

Sandra Hutchings

From: Hilary Winter
Sent: 08 September 2014 08:51
To: DPD
Subject: Landscape Sensitivity Assessment Supplementary Planning Document
Attachments: dcc-wind-solar-position-statement-2.pdf

Dear Sir/Madam



Landscape Sensitivity Assessment Supplementary Planning Document

Thank you for consulting the Devon Countryside Access Forum on the above document.

The Devon Countryside Access Forum is a statutory local access forum under the Countryside and Rights of Way (CROW) Act 2000. Its remit is to provide independent advice as to the improvement of public access to land for the purposes of open-air recreation and enjoyment. It has fifteen voluntary members, appointed by Devon County Council, who represent the interests of access users, land owners/managers and other interests such as tourism and conservation. The DCAF has a statutory function to give advice to section 94(4) bodies under the CROW Act and district councils are included in this list. This e-mail constitutes formal advice from the DCAF and Mid Devon District Council is required to have regard to relevant advice from this forum in carrying out its functions.

The timing of the above consultation did not coincide with a formal meeting of the Forum. However, the Forum has previously submitted advice to other District Councils on on-shore wind and photovoltaic developments and its main concern has focussed on the implications for public rights of way. Many of the Forum's concerns were subsequently included in new guidance on this topic produced by the Public Rights of Way team at Devon County Council. This document is attached.

The DCAF advises that the implications of on-shore wind and voltaic developments on public rights of way and accessible green space, and the views enjoyed by users, should be included in the Supplementary Planning Document (SPD) currently being prepared by Mid Devon District Council. The SPD should be cross-referenced against the DCC guidance to ensure all relevant aspects are incorporated.

This response will be formally noted at the next public meeting of the DCAF in October.

The DCAF would be pleased to receive an acknowledgement of this response and feedback on its advice.

Yours faithfully

Hilary Winter

Forum Officer

Devon Countryside Access Forum

Response sent on behalf of Devon Countryside Access Forum

Chair: Laura Leigh

Vice Chair: Chris Britton

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ON-SHORE WIND TURBINES AND SOLAR ARRAYS AND THE IMPACT ON PUBLIC RIGHTS OF WAY

GUIDANCE FOR DEVELOPERS AND PLANNERS

Devon County Council
Public Rights of Way Section

October 2013

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ON-SHORE WIND TURBINES AND SOLAR ARRAYS AND THE IMPACT ON PUBLIC RIGHTS OF WAY: GUIDANCE FOR DEVELOPERS AND PLANNERS

1. *Introduction*

- 1.1 This guidance has been prepared by Devon County Council's Public Rights of Way section to assist developers and planners in assessing the impact of wind turbines and solar arrays on public rights of way, recreational trails and access land at the pre-application stage, during construction and post project completion.
- 1.2 The advice provides details about how the legal framework associated with rights of way can be observed and how good practice can be achieved to safeguard the interests of access users. This advice applies to both wind and solar farms except where specifically indicated.








Fullabrook Wind Farm, North Devon © Olwen Maidment, Teignbridge District Council



Solar Arrays in Mid Devon © Andy Leithgoe

2. Pre application

2.1 Contact should be made with the Public Rights of Way team at Devon County Council to ascertain whether there any public rights of way cross the proposed site. The Definitive Map and Statement is the legal record of public rights of way. Public rights of way include footpaths, bridleways (available to walkers, riders and cyclists), restricted byways (also available to carriage drivers) and byways open to all traffic (which can be used by motorised traffic as well). In addition, the Public Rights of Way section is responsible for the maintenance of Devon's unsurfaced, unclassified County roads (uUCRs).

Access Route	Legal Users	Length in Devon
Footpath		3675km
Bridleway		1203km
Restricted Byway		19km
Byway Open to All Traffic		78km
Unsurfaced Unclassified County Road		560 km

- 2.2 Applicants are also advised to check whether any claims are being processed to add previously unrecorded routes to the Definitive Map and Statement or to upgrade or amend existing routes. This is done through the County Council's parish-by-parish Definitive Map Review process under Schedule 15, or applications made under Schedule 14, of the Wildlife and Countryside Act 1981.
- 2.3 Any applicant is required to submit details of public rights of way with their planning application but the local planning authority should also check the Definitive Map and consider any possible modifications to rights of way, as described above.
- 2.4 The route of any public right of way has legal protection and the impact of a proposal on a public right of way is a material consideration when a planning application is being decided. If the proposal anticipates any change to a public right of way, developers will need to take account of this when they submit their application.
- 2.5 Planning applications in Devon, with the exception of minerals or waste management matters or the County Council's own developments, are dealt with by the relevant District Council or Unitary Authority in their role as the Local Planning Authority (LPA). The LPA must advertise any development which affects a public right of way through an advertisement in the local press and by posting a notice on the site.

