



South Hams  
District Council

# South Hams District Council Landscape and Leisure Service **PUBLIC RIGHTS OF WAY AND DEVELOPMENT**

SUPPLEMENTARY PLANNING GUIDANCE NOTE - JUNE 2001

This Supplementary Planning Guidance Note has been subject to a wide public consultation between February and April 2000. The results of the consultation have been considered by the Local Planning Authority and where appropriate amendments to the note have been made. The document has been formally adopted at Planning Committee in November 2000. Full details of the public consultation and Council response are available on request.

## Paths are an important asset on a development site.

The purpose of this note is to provide guidance primarily for developers as to the best ways in which public rights of way can be incorporated within sites that are being developed. It is especially relevant for new housing and employment development.

The note expands on the measures set out with regard to paths in the South Hams Local Plan and forms Supplementary Planning Guidance. The Council will bear the guidelines in mind when considering planning applications.

It is also in accordance with Department of the Environment Circulars 2/93 'Public Rights of Way' and 5/94 'Planning out Crime', and Devon County Council's Travel and Transport Plan.

## IMPORTANCE OF PATHS

Paths exist because people want to get from one place to another. In particular, they are used by people to get to shops, schools and services. Paths also provide an important link between built up areas and the countryside. They are a valuable recreational resource.

Good path networks make life more convenient and may in some cases help reduce the need to travel by car.

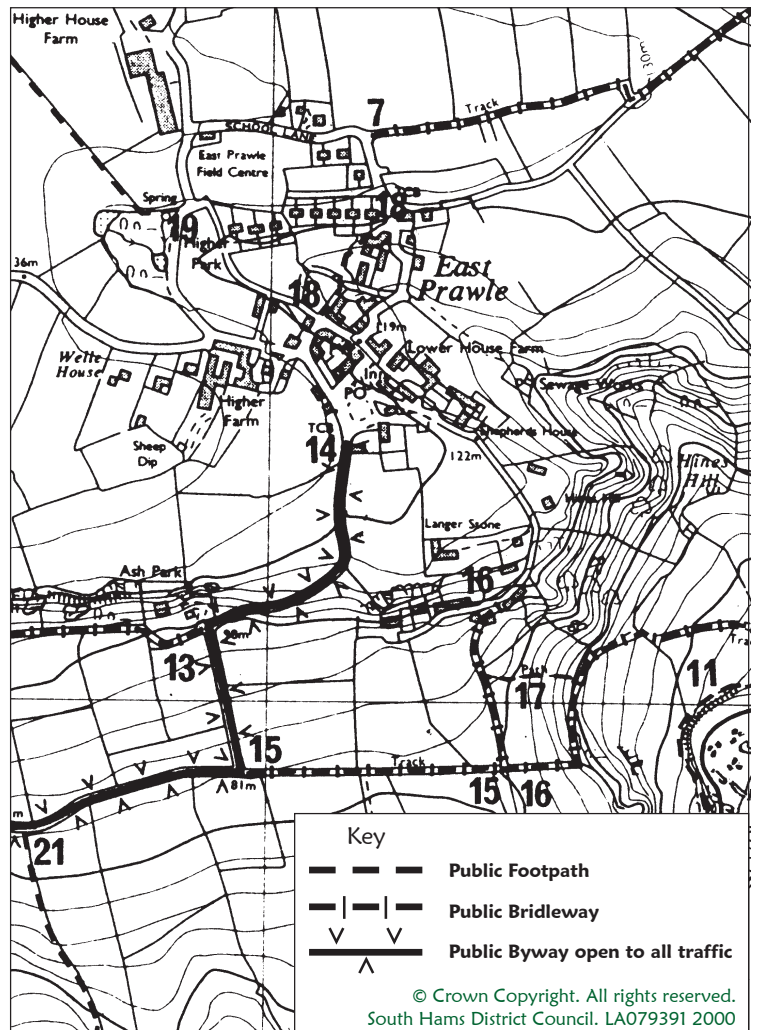
Paths are particularly important to children and to people without cars, and we should remember that almost everyone is a pedestrian at some point.

