

# Technical Note

**Project:** North Northamptonshire Greenway

**Subject:** Creating new traffic-free routes

<b>Client:</b>	North Northamptonshire Council	<b>Version:</b>	A
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## 1.1 Introduction

1.1.1 The North Northamptonshire Greenway (NNG) will be a network of connected routes developed for the public to use predominantly for walking, wheeling, cycling and horse riding. It is intended to be a traffic-free Network for the most part. When developing a network of traffic-free routes for these users it will be necessary to (1) create new paths where none exist at present, with public legal rights or permissive access and/or (2) use the existing path network, often by introducing 'higher rights' along existing public footpaths but also potentially restricting motorised vehicular traffic along other public paths; and sometimes utilising/upgrading existing permissive routes. A focus on creating public legal rights of access and ensuring the long-term public maintenance of routes is recommended when seeking to create a traffic-free Network. Where this is not possible, permissive route options are likely to be a pragmatic way of maximising opportunities in this regard.

## 1.2 Types of public legal rights of access

1.2.1 A Public Right of Way ('PROW') included on Definitive Maps in England can be (1) a public footpath (2) a public bridleway (3) a restricted byway or (4) a Byway Open to All Traffic (BOAT<sup>1</sup>). PROWs which carry a legal right for the public to walk, wheel, cycle and ride horses along a traffic-free path include a public bridleway and a restricted byway. The public right to cycle along a bridleway is subject to giving way to pedestrians and persons on horseback. It is also subject to any orders made by a local authority, and to any byelaws. The rights conferred do not affect the obligations of the highway authority, or of any other person, as respects the maintenance

<sup>1</sup> A BOAT is 'a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used', see s.66(1) of the Wildlife and Countryside Act 1980 (as amended).

of the bridleway, and there is no obligation to do anything to facilitate the use of the bridleway by people who are cycling.<sup>2</sup> A key difference between bridleways and restricted byways is that restricted byways are generally open to horse-drawn vehicles as well as people on foot, cycling and horse riders. In addition to being used mainly for the purpose for which footpaths and bridleways are used, there is a right of way for vehicular and all other kinds of traffic on BOATs (see Table 1 at the end of the note for more information on maintenance and liability obligations for different public rights of way).

- 1.2.2 Bridleways and restricted byways can be created through common law dedication; public path creation agreement; or by public path creation order or some other form of compulsory acquisition. If creating a public bridleway or restricted byway to facilitate horse riding and/or the use of horse drawn vehicles is not appropriate, a walking/cycling hybrid solution may be more practical. This can be achieved in various ways including (1) at common law (by dedication), (2) creating a cycle track using the Highways Act 1980 or Cycle Tracks Act 1984 or (3) combining permissive cycling with a public legal right to pass and repass on foot (see further below).

### **1.3 Public path creation agreement**

- 1.3.1 Section 25 of the 1980 Act provides for the creation of a bridleway or restricted byway either as a new path or to create ‘higher rights’ on an existing public footpath, by agreement between a local authority and a landowner. Such agreements are simply drawn up and signed, and the upgraded right of way would come into existence on the date given in the agreement. The Definitive Map would need to be modified but this would not impact upon the timing of delivery.
- 1.3.2 Notice of the agreement must be given in at least one local newspaper circulating in the area. While an authority must consult other local authorities if the land affected lies within the authority’s area, there is no requirement to consult users before entering into an agreement. There is no legal requirement for wider consultation and no mechanism for public objections, although it is good practice to notify Parish Councils and user organisations about the way that has been created. Where a bridleway or restricted byway is dedicated in pursuance of a public path creation agreement, it becomes a highway maintainable at the public expense.<sup>3</sup>
- 1.3.3 The advantage of converting a footpath to a bridleway or restricted byway using a public path creation agreement is that there is no formal order process and uncertainty of outcome is not a risk here. This is in contrast with cases of footpath conversion using a public path creation order

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<sup>2</sup> See section 30 of the Countryside Act 1968.