- 2.6 -If the LPA is satisfied that the diversion or stopping-up of a footpath, bridleway or restricted byway within the development boundary is necessary to enable the development to take place they may make an order under Section 257 of the Town and Country Planning Act 1990. The local planning authority needs to be convinced that such a change is necessary for the development to proceed and should consider the loss to access users. As part of this procedure consideration may be given to the creation of an alternative route or improvement of an existing route nearby. When the diversion or alternative right of way is proposed to be provided and dedicated over land not owned by the developer, the consent of the landowner(s) to the proposed dedication must be obtained before the order is made. Early discussions between the developer, the local authority, landowners and interested parties, including access user groups, are advised. This course of action will produce an acceptable scheme in many instances and enable the eventual proposals to gain a wide measure of public acceptance.
- 2.7 Defra has set out advice and guidance for local authorities in its Rights of Way Circular 1/09 <https://www.gov.uk/government/publications/rights-of-way-circular-1-09>.
- 2.8 Diversion and Stopping-up Orders have to go through a legal process that involves public consultation and advertising, and can take about six months to process if the order is straightforward. However, if there are objections the process can take much longer and may end up having to be decided at a public inquiry. Costs of processing and advertising the order will be charged to the applicant. Under the Growth and Infrastructure Act 2013, applications for the diversion or stopping-up of a right of way can now be made concurrently with the planning application which reduces the delay. If the development involves a diversion or stopping up of a byway open to all traffic or a road, in other words a change involving the passage of motorised vehicles, the applicant will be required to apply to the Secretary of State for an order under section 247 of the Town and Country Planning Act 1990.
- 2.9 The granting of planning permission does not legally alter any existing rights of way crossing the land. The associated Order has to be determined and until that comes into effect any development affecting a right of way should not be started. The public right of way must be kept open.
- 2.10 The requirement to keep a public right of way open for public use will preclude the developer from using an existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights.
- 2.11 As well as investigating public rights of way on the development site, it is also important to record whether there are any public rights of way or unsurfaced, unclassified county roads (uUCRs) in the vicinity of the site as there could be potential impacts on these too. Factors such as fall-over distance and surface run-off affect a wider area. Public rights of way and unsurfaced, unclassified county roads are highways maintainable at public expense. Devon County Council, as the highway authority, discharges this duty under the Highways Act 1980, section 41.
- 2.12 Information can be obtained from Devon County Council on the existence of any cycle or multiuse routes. These may be permissive routes without the same legal status as public rights of way but nonetheless provide important recreational routes.
- 2.13 The Public Rights of Way team will also be able to advise whether the site is access land; mountain, moor, heath or downland, or registered commons, designated under the

Countryside and Rights of Way Act 2000 as areas of land where there is a right to walk. The law associated with development on access land is complex and contact is advised with Natural England, the regulatory body, to discuss the legal implications and any formal procedures that might be required. Development is allowed on access land where planning permission has been granted or where it is a permitted development. However, discussions may need to take place around any access restrictions to the site, whether the site is excepted land under the Act and the definition of curtilage around the development.

Contact details:

- Public Rights of Way, Lucombe House, County Hall, Topsham Road, Exeter EX2 4QD.
Tel

- Natural England, Open Access Centre, Temple Quay House, 2 The Square, Bristol BS1 6EB

3. Application stage – landscape character and quality

- 3.1 Consideration should be given to following aspects and their impact on public rights of way, unsurfaced, unclassified County roads, cycle/multi-use routes and access land.

