



West Sussex County Council

Development and Public Rights of Way: Advice Note for Developers and Local Authorities

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1. Introduction

- 1.1 This document is aimed at developers and their agents whose site may be affected by a Definitive Public Right of Way. This advice note can also be used as a guide for other authorities when dealing with planning applications that involve public rights of way.
- 1.2 The document aims to inform and advise in situations where Public Rights of Way need to be considered and taken account of where development proposals impinge upon them. It is an informative guide and is not legal advice.
- 1.3 Public rights of way are a material consideration in the determination of planning applications, however, they are often disregarded or overlooked during the development process. This can lead to a whole range of issues later on in the process. This document aims to rectify this and minimise the potential for issues at a later date.
- 1.4 The granting of planning permission does not authorise obstruction, interference with or moving of any Public Right of Way; this can only be undertaken with the consent of the County Council as highway authority, or by confirmation of a relevant legal order.



2. Background

- 2.1 Public rights of way form an integral part of any large development offering a safe and sustainable off-road link to a wide range of facilities and recreation by linking urban areas with the countryside. West Sussex is predominantly rural in character; more than half of the county is farmland and around a fifth is woodland, making it one of the most heavily wooded counties in the country. With over 4,000km of public rights of way and two national trails including the South Downs Way and the King Charles III England Coast Path, there are fantastic opportunities to explore the County on foot, bicycle and horseback.
- 2.2 No matter the size of your development it is important to address the effect it may have on the rights of way network at an early stage. Failure to do so could lead to significant issues and delays later on.
- 2.3 Public Rights of way provide safe, quality environments for movement and access to local facilities and promote sustainable, active travel, physical activity, community interaction and mental well-being. They reduce reliance on the car, contribute to combatting climate change and reducing air pollution. Not only are public rights of way a material consideration in the determination of any planning application, protecting and enhancing public rights of way can increase the attractiveness of any development.
- 2.4 We highly recommend, as part of your planning application that you include a public right of way strategy, either stand alone or within a transport assessment / travel plan. This will help to ensure public rights of way have been adequately considered. In preparing this, it would be helpful for you to include:
 - i. Correct identification of public rights of way within and adjacent to the site
 - ii. Proposals showing how public rights of way will be integrated within the development
 - iii. Proposals showing how the public rights of way network beyond the development provides links to local facilities, schools and employment, etc
 - iv. Proposals showing how they will be affected by new dwellings, increased usage, access points, new roads, railways, utilities and services
 - v. Detail if there is a need to divert and / or temporarily close any public right of way
 - vi. Mitigation measures including enhancements, upgrades and crossings
 - vii. Detail any enhancement to the network you are willing to provide such as dedication of higher rights or the inclusion of permissive routes
- 2.5 For advice in preparing a public rights of way strategy, please contact the Public Rights of Way team using the details provided on page 9.

- 2.6 Public Rights of Way are recorded on the Definitive Map and Statement which is the legal record of Public Rights of Way. The Definitive Map and Statement records footpaths, bridleways, restricted byways and byways open to all traffic (BOAT) often referred to as byways. The table below sets out the permitted use for each classification. The Definitive Map's accompanying Statement provides a brief description of the path and may also include details of width and any limitations on a path. It is important to note that there is no standard width for a public right of way. Where no width is recorded in the definitive statement, enquiries should be made with the County Council to determine the width. Generally, where a public right of way passes between defined boundaries, the presumption is that the public right of way occupies the full width between those boundaries. If the width of a path is not defined by inclusion in the definitive statement, or by physical boundaries, the width of a path is that which, as a matter of evidence, has been habitually used and available to the public.
- 2.7 Information recorded in the Definitive Map and Statement is conclusive evidence in law as to position, status, width and limitations or conditions. Once a site has been identified for development, it is important to check the position regarding existing Public Rights of Way at the very outset. It is strongly recommended that you check the Definitive Map and Statement for this purpose and if necessary, seek advice from the County Council's public rights of way team.
- 2.8 It may be the case that there are outstanding claims to record new rights of way or amend the legal status of those already recorded. You are therefore recommended to check such details with the County Council's legal team who are responsible for processing such applications. A list of key contacts can be found at the end of this document.

Term	Definition
Footpath	is a highway over which the public have a right of way on foot only, but which is not a pavement or footway at the side of a public road.
Bridleway	is a highway over which the public have a right of way on foot, cycle and on horseback or leading a horse.
Restricted Byway	is a highway over which the public have a right of way on foot, on horseback or leading a horse, with or without a right to drive animals and in a vehicle other than a mechanically propelled vehicle, thereby giving a right of way for pedal cyclists and drivers of horse drawn vehicles.
Byway Open to All Traffic (BOAT) often known as Byway	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 purposes for which footpaths and bridleways are used.