<sup>3</sup> See section 36(2)(d) of the Highways Act 1980.

– or a cycle track order - where there are opportunities for third parties to object and a proposed order might be successfully opposed at public inquiry. Furthermore, although a public path creation agreement shall be on such terms as to payment or otherwise as may be specified in the agreement, no compensation is payable when a public path creation agreement is used. This is also in contrast with the order making procedure, which could be a more expensive procedure with the payment of compensation.

#### **Case Study 1 - North Somerset District Council creation agreement**

An example of a public path creation agreement notice for bridleways by North Somerset District Council can be seen [here](#). The agreement was made under section 25 of the Highways Act 1980 and had the effect of creating two public bridleways by agreement with the landowners, as shown on the accompanying map. The two new bridleways connected to existing bridleways and their widths were specified. The notice confirmed that under section 25 there was no right of objection and so the Agreement took immediate effect.

#### **Case study 2 – Rochdale Council bridleway**

In another example, Rochdale Metropolitan Borough Council sought to upgrade the status of a public footpath to that of a bridleway by agreement with the landowners under section 25 of the Highways Act 1980. The route in question was identified as an important means of non-vehicular access to the Kingsway Business Park and also formed part of proposals for a cycling network linking Rochdale and Oldham. The purpose of upgrading to bridleway status was to enable equestrian use, mainly for recreational purposes, and use by cyclists to reach the Business Park. As part of its Rights of Way Improvement Plan (ROWIP) the Council had sought to identify where the use of definitive routes could be improved by upgrading their status. The financial implications were identified as (i) amending the Definitive map and (2) the cost of erecting signposts and maintenance required to be commensurate with the greater volume and type of use. See [here](#).

## **1.4 Landowner dedication**

- 1.4.1 For a new route, or a route which is already a public right of way, rights for different types of public legal access can be dedicated by the landowner(s), such as creating a public bridleway or upgrading a public footpath to that of a restricted byway or public bridleway.. Again, modification of the Definitive Map through a Definitive Map Modification Order (DMMO) process would be needed to reflect this change in highway status but, again, this could follow dedication and need not cause any delay in the delivery of the traffic-free route.

1.4.2 A landowner (and this would include a local authority, see section 1 of the Localism Act 2011) may expressly dedicate new rights or higher rights for the public. The landowner must be the owner of the freehold to be able to dedicate expressly<sup>4</sup> and the dedication is known as ‘express dedication at common law’. The legal basis upon which a highway comes into existence at common law is dedication by the landowner and acceptance by the public, in the following way:

- the landowner lays out the route or causes the route to be laid out and open for public use;
- the dedication process is complete when the public uses the route sufficiently to demonstrate acceptance of the dedicated right;
- the creation of the new right is then deemed to have occurred.

1.4.3 Some landowners may find granting a dedication more agreeable than allowing a permissive route because it removes much of their legal liability for the route. This is because of the rule<sup>5</sup> which states that if a claimant suffers an injury due to the presence of a dangerous defect on a highway not maintainable at public expense (which could include a public right of way) and the defect arises from a lack of action as opposed to a positive act, then no liability attaches, and there is no duty under the Occupier’s Liability Act either.

## **1.5 Public path creation order**

1.5.1 A public path creation order can create a new public right of way or establish 'higher' rights over an existing right of way (turning a footpath into a bridleway, for example). Under section 26 of the Highways Act 1980 local authorities can make orders creating bridleways and restricted byways where it appears to the authority that there is a need for them. A bridleway or restricted byway created by way of a public path creation order becomes a highway maintainable at the public expense.<sup>6</sup> In terms of demonstrating need, the Council would require evidence of demand for the public path through ROWIP or other assessments; the potential to connect to existing routes and networks, and safety concerns which would be avoided by the creation of the new traffic route for example. Designation of the NNG and references to this Network within development plan documents would also be important.

