov.uk](mailto:highway.management@nottinghamcity.gov.uk)
- **Stopping Up and Diversion Orders:** to permanently close or divert a PROW in order to build on PROW. For costs and advice email: [john.lee@nottinghamcity.gov.uk](mailto:john.lee@nottinghamcity.gov.uk)
- **Section 278/38 Agreement:** A Section 278 is an agreement with the Council to carry out work on an existing PROW. A Section 38 Agreement covers building new PROW and future maintenance. For costs and advice email: [highway.agreements@nottinghamcity.gov.uk](mailto:highway.agreements@nottinghamcity.gov.uk)
- **Safety Audit:** Any alterations to the PROW layout may need a Safety Audit. For costs and advice email: [road.safety@nottinghamcity.gov.uk](mailto:road.safety@nottinghamcity.gov.uk)

# Think planning, think public rights of way!

---

<sup>2</sup> A range of powers exist under the Town and Country Planning Act 1990 to stop up or divert PROW and other highways on grounds of planning and development. For further information, fees and advice please contact the Council.