- 3.2 Developers and planners are advised to refer to recently published guidance from the Devon Landscape Policy Group (DLPG) on 'Accommodating wind and solar pv developments in Devon's landscape: Guidance on minimising harm to the distinctive character and special qualities of Devon's landscape through sensitive siting and design'. (Devon Landscape Policy Group. Advice Note 2).
http://www.devon.gov.uk/index/environmentplanning/natural_environment/landscape/landscape-policy-guidance.htm

- 3.3 In addition to the above Advice Note, the 3rd edition (2013) of Guidelines for Landscape and Visual Impact Assessment, published by the Landscape Institute and Institute of Environmental Management and Assessment, provides some useful guidance specifically on rights of way as well as informing the DLPG Advice Note. It is important to mention that carrying out environmental impact assessments is firmly embedded in EU legislative Directive 2011/92/EU "The Assessment of the Effects of Certain Public and Private Projects on the Environment." The framework within which an EIA is carried out consists of this directive and other regulations and guidance documents produced by government agencies or professional bodies.

- 3.4 The Guidelines for Landscape and Visual Impact Assessment include the impact on human beings and this can include public rights of way, visual amenity and social impacts (Figure 1.2). Individuals or groups of people most susceptible to change include: "people, whether residents or visitors, who are engaged in outdoor recreation, including use of public rights of way, whose attention or interest is likely to be focussed on the landscape and on particular views." (Paragraph 6.33)

- 3.5 A Landscape and Visual Impact Assessment (LVIA) is recommended even if a full Environmental Impact Assessment is not required. The Guidelines state that any LVIA must assess visual effects and visual amenity, both in terms of impact and magnitude, and consider rights of way and recreational trails as part of this assessment.

- 3.6 Mapped information, particularly maps showing a Zone of Theoretical Visibility, can be important in assessing the impact on access users as “during passage through the landscape, certain activities or locations may be specifically associated with the experience and enjoyment of the landscape, such as the use of paths, tourist or scenic routes and associated viewpoints.” (6.14). Paragraphs 6.15 and 6.16 state that mapped information can be informed by details on:
- the types of viewer and the places where they will be affected;
 - estimates of the numbers of different types of people who might be affected in each case. This could include for example, walkers, dog walkers, cyclists and horse-riders;
 - viewpoints and views from access land and public rights of way. This could include cycle and multi-use trails and parks.
- 3.7 Viewpoints selected to assess the visual impact might be ‘representative viewpoints’, for example “chosen to represent the views of users of particular public footpaths and bridleways”, or could be ‘specific viewpoints’ chosen because they are “key and sometimes promoted viewpoints within the landscape.” (Paragraph 6.19).
- 3.8 The cumulative visual impact of several solar or wind farms and an assessment of the effects on recreational access users is a very important consideration. This is explained further both in the DLPG Advice Note 2 and in the 2013 Landscape Institute Guidelines.
- 3.9 The Public Rights of Way section may be able to provide data on use of particular routes and can advise on whether a public right of way or cycle/multi-use route forms part of a recreational trail or promoted route at local or county level.

4. *Siting and Design Guidance*

4.1 Wind Farms – additional considerations for rights of way

- 4.1.1 Applicants are advised to consult at an early stage with the Public Rights of way section concerning the proximity of public rights of way and uUCRs.
- 4.1.2 There is no statutory separation between a wind turbine and a public right of way. Often, fall over distance is considered an acceptable separation, so as to achieve maximum safety, and the minimum distance is often taken to be that the turbine blades should not be permitted to oversail a public right of way.
- 4.1.3 The British Horse Society has published non-statutory guidance, which recommends a minimum exclusion zone of 200m from a bridleway, restricted byway, byway open to all traffic or road used by horses. A separation distance of four times the overall turbine height is suggested for National Trails and Ride UK routes and three times the height for other routes. The Public Rights of Way team can advise on whether any public right of way forms part of a recreational route.
<http://www.bhs.org.uk/~media/BHS/Files/PDF%20Documents/Access%20leaflets/Wind%20Farms%20Leaflet.ashx>
- 4.1.4 The new Planning Guidance for Renewable and Low Carbon Energy (July 2013) states “Local Planning Authorities should not rule out otherwise acceptable renewable energy developments through inflexible rules on buffer zones or separation distances. Other than when dealing with set back distances for safety, distance of itself does not necessarily determine whether the impact of a proposal is unacceptable. Distance plays a part, but so

does the local context including factors such as topography, the local environment and near-by land users. This is why it is important to think about in what circumstances proposals are likely to be acceptable and plan on this basis.” (Paragraph 16) <https://www.gov.uk/government/publications/planning-practice-guidance-for-renewable-energy>

- 4.1.5 Blade flicker and shadow may pose additional hazards for horse riders when horses react adversely and this should be assessed.