1.5.2 Before making an order, a local authority must also be satisfied – and be able to evidence - that it is ‘expedient’ that a way should be created, having regard to:

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<sup>4</sup> The landowner must be able to dedicate the land forever, so a lessee (ie with a leasehold interest) cannot dedicate.

<sup>5</sup> In McGeown v Northern Ireland Housing Executive [1995] 1 AC 233.

<sup>6</sup> See section 36(2)(d) of the Highways Act 1980.

- (1) the extent to which it would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
- (2) the effect that the creation would have on the rights of persons interested in the land, account being taken of the Act's provisions as to compensation.

1.5.3 There is a right to object to a proposed public path creation order and the procedure laid down in the Public Path Order Regulations 1993 must be followed. Authorities may confirm orders which are unopposed or to which all duly made representations and objections have been withdrawn. Authorities have the discretion not to proceed with orders which have led to objections or may withdraw an order for other reasons, such as external factors making a scheme no longer appropriate. Although there is no certainty that a public path creation order would be confirmed, this risk would be significantly mitigated by gauging the level of objection (if any) at an early stage through widespread public consultation. This course of action is strongly recommended.

1.5.4 In the case of an order to which there are duly made representations or objections, an Inspector appointed by the Secretary of State will determine whether to confirm it. Once an order is submitted to the Secretary of State the power of decision passes to them, or their appointed Inspector, although if all the representations and objections to the order are subsequently withdrawn, the authority will be asked whether it wants to confirm the order itself. When considering whether to confirm a creation order, the Secretary of State or the order making authority, must consider any material provision within a ROWIP for the relevant area.

1.1.1 Compensation is payable to the landowner for the depreciation in the value of their land due to the creation of the path, or where a person has suffered damage by being disturbed in their enjoyment of land in consequence of the making of an order.<sup>7</sup> The prospect of compensation can often be daunting, as high value compensation can sometimes be demanded early on as a means of discouraging local authorities from proceeding any further. But the actual amount of compensation may turn out to be quite modest as a proportion of the total project cost. Where landowners are thought to have an unrealistic concept of the value of their land, the early involvement of an independent valuer can be worthwhile. District Valuers can be asked to advise and give an opinion of value prior to the start of the process to give local authorities the confidence to proceed.

1.5.5 Consultation and involvement of landowners and occupiers as early as possible is recommended. This is not always easy, as often schemes need to be developed before this is

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<sup>7</sup> Section 28 of the Highways Act 1980.

feasible. But a local authority's position can be weakened and credibility damaged if landowners hear about a project from another source. Support from elected members is key, as they may be unwilling to support the use of a compulsory power without very good reason. The scheme must be fully justified, have good public support, have some landowner support (preferably) and fit with the Council's corporate policies and priorities. It should also be shown wherever possible on policy documents such as ROWIPs and in development plan policies. Being able to demonstrate the scheme will attract external funding (and possibly support local jobs and businesses in the current economic climate) will also be favourable to members.

- 1.5.6 Allowing some scope for negotiation with landowners regarding precise routing, widths, limitations and conditions is also recommended. Although there are limitations as to what can be negotiated, some flexibility such as moving the route further from buildings for example, may help landowners to feel that their needs have been taken into account from an early stage. Similarly, accommodation works such as fencing or buffer zone planting may help to reduce the impact on landowners. Generally, the more a landowner can feel involved in the development of the project the less likely they are to feel it is being imposed on them and the less likely to object.

#### **Case study 3 – Nidderdale Greenway creation order**

Sustrans, in partnership with the local authority, developed the Nidderdale Greenway, a traffic-free path from the centre of Harrogate to Bilton and onto Ripley. This project required the making and confirmation of a bridleway creation order. The creation order was opposed and was ultimately determined by the Secretary of State through the Planning Inspectorate (PINS). Evidence in support of the public path creation order was given at the public inquiry. The creation order was confirmed and route has now been constructed. It supports the cycle network in Harrogate, providing vital links to the National Cycle Network. Sustrans also worked on a successful bridleway and footpath creation order between Headley Lane and Cockin Lane, Clayton, Bradford, West Yorkshire to develop a section of the Great Northern Railway Trail. Evidence was given in support of the public path creation order at this public inquiry as well.