Depending on their status paths are used not only by people on foot but by cyclists and horse riders. Generally footpaths are for use by walkers; bridleways by walkers, cyclists and horse riders and byways can be used by walkers, cyclists, horse riders and any wheeled traffic. The technical term for hard-surfaced paths running alongside roads are 'footways', and the issues relating to these are outside of the scope of this document.

## IDENTIFYING PATHS AT THE OUTSET

It is very important that all existing and potential public rights of way are identified and considered at an early stage in the development process. The identification of a public right of way at a late stage can cause significant delays and may even halt a development or make properties unsaleable. The County Council has powers to remove an obstruction to a public right of way and has in the past required the demolition of buildings for this reason. You should therefore consider whether any paths cross your site well before you submit a planning application.

The easiest way of determining the location and status of any public rights of way across a site is by undertaking a Land Charges Search. Alternatively, an examination can be made of



An extract from the definitive map of public rights of way

the Definitive Map which is a legal document giving information on the location of all Public Footpaths, Bridleways and Byways Open to All Traffic, known to the Highway Authority. Copies of the Definitive Map are held by the County Council at County Hall and also by the District Council, and are available for inspection by the public (preferably by appointment). However, not all paths are shown on the definitive maps or revealed in a Land Charges search. If a path has been used for many years it may be a public right of way even if not shown on the map. Very occasionally there are also some instances where public paths were created as a result of the Enclosure Acts in the 18<sup>th</sup> and 19<sup>th</sup> centuries, and there may be no evidence of these paths on the ground.

You should discuss the status and significance of any paths with South Hams District Council Planning Services staff. The Countryside Projects Officer can offer specific advice on these matters (phone 01803 861456).

The granting of planning permission does not give a developer any right to interfere with, obstruct or move a public right of way. Public rights of way can only be diverted or closed by a separate legal order. The minimum time for undertaking a Diversion Order is about 4 months but it can take much longer and there is no guarantee that an application will be successful. Further information is provided later on in the note.

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## WHEN SHOULD EXISTING PATHS BE RETAINED ?

The County Council has a responsibility to protect the public rights of way network. For this reason public paths should normally be retained, especially if they:-

- provide a convenient well used route to local facilities;
- link areas;
- are used for recreational reasons and for access to the countryside.

The first option should be to retain paths on their existing alignment. However, if this would prejudice an otherwise acceptable development or layout it may be acceptable to divert a path if an equally convenient and pleasant route can be found.

Circular 2/93 advises that if a path is diverted it should not usually be on to the footway or carriageway of an estate road.

In some cases it may be possible to create a more convenient route as a result of a development or to enhance the quality of a route. These opportunities should be taken even if it means diverting a Public Right of Way.

## WHEN ARE NEW PATHS NEEDED?

New paths may be needed to supplement the existing network. This is especially relevant for new housing developments where new path links will be required to create convenient access to work, services, leisure and countryside primarily for those who live on the site. Such paths should be permanent and made definitive public rights of way.

## WHERE SHOULD NEW PATHS BE LOCATED WITHIN A DEVELOPMENT?

New paths should be located taking into account the following principles:-

- avoid the need for people to make unduly long circuitous routes to destinations (shops, schools, play areas)
- seek to ensure where possible that nobody has a walk of over 5 minutes (400 metres) to reach a bus stop or play area
- where possible utilise any open space on the site. This will allow a more pleasant route and will help avoid paths being located close to property boundaries
- avoid risk of crime and nuisance to neighbours.
- design to link with existing routes.

## DETAILED DESIGN OF PATHS:

All paths whether existing or new should be designed to accommodate their intended use and to minimise the risk of disturbance to neighbours and opportunities for crime.



The above development has incorporated the public footpath on its original line. Features such as the adjacent hedgerow have been preserved. The route has an open aspect, is well overlooked and street lighting increases the safety at night

### Surfacing and drainage

Paths within urban areas including path links on housing sites should be surfaced and drained to the same standard as the pedestrian footways which form part of the highway.