Fullabrook Wind Farm, North Devon © Olwen Maidment, Teignbridge District Council

4.2 Solar Arrays – additional considerations for rights of way

- 4.2.1 Consideration should be given to the surface water regime. While surface permeability may not change, the rate of water run-off could increase significantly during periods of high rainfall. Water coming off solar panels may be concentrated in specific channels accelerating the incidence of run-off. Design of drainage systems, including any bunding or water holding swales, should be carefully considered so that run-off does not erode or flood public rights of way or uUCRs within or adjacent to the site. As part of their application the applicant should provide details of the current water flow across the site with site percolation information, together with an assessment of how this will change with the solar array installation.
- 4.2.2 Equally, any access tracks on site should be composed of permeable materials with associated drainage, such as swales and infiltration trenches.
- 4.2.3 The width of any public right of way may be defined in the Definitive Statement accompanying the map. Where the width is not defined advice should be sought from the Public Rights of Way team to ensure that the development does not restrict the right of way.
- 4.2.4 High fencing alongside a public right of way could feel claustrophobic, particularly for horse riders, and the choice of materials and associated vegetation should consider access users as well as the character and quality of the landscape setting. Consultation with the Public Rights of Way team and access user groups is recommended.

- 4.2.5 •Tree and/or hedge planting may be appropriate to conceal solar pv panels and associated infrastructure in views enjoyed from rights of way and recreational routes. This is particularly important in more rural areas to minimise urban elements in the landscape. As part of this assessment hedges alongside public rights of way should be maintained, where possible. Consideration of important views needs to be taken into account as lines of trees or fencing may reduce enjoyment.
- 4.2.6 Visual intrusion can be reduced through the choice of appropriate materials to reduce reflectivity. The glint of solar panels and the impact on access users should not be underestimated, particularly if sun 'tracking' panels are used. These may result in differing patterns of glint according to the season or time of day. The visual sensitivity may affect access users and is particularly likely to be a hazard for horse riders when horses experience intense light. Such problems can be overcome at the design stage through use of appropriate materials or mitigated through adoption of good practice.



Solar arrays. © Olwen Maidment, Teignbridge District Council

5. *During construction*

- 5.1 Adequate sight lines from the access point should be maintained to ensure safety for access users on the highway, including walkers, cyclists and horse riders.
- 5.2 Gates to the access site should be set back from the highway to improve safety.
- 5.3 Consideration of access users during construction is required to ensure safety of all users, with appropriate separation of vehicular construction traffic, information notices and an assessment of the timing of vehicular movements to minimise disruption.
- 5.4 It may be necessary to divert a public right of way on a temporary basis. Contact should be made with the Public Rights of Way team, as above, to make an application for a 6 month Temporary Closure Order for a Public Right of Way under the Road Traffic Regulation Act 1984 – Section 14.

6. *Maintenance and decommissioning*

- 6.1 The County Council has a legal responsibility, under the Highways Act 1980, to maintain rights of way and ensure that they are kept free of obstructions. Access for County Council staff, contractors and volunteers to the right of way to permit strimming, cutting or surfacing work must not be impeded.

- 6.2 Chemical spraying of undergrowth associated with solar arrays must be carried out in accordance with appropriate health and safety regulations, and with due regard to users of rights of way.
- 6.3 The Devon Landscape Policy Group Advice Note 2, referred to above, includes a recommendation for a landscape management plan to be approved as part of a planning application for wind and free-standing solar pv energy development. This should cover the lifetime of the development operation (usually 25 years) plus restoration and a 5 year aftercare period to ensure effective restoration of vegetation. It is recommended that the management plan includes any statutory obligations for rights of way on the site.
- 6.4 Consideration of access users during the decommissioning period would be the same as for the construction period above.

For further information and advice please contact:

Public Rights of Way,
Devon County Council,
Lucombe House, County Hall, Exeter EX2 4QD.

Telephone: 01392 264111 Email: publicrights@devon.gov.uk