## **1.6 Compulsory acquisition of land**

- 1.6.1 Local authorities have powers to create or upgrade public rights of way by compulsorily acquiring land if needed, under the Highways Act 1980. Where a local authority considers that there is a compelling case in the public interest, a compulsory purchase order can be used to acquire land required to deliver the scheme. Compulsory purchase is a last resort but can significantly delay a scheme if the process is begun only after the breakdown of negotiations.

Where it is considered likely that compulsory purchase order (CPO) may be required, an authority can initiate formal procedures. This can have the effect of communicating the seriousness of an authority's intentions and may in turn enable meaningful negotiation with those whose land is affected.

## **1.7 Upgrading existing public footpaths**

1.7.1 If cycling along a public footpath were desired, it is advisable to upgrade that footpath to allow for this by creating a public right to cycle or granting a permissive use for cycling. This is because uncertainty exists regarding the appropriateness and/or legality of cycling on a public footpath. If allowing cycle use along a public footpath which had been upgraded to facilitate this was required, but the route is not suitable for use by horses or horse-drawn vehicles, it would be possible for the landowner to dedicate only public cycling rights<sup>8</sup> over that public footpath. A route of this status would still be shown on the Definitive Map as a public footpath and the cycling rights would have to be clearly signposted on the ground and shown on a Council's GIS system of interactive maps and on Ordnance Survey Explorer maps.<sup>9</sup> But if public legal rights to cycle were sought, different legal procedures would apply depending on whether the proposal affected an existing footway<sup>10</sup> or an existing public footpath.<sup>11</sup>

## **1.8 Creating higher rights for a public footpath**

1.8.1 The use of public path creation agreements and public path creation orders have already been addressed in this regard (see above).

### **Footpath to cycle track**

1.8.2 Section 3(1) of the Cycle Tracks Act 1984 gives a highway authority the power to make an order to convert all or part of a footpath into a cycle track, providing a right of way for cycling and on foot. The resulting cycle track would be maintainable at the public expense. The accompanying Cycle Tracks Regulations 1984 specify the detail to be followed for orders made under section

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<sup>8</sup> In addition to the existing pedestrian rights.

<sup>9</sup> Section 25 of the Highways Act 1980 creates only public footpaths, bridleways and restricted byways and does not, on the face of it, accommodate this type of 'hybrid' solution although conditions and limitations affecting a public bridleway could be imposed. NB the Cycle Tracks Act 1984 also provides a legislative mechanism for creating, by legal order, rights on foot and to cycle only.

<sup>10</sup> A "Footway" is defined as a way comprised in a highway, which also comprises a carriageway, being a way over which the public have a right of way on foot only - section 329(1) Highways Act 1980. A footway is often referred to as the pavement.

<sup>11</sup> A "Footpath" is defined as a highway over which the public have a right of way on foot only, not being a footway' - section 329(1) Highways Act 1980.

3. Public consultation is a mandatory requirement for conversions carried out under the 1984 Act.<sup>12</sup> Orders that have unresolved objections must be referred to the Secretary of State for Transport to confirm, who would then decide whether to:

- call a public inquiry so an inspector can hear the objections and then report back before a decision is made
- not call a public inquiry and make a decision based on the submitted order and its objections.

1.8.3 No order can be made in respect of a footpath or the parts of a footpath that cross agricultural land if the consent(s) required by section 3(2) are withheld. In section 3(2) of the 1984 Act, “agricultural land” has the meaning given by section 1(4) of the Agricultural Holdings Act 1986 (see Annex 1).

1.8.4 A cycle track is not legally required to be shown on the Definitive Map and Statement and a modification order would be required to remove a converted public footpath from the record following confirmation of an order. This is often why the Ramblers object to cycle track order proposals. In some circumstances segregation by some form of physical delineation can overcome objections, including where a cycle track is created and the public footpath is retained alongside - or if only part of the width of the footpath is converted. As such, the public footpath would remain on the Definitive Map although the Definitive Statement may need to be amended to reflect any reduction in width of the footpath.