If the development is such that it will cause a significant increase in the use of an existing right of way that does not require diverting, then a new surface, commensurate with its predicted new level of usage ought to be provided. Paths through open spaces should generally be surfaced in either tarmac or rolled aggregates depending on the terrain and the intensity, type and level of use. Bridleways and byways should be surfaced in a way that is appropriate for equestrian and cycle use.

Unsurfaced paths will rarely be acceptable unless the anticipated use will be very light. Unsurfaced paths, which may be passable in summer, can become boggy quagmires in winter even with light use. Site drainage should be designed to avoid additional water crossing the surface or settling on paths.

### Lighting

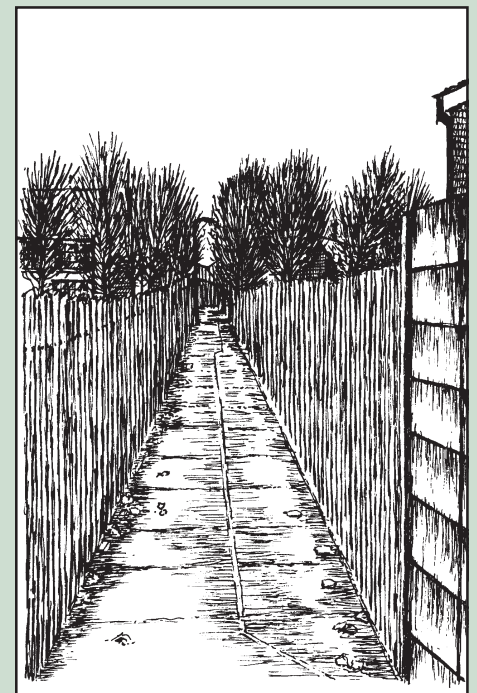
The need to provide lighting along paths will depend on their location and likely use. Paths within development sites should normally be lit to the same standards as for highway street lighting, whereas for most 'rural' paths additional lighting would not be appropriate.

### Width

Depending on the level of use and status, the actual path should be between 1.8 and 3 metres wide with a landscaped area on each side of 1-2 metres. A width of at least 3 metres will be required for a bridleway, and more for a byway.

### Fences and walls

Paths should not be placed in narrow alleyways between high fences which will deter use. However, where housing adjoins footpaths, and cannot be designed to front it, appropriate robust and secure boundary treatment will be required to provide security and privacy.



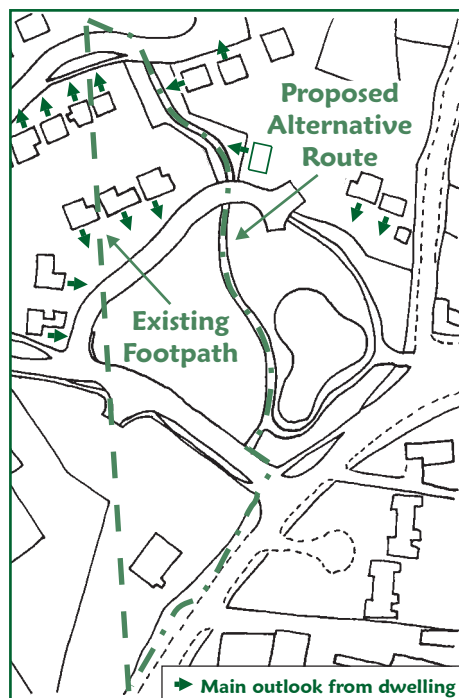
This narrow, enclosed path runs behind housing and is threatening and unattractive to the user. Such paths can also be perceived as a haven for anti-social and possibly criminal activities

## CONSULTATIONS

If it is proposed to make a significant change to a public right of way, it is recommended that at an early stage, contact is made with any affected landowners, the local community and user groups via the Parish Council or other local groups. Invaluable information can be obtained such as the type of use the path receives or features that they would like preserved to maintain local identity.

Designers would also benefit from early discussions with user groups such as the Ramblers Association and the British Horse Society. Help and advice on contacting Parish Councils and user groups can be obtained from the Countryside Projects Officer at South Hams District Council.