3. Diversion and Extinguishment

Section 257 Town and Country Planning Act 1990

- 3.1 The granting of planning permission for development of land over which there is a public right of way does not itself constitute authority for interference with the public right of way. Nor does it authorise you to divert or extinguish it.
- 3.2 Powers are granted to Local Planning Authorities (LPA) to make Orders under the Town and Country Planning Act 1990 (TCPA) to stop up or divert public footpaths, bridleways and restricted byways affected by development in cases where an application for planning permission has been made or granted. The LPA may make an Order under Section 257 TCPA to stop up or divert the way, if it is satisfied that it is necessary to do so in order to enable that development to be carried out.
- 3.3 If you have a byway open to all traffic (BOAT/Byway) crossing your development site, then an order under Section 247 will be necessary as it is not possible to divert or extinguish a path which has vehicular rights along it, under Section 257 TCPA.
- 3.4 The diversion or extinguishment of a right of way should be considered as the last option. Where possible, developers should seek to accommodate rights of way within their development. It is not sufficient that the making of the order would facilitate the carrying out of development, it must be necessary in that without the order development could not be carried out.
- 3.5 If it is considered necessary to divert a public right of way, early engagement and consultation with the local community is advised. Communication through Parish, Community and Town Council's and relevant amenity groups should assist in this regard.
- 3.6 Orders made under the TCPA are subject to a period of public consultation, during which anyone can raise an objection. If objections are received and not withdrawn then confirmation of the order can only be determined by an Inspector appointed by the Secretary of State, who may hold a public local inquiry before reaching a decision. If there are no objections, the Order may be confirmed as an unopposed Order by the Order Making Authority. It could therefore be several months before the outcome of an order is determined.
- 3.7 Most Section 257 Orders do not come into effect until confirmed and the required certificate, confirming the new route is acceptable has been issued. This certificate can only be issued once the diverted route has been inspected and approved by the County Council as Highway Authority. It is therefore important to keep the County Council updated on progress of development so that the necessary inspection can be carried out as soon as the path is complete.
- 3.8 An Order for the stopping up or diversion of a right of way under the TCPA cannot be made once the relevant development is "substantially complete". If the development is substantially complete, the developers

will need to ensure that the right of way is accommodated on its current legal line or seek diversion of the path under another appropriate legal mechanism. Should you require further information on this process, please contact PROW@westsussex.gov.uk.

4. Network Improvements and Enhancements

4.1 Larger developments may have a significant impact on the immediate and surrounding rights of way network, particularly when they provide safe off-road alternatives to nearby schools, leisure facilities and important public amenities.

4.2 In these circumstances, paths may need to be improved to cope with the increased use or possibly, upgraded in status to accommodate the potential user. Below is a list of do's and don'ts when considering improvements.

Do	Don't
Discuss your proposals with the Rights of Way Team at WSCC	Simply incorporate PROWs into estate roads or adopted footways
Deal with public rights of way at the early stages to avoid delays at a later stage	Confine the PROW between hard boundaries such as tall fences and walls
Seek to retain the existing definitive line of the PROW where possible	Install new structures/start work/make changes to the surfaces without consulting WSCC first
Consider introducing additional rights such as bridleway rights over a footpath	Unofficially close a PROW while development is taking place
Consult with the community / relevant amenity groups on any PROW proposals	Assume an order under Section 257 TCPA will be successful

4.3 Network enhancements and improvements are welcomed and may, where appropriate be secured by way of a planning condition or obligation under a Section 106 TCPA.

4.4 It is important to note that any legal change in status requires the landowner to enter into a legal agreement with the County Council. Such changes can be by way of a formal dedication or permissive agreement permitting use of a path by certain users. In both scenarios, evidence of ownership will need to be provided.

4.5 Formal dedication of a right of way, or additional rights over an existing right of way are achieved under Section 25 Highways Act 1980. Under these provisions, the County Council can enter into a formal agreement with anyone having the necessary capacity to dedicate. This means the freehold owner. Rights of Way dedicated to the public under Section 25 Highways Act 1980 exist in perpetuity and can only be removed by way of

a formal legal order. Upon dedication, they also become maintainable at the public expense.

- 4.6 Permissive paths are routes which a landowner has consented for use by the public. Consent can be given by way of a formal agreement with the County Council, allowing use initially for a specified period (usually a minimum of 10 years). An owner may also permit by agreement the exercise of additional rights (e.g. to allow cycling on a public footpath). Alternatively, an owner may simply allow the public to use a route on their land without any formal record and this consent can be withdrawn at any time.
- 4.7 The County Council as Highway Authority are only responsible for the maintenance of a permissive path where there is a formal agreement in place.
- 4.8 Please note that no works to improve a public right of way may be carried out without prior consultation and approval by the Public Rights of Way Team. Should you wish to discuss any works to an existing or proposed path, please contact the public rights of way team using the contact details on page 9. Further details on standards and specifications can be found below.