1.8.5 Under section 5 of the 1984 Act, compensation is payable. Where any person suffers damage by reason of the execution by a highway authority of any works under section 3(10) or section 4, they shall be entitled to recover compensation in respect of that damage from the authority. Where in consequence of the coming into operation of an order under section 3 any person suffers damage by the depreciation in value of any interest in land to which they are entitled, they shall be entitled to recover compensation in respect of that damage from the local highway authority which made the order.<sup>13</sup> If agreement over the compensation to landowners cannot be reached then the matter is placed before the Lands Tribunal, (s.5(3)).

1.8.6 There is no certainty that the Secretary of State (Inspector) would confirm the cycle track order however. This may depend on nature and extent of any objections to the making of the order

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<sup>12</sup> By way of illustration, see for example LB Hounslow’s notice (in 2016) of conversion of a footpath into a cycle track at <https://bit.ly/3acXZbR> and by Surrey County Council (in 2018) at: <https://bit.ly/3bhYuDO>.

<sup>13</sup> But a person shall not be entitled to recover any compensation under this subsection in respect of any depreciation—

(a) in respect of which compensation is recoverable by him under subsection (1) above; or

(b) which is attributable to the prospect of the execution of any such works as are referred to in that subsection.



by the County Council. As referenced above, in relation to public path creation orders, the level of objection (or no objection) may be ascertained with wide consultation prior to the making of any order, to mitigate against this risk.

### **Footway to cycle track**

- 1.8.7 The recommended way of converting all or part of a footway to a cycle track is through the Highways Act 1980. The relevant part of the footway is 'removed' under section 66(4) and a cycle track constructed under section 65(1). Consultation is recommended but is not a statutory requirement. There would need to be clear evidence that a local authority had properly exercised its powers in this regard with a visible audit trail (such as the resolution of an appropriate committee). The creation of a cycle track in this way would create a right to cycle and could include a right of way on foot. A "Cycle track" is defined in the Highways Act 1980 as "a way constituting or comprised in a highway, being a way over which the public have the following but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with or without a right of way on foot".<sup>14</sup>

### **Widening an existing public footpath path to facilitate cycling**

- 1.8.8 Certain public paths have a specific width prescribed by the Definitive Statement (which accompanies the Definitive Map), which may be wider than is currently experienced on the ground. It would therefore be advisable to check if the width of a public footpath is referred to in the Definitive Statement and, if so, whether it reflects the width of the public footpath currently used. Any land lying outside the boundary of the existing public footpath (as described in the Definitive Statement or otherwise) would need to be dedicated (either at common law or under section 25) or acquired by the highway authority to enable widening to take place. If the owner of the land needed for path widening is unwilling to provide this, then the local authority would have to acquire the land compulsorily.

## **1.9 Use of Traffic Regulation Orders to facilitate a traffic-free route**

- 1.9.1 A Traffic Regulation Order (TRO) is a legal tool which allows a local authority, or a national park authority, to restrict, regulate or prevent the use of any named road. This would include a byway open to all traffic (BOAT) which would otherwise be used by people driving motor vehicles. A TRO does not extinguish rights, whether public or private, over a road, but may make it an offence to exercise such rights. A person who disobeys a TRO commits a criminal offence. There

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<sup>14</sup> Section 329(1) Highways Act 1980.

are currently motor vehicle restrictions in place due to permanent TROs on a number of routes in the Yorkshire Dales National Park. Maintaining and managing ‘green lanes’ in the National Park is one of the objectives agreed by the Authority and a wide range of local partner organisations in the [National Park Management Plan 2019-24](#).