**Due account was given to the above footpath at the design stage of this small development. Public open space and a green corridor have been created around the proposed alternative route of the path.**



## DESIGN TO AVOID CRIME AND NUISANCE

It is often difficult to resolve conflicts between the needs of path users and the problems, both real and perceived, to those who live near paths. However, by taking account of the following principles, unnecessary problems can be avoided:

avoid unnecessary paths which allow casual intrusion by non-residents

ensure paths are as short as possible, direct, open to view, well lit and clear of hiding places

paths should be set in a landscaped area to avoid nuisance to neighbours

where possible paths should be kept away from the sides and rears of houses.

Further information is given below under 'Detailed Design of Paths'. The Police Architectural Liaison Officer (telephone 01803 841494) 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.

## IMPACTS OF DEVELOPMENT ON PATHS OUTSIDE THE SITE

New development (especially housing) can lead to significant additional use of paths near the site. This additional intensive use can cause problems if the path is unsurfaced and has not historically carried large volumes of people. For instance, what was once an unsurfaced recreational path may, after the construction of a new housing development, be used by much larger numbers of people walking to local services.

In such cases the County Council will assess the impact of the development and where it is significant will seek financial contributions from developers to ensure the paths are appropriately upgraded to accommodate the additional use. The circumstances in which this will be possible will to some extent be dependent on the status and ownership of the path.

The kind of surfacing required will depend on the level of use, but generally an urban path should be provided with a tarmac surface constructed to adoption standards and where appropriate include street lighting.

The upgrading of paths outside the development site will where appropriate be secured by use of *Section 106 agreements* in accordance with Circular 1/97 'Planning Obligations'.

### Landscaping

The type of planting will depend on the length, width and setting of the footpath. Planting should be designed to provide a pleasant setting, and require low maintenance.

Planting alongside urban paths between buildings should not unduly enclose or narrow the path or create hidden areas. Low growing shrubs or grass are therefore often preferable, used in conjunction with trees.

Where paths lie next to housing it may be sensible to use thorny shrubs to provide security and deter ball games.

### Access for all

Paths should have a gradient of less than 8% (1 in 12) and wherever possible 5% (1 in 20). Extended gradients of 8% may prove difficult for some wheelchair users and pushers.

Steps should be avoided unless the topography makes them absolutely essential. Generally, however, zigzag paths should be provided on steep slopes to reduce gradients to an acceptable level.

Handrails will usually only be required where steps are provided or where path gradients exceed those recommended above. For technical advice on design standards contact the South Hams District Council's Countryside Projects Officer (01803 861456).

### Barriers

Barriers serve two functions where paths join roads.

**Safety barriers** are designed to prevent children and where appropriate cyclists and horse riders from joining a road from a path without looking.

**Access control barriers** prevent access by unauthorised motorcycles and other motorised vehicles.

Both types of barriers should be designed to accommodate use by parents with pushchairs and by people with disabilities.

It is important that the need for barriers is considered at the outset. The Development Control Officer at Devon County Council will advise of circumstances where barriers will be required and can provide advice on the design (contact 01752 898200). Barriers should not be erected without prior discussion with the County Council. They are classified as obstructions unless they are licensed by the County Council.

### Cycling

Cycle routes will be required where they would usefully complement the existing cycle network or where they are necessary to provide access to local services and facilities. Provision of secure cycle parking should also be considered.

Development should be designed so that current opportunities for cycling are not reduced.

## BARN CONVERSIONS

Public paths often pass close to farm buildings. Where barns are converted to residential use this can mean that a public path will cross through areas proposed for gardens and parking. This can potentially cause inconvenience to both occupants and path users. It is important therefore that where barn conversions are considered acceptable they are designed so the garden and parking areas do not have an adverse impact upon users of the paths.

The District Council will consider the diversion of the path around the edge of the curtilage. However, this will only be acceptable if an equally pleasant and convenient route can be provided. It is important that these issues are resolved before planning permission is granted.

## ADOPTION AND MAINTENANCE

Developers must consider the responsibility for the future maintenance of the path. This should be made clear on the planning permission application form. It is possible that, in certain circumstances adoption may be considered the most appropriate procedure for maintenance reasons.