5. Government Advice and Planning Considerations

Public rights of way are a material consideration in the determination of planning applications

5.1 National Planning Policy Framework (para 100)

“Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”

5.2 Defra Rights of Way Circular (1/09) Version 2, para 7.8, Department for Environment Food & Rural Affairs, 2009

“In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

6. Standards and Specifications

- 6.1 In this section you will find details of the County Council’s standard specifications regarding width, surfaces and structures for public rights of way.

- 6.2 The construction and surface of a right of way within a development must be carried out to a standard that is acceptable to the County Council as highway authority. Full details of the construction and surface must be provided in advance of the works being carried out and must not commence until approval of the proposal has been given. Standard surface specifications for a footpath and bridleway are attached at annexes 1 and 2.
- 6.3 The specifications provided are an initial guide as to what we would expect to see. However it may be the case that these are not suitable for all locations and site circumstances. Any departure from this must be discussed and approved by the Rights of Way Team prior to implementation.

Widths

- 6.4 Below are the minimum path widths we would expect for a right of way created under a diversion order.

Path type	Minimum width
Footpath	2 metres
Bridleway	3 metres
Restricted byway	4 metres
Shared used route	4 metres

- 6.5 It is important to note that each proposal will be assessed on a case-by-case basis. When assessing the width and surface finish of any proposed path, consideration will be given to the individual circumstances surrounding each proposal.
- 6.6 As mentioned above, there is no standard width for existing rights of way.

Structures

- 6.7 The introduction of gates and stiles on the network is generally not acceptable. It is our aim to provide as open and accessible rights of way network as possible. We therefore welcome removal of old structures which are no longer necessary.
- 6.8 If it is considered necessary to introduce a new structure, [applications](#) can be made online.
- 6.9 Applications will be assessed against the following enabling legislation and will only be considered in exceptional circumstances.
- i. Section 147 of the Highways Act 1980 - to ensure the use of the land for agriculture can be efficiently continued by preventing the access of animals
 - ii. Section 115B and 115E of the Highways Act 1980 – to apply for permission to place structures or objects on a footpath, bridleway or restricted byway to enhance the amenity or provide a service for public benefit.

6.10 Further details on [adding a structure to a public right of way](#) can be found online.

7. Key points to note

Access

- 7.1 Access along a public right of way by contractors' vehicles, deliveries or plant is only lawful if they can prove it has a vehicular right; without this an offence under the Road Traffic Act 1988 section 34(1) is committed. There is no automatic right to drive a vehicle along a public right of way for the purpose of reaching a development site.
- 7.2 Public access rights take precedence over any proven private access rights. Where a public right of way runs along a route also used for private access purposes, this shared use has the potential for accident or injury. Developers must consider how access is managed so the public is not endangered or inconvenienced.
- 7.3 It is important to ensure that safe access to the public rights of way network is maintained at all times throughout the duration of a development. If it is not possible to ensure the safety of the public through effective health and safety practices you will need to apply for a temporary path closure. More details can be found below.
- 7.4 Before carrying out any alteration to, or replacement of the existing boundary with the public right of way, or the erection of new fence lines, please contact the Public Rights of Way Team to ensure the legal width of the path is not reduced and there is no unlawful encroachment.
- 7.5 If the development proposes shared use of a public right of way with vehicles or introduces a vehicle crossing point of a public right of way this could result in an increased risk of accident or injury to the public right of way user. It is highly recommended that appropriate signage is used to advise vehicle drivers of the hazard and to act responsibly.

Drainage

- 7.6 Where the ground levels adjacent to the public right of way are to be raised above existing ground levels, this could increase the potential to flood the path. A suitable drainage system must be installed adjacent to the path to a specification agreed with the public rights of way team prior to development commencing.
- 7.7 Any down pipes or soakaways associated with the development should discharge into an existing or new drainage system and away from the surface of the right of way. No drainage system is to be installed through the surface of the path without the prior consent of the County Council.

Temporary Closures

- 7.8 A public right of way crossing a development site may be temporarily closed to protect public safety whilst works take place. Once the works are

complete the public right of way will need to be re-opened and any disruption or damage to the surface made good.

7.9 In cases where a Section 257 TCPA Order is proposed, the County Council will not grant a temporary path closure as a precursor to a made and confirmed order. Applications to temporarily close a path will only be considered once an order under S257 TCPA is capable of confirmation

7.10 Temporary closures require the following notice periods:

- Up to 21 days closure - 6 weeks' notice
- Up to 6 months closure - 8-10 weeks' notice

7.11 [Applications for temporary closures](#) can be made online.

8. Key contacts

Planning and Rights of Way team:

Contact: PROW@westsussex.gov.uk

Advise on:

- Early engagement with the relevant Rights of Way Access Ranger to discuss paths identified within a development site
- Details regarding TTROs
- Interaction between the LPA and WSCC as part of the S257 TCPA process