## **1.10 Highways maintainable at the public expense**

1.10.1 It is the legal duty of a highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, which would include a PROW, irrespective of whether it is a HMPE.<sup>15</sup> But local highway authorities are under a separate and additional duty to maintain highways maintainable at the public expense (HMPE), together with statutory powers to improve them, so HMPEs can play an important role in seeking to achieve the long term public maintenance of traffic-free routes. Cycle Tracks created under the Highways Act 1980 or the Cycle Tracks Act 1984 will always be HMPE. Bridleways and restricted byways may be created as highways maintainable at the public expense (HMPE) but not necessarily. A HMPE for the purposes of the Highways Act 1980 means that the surface is vested<sup>16</sup> in the highway authority as per section 263 of the Highways Act 1980<sup>17</sup>. In the absence of freehold ownership, vesting takes away from private ownership only those rights in the vertical plane of the highway which are necessary to enable the highway authority to perform its statutory functions of operation, maintenance and repair.<sup>18</sup>

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<sup>15</sup> Section 130(1) of the Highways Act 1980 as amended.

<sup>16</sup> Section 41(1) of the Highways Act 1980 (as amended) (‘the 1980 Act’) extends to both England and Wales. It places a statutory duty on highway authorities to maintain all highways maintainable at the public expense. This is an absolute duty on the part of highway authorities to keep the fabric of a highway, which would include any public bridleway or restricted byway or BOAT that is maintainable at the public expense, together with cycle tracks and unclassified county roads, in such good repair as to render their physical condition safe for ordinary traffic to pass at all seasons of the year.

<sup>17</sup> It provides, so far as is relevant, as follows: “Vesting of highways maintainable at public expense. S.263(1) Subject to the provisions of this section, every highway maintainable at the public expense together with the materials and scrapings of it, vests in the authority who are for the time being the highway authority for the highway.....”.

<sup>18</sup> The automatic vesting of proprietary interests in highways (in the bodies responsible for their maintenance and repair) operates in a more limited way than would a simple conveyance (or transfer) of the freehold for the following reasons:

- (1) it is a determinable, rather than absolute, fee simple, which would end automatically if the body responsible for its repair ceases to be so responsible (eg if the road ceased to be a public highway)
- (2) it is inalienable (can’t be taken away) for so long as that responsibility lasts.
- (3) statutory vesting confers ownership only of that slice of the land over which the highway runs, viewed in the vertical plane, as is necessary for its ordinary use, including its repair and maintenance. The zone of ordinary use is a flexible concept, the application of which may lead to different depths of subsoil and heights of airspace being vested in a highway authority, both as between different highways and even, over time, as affects a particular highway,

## **I.11 Creating permissive access**

- 1.11.1 Permissive rights can be useful, particularly where landowners are willing to allow public use but do not want a permanent legal right of way to be created. Wholly permissive sections of traffic-free route are those which carry no public legal rights to walk, wheel, cycle or ride a horse, with permission to do so granted by the landowner. Permissive use can be achieved through leasehold and licence agreements which will terminate at some point, potentially at short notice in the case of licence agreements. Dual public/permissive routes are included in this ‘permissive’ category because although these carry a public legal right to pass and repass on foot (by virtue of their status as a public footpath) this is coupled only with permission granted by the landowner to cycle or horse ride on – or alongside - that footpath.
- 1.11.2 Even if landowners are willing to consider permissive use, they can impose conditions on their use including restrictions on when the public can use them and how the paths are used. An additional point to note is that permissive paths are always not ‘visible’ in the same way as PROWs which are shown on Definitive Maps and other public paths (eg HMPEs under the Highways Act 1980 are listed on local highway authorities’ statutory Lists of Streets for HMPEs). Permissive paths are also often not recorded in a Council’s GIS system. A licence agreement is not an agreement to own land: it is an agreement to use land in a certain way. As a licence is neither a legal estate nor a legal interest, it cannot be registered at the Land Registry. This means that they can be overlooked including where new development or other works might adversely affect them (eg by blocking or narrowing routes).
- 1.11.3 There is a risk with permissive routes that landowners will withdraw permission for their land to be used for walking and cycling when leasehold and licence agreements expire and/or they sell the licensed land to new owners who are not willing for the licence to continue. But if the land is owned by a local authority or a public/quasi- public body, this risk is likely to be significantly lower. Permissive sections of route on land owned by local authorities and public/quasi-public stakeholder partners such as Network Rail, Canal and River Trust, the National Trust, the Environment Agency, the Forestry Commission and some statutory utilities for example, are generally likely to be less vulnerable to permanent closure, at least without an acceptable realignment, than those on privately owned land. These paths are generally less exposed to