The County Council will seek to adopt and maintain all paths, including landscaped areas, which form part of a development providing they are necessary and have been located, designed, surfaced, drained, and (as appropriate) lit and signed to a satisfactory standard.

The adoption of paths is at the discretion of the County Council and thus it should be discussed and agreed at an early stage and in any case before planning permission is granted.

Paths should be designed so they are easy to maintain. Their design should avoid small or narrow areas of soft landscaping.

Once a path has been adopted its maintenance will be the responsibility of the County Council.

## DIVERSION AND CLOSURE

Public paths can only be diverted or closed by legal order. These require a separate application and are not covered by any planning permission. The costs associated with the legal process, currently around £1000, are charged to the developer.

You should allow plenty of time for a Diversion Order. Orders have to go through a legal process which involves consultation with rights of way user groups and adverts (on site and in the press). This takes a minimum of 4 months. If there are unresolved objections the matter may have to go to a public inquiry and the procedure can take 18 months or more to complete. There can be no guarantee that a diversion proposal will be approved.

It is an offence to disturb or obstruct a public path. Any path across a development site should be kept clear until an order is finalised and the diverted route is available.

Even if a path is to be permanently retained, it may be disturbed while the development takes place. For instance, it may not be possible to safely keep the path open during building works. If so, a temporary closure or diversion will be required for the duration of the works. It takes at least 3 weeks for a temporary order to be processed, and a charge of around £300 is made by the County Council to cover the cost of staff time and advertising of the order. The path must be fully reinstated at the end of the diversion.

Circular 2/93 advises that it should not be assumed that because planning permission has been granted that an order to divert or close a path will invariably be made or confirmed. It is therefore important that discussion about diversion or closure takes place at the time the planning application is considered. These issues should also be considered at outline application stage even if details of a proposal are not known.

A more detailed leaflet 'A Guide to Procedures for Public Path Orders' produced by the Countryside Commission is available from the District Council (contact the Countryside Projects Officer on 01803 861456).

## HOW CAN THE PLANNING AND BUILDING CONTROL SERVICE GROUP HELP?

The Planning and Building Control Service can advise on the status of paths that cross your site, on how they should be dealt with and on the necessary procedures.

### FURTHER INFORMATION

If you would like further information please contact the Planning and Building Control Service on 01803 861234.

### USEFUL DOCUMENTS:

**Countryside Commission Pamphlet 285 (CCP 285) A Guide to Definitive Map Procedures. Countryside Commission, 1992**

**Countryside Commission Pamphlet 449 (CCP 449) A Guide to Procedures for Public Path Orders. Countryside Commission, 1994**

**Department of Environment and Department of Transport, Design Bulletin 32 – Residential Roads and Footpaths, 1992 . HMSO**

**Department of the Environment, Circular 2/93 – Public Rights of Way, January 1993. HMSO**

**Department of the Environment, Town and Country Planning (Public Path Orders) Regulations 1993. HMSO**

**Department of the Environment, Circular 5/94 – Planning Out Crime, 1994. HMSO**

**Devon County Council, Design Guide to Residential Estates: Highways and Footpaths**

## CHECK LIST: PUBLIC RIGHTS OF WAY

Prior to submitting an application please check that your submission includes the following:

- The precise legally defined line of any existing public rights of way.
- Consultations undertaken with local communities and user groups undertaken at the design stage.
- If applicable, reasons why it is not practical or desirable to retain a path on its existing line.

Paths carefully designed to be segregated from roads and footways, and:

- a) Routed through public open space.
- b) Linked to existing paths.
- c) Have an adequate width as shown below. While border widths may vary depending on the location and nature of the route, the specified minimum widths should be adhered to.

Please remember that if development commences before a path has been legally diverted, the existing route must be kept open and clear of obstructions.

Status of Public Right of Way	Specified minimum width to be provided with an all weather surface	Landscaped borders to be provided on either side
Footpath	1.8 metres	2.0 metres
Bridleway	3.0 metres	1.5 metres

This note is one of a series encouraging good practice in the design and layout of new development and has been produced by the Landscape and Leisure Service at South Hams District Council. For further information on this Guidance note, and the role of Supplementary Planning Guidance, please contact:

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