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according to differences or changes in the nature and intensity of its public use A footpath or bridleway might only require shallow foundations, and airspace necessary to accommodate someone riding a horse. By contrast a busy London street might require deep foundations to support intensive use, and airspace sufficient to accommodate double-decker buses, and even the overhead electric power cables needed by urban trams.

changes in circumstance including land disposal, new development and financial pressures, despite no public legal right to use them.

#### **Case Study 4 - New Malden to Raynes Park Link**

Sustrans was involved in a project with the Royal Borough of Kingston and Thames Water to deliver a 1.2km traffic-free walking and cycling path linking New Malden Railway Station and Raynes Park in South West London, on previously inaccessible land owned by Thames Water. A permissive cycle path (licence) agreement was entered into between the Royal Borough of Kingston Upon Thames and Thames Water Utilities Ltd to deliver the new path. The project was part of Kingston Council's £30m mini-Holland programme, funded by the Mayor of London. The path has now been constructed and makes the journey between New Malden and Raynes Park safer, convenient and more attractive for people walking and on cycles, avoiding busy roads and a dual carriageway. It also opened up an area of public space providing a 'green corridor' with natural habitats for badgers, bats and other wildlife, creating a valuable new community asset. Further information about the project is [here](#).

#### **Case Study 5 - Millwall Quietway**

The Millwall Quietway is a traffic-free route forming a key part of the London Cycleway Network between Waterloo and Greenwich. It follows the alignment of an existing railway corridor which links South Bermondsey railway station with the new East London Line Extension shared walking/cycling path. The Millwall Quietway also links to a pedestrian/cycle bridge constructed (as part of the Connect2 project) over Rotherhithe New Road in 2013 linking Gainsborough Court to South Bermondsey station. It was not possible to deliver this project through a public path creation agreement or order because it required Network Rail's operational land. Sustrans worked to deliver a permissive shared use traffic-free route, mitigating risk by brokering and helping to facilitate a leasehold agreement between the London borough of Lewisham and Network Rail to develop this new route and secure its use for walking, wheeling and cycling for at least 25 years. It also involved the signing of an agreement for lease between the London borough of Lewisham and Network Rail and the creation of a sub-lease because of the desire of Millwall Football Club to retain its away fans path over a section of the Millwall Quietway to connect to South Bermondsey railway station, which is in use on match days.

## I.12 Securing public access more generally

### New development

- 1.12.1 New traffic-free routes can also be created and/or funded through new development identified in Local Plan site allocations. By way of example, a very large and complex site allocation in South West Rugby comprising various different land ownerships will deliver phased development of around 5,000 homes and 35 ha B8 employment land over a significant period of time. Included within Appendix K of the adopted South West Rugby Masterplan Supplementary Planning Document (SPD) is a figure of £900,000 for future development of the traffic-free Lias Line Greenway adjacent to the boundary of the site allocation, plus an additional £2,826m identified in the SPD for other active travel measures. This funding will be provided through section 106 developer contributions and planning applications are in the process of being submitted.

### ELMS and Right to Roam

- 1.12.2 Little progress has been made in securing greater public access through the Environmental Land Management Scheme (ELMS). In some ways, this has gone backwards in so far as the existing system has recently been extended with regard to access but without any root and branch reform of subsidies. It is relevant to note, however, that the UK Labour party are interested in ELMS and public access reform linked to their right to roam work. A House of Commons debate recently gave an indication of Labour's intentions towards the future of right to roam legislation, should the party form the next government. Shadow Nature Minister Alex Sobel MP stated that:

*"We will introduce a right to roam Act, a new law allowing national parks to adopt the right to wild camp, as well as expanding public access to woodlands and waterways."*

*"Like in Scotland, Labour's approach will be that our right to roam will offer access to high- quality green and blue spaces for the rest of Britain. We will replace the default of exclusion with a default of access and ensure the restoration and protection of our natural environment."*

- 1.12.3 The detail of this is yet to be articulated but the Land Reform (Scotland) Act 2003 introduced extensive new rights of public access to land and the countryside. There is now a right of responsible non-motorised access for recreational and other purposes to land and inland water throughout Scotland, with a few exceptions. In addition, the public has a right to pass and repass along core paths or other public routes. The core path designation gives anyone the right to walk, cycle or ride a horse<sup>19</sup> rather than focus on specific types of access. Core paths can be

<sup>19</sup> And paddle/canoe on inland waterways.

anything from a faint line across a field to a fully constructed path, track or pavement but the key feature of core paths is their legal status, once adopted; this gives them certainty, preventing them from being diverted or removed without due process, although they are not automatically maintainable at the public expense. There are also public rights of way in Scotland although these are not marked on Definitive Maps because these maps do not exist in Scotland.

**Table 1: Path creation - Maintenance/Liability obligations**

	<b>Procedure</b>	<b>Maintenance/liability obligation</b>	<b>Source</b>
<b>1</b>	Public bridleway or restricted bvw way created through a section 25 public path creation agreement	Highway maintainable at the public expense (HMPE)	Section 36(2)(d) of the Highways Act 1980
		Local highway authority has a legal duty to maintain and statutory powers to improve	Legal duty to maintain: section 41 of the Highways Act 1980  General power of improvement: section 62 of the Highways Act 1980 (plus specific powers in Part V)
		With respect to maintenance of a bridleway, there is no specific obligation to do anything to facilitate its use by cyclists	Section 30(3) of the Countryside Act 1968
<b>2</b>	Public bridleway or restricted bvw way created through a section 26 public path creation order	Highway maintainable at the public expense (HMPE)	Section 36(2)(d) of the Highways Act 1980
		Local highway authority has a legal duty to maintain and statutory powers to improve	Legal duty to maintain: section 41 of the Highways Act 1980  General power of improvement: section 62 of the Highways Act 1980 (plus specific powers in Part V)
		With respect to maintenance of a bridleway, there is no specific obligation to do anything to facilitate its use by cyclists	Section 30(3) of the Countryside Act 1968
<b>3</b>	Cycle track created through a Cycle Track Order	Highway maintainable at the public expense (HMPE) Local highway authority has a legal duty to maintain and statutory powers to improve	Section 3(1) of the Cycle Tracks Act 1984
<b>4</b>	Cycle track created under the Highways Act 1980	Highway maintainable at the public expense (HMPE) Local highway authority has a legal duty to maintain and statutory powers to improve	Section 36(2)(a) of the Highways Act 1980
<b>5</b>	Public bridleway or restricted bvw way (PROWs) created through	Local highway authority has a legal duty to assert and protect the rights of the public to the use and enjoyment of any highway	Section 130(1) of the Highways Act 1980

	landowner dedication at common law	for which they are the highway authority	
		The landowner or occupier of land with a public right of way across it must keep the route visible and not obstruct or endanger users	Defra Guidance Note: <a href="#">Public rights of way: landowner responsibilities</a>
<b>6</b>	Permissive path – no legal agreement (eg if already owned by a local authority)	A landowner owes a duty of care to visitors on their property and is liable for the maintenance of the path  The landowner is liable for the maintenance of the path	Section 2 of the Occupiers Liability Act 1957
<b>7</b>	Permissive path – leasehold agreement	Maintenance and liability obligations will be set out in the leasehold agreement  A landowner owes a duty of care to visitors on their property and is liable for the maintenance of the path	Section 2 of the Occupiers Liability Act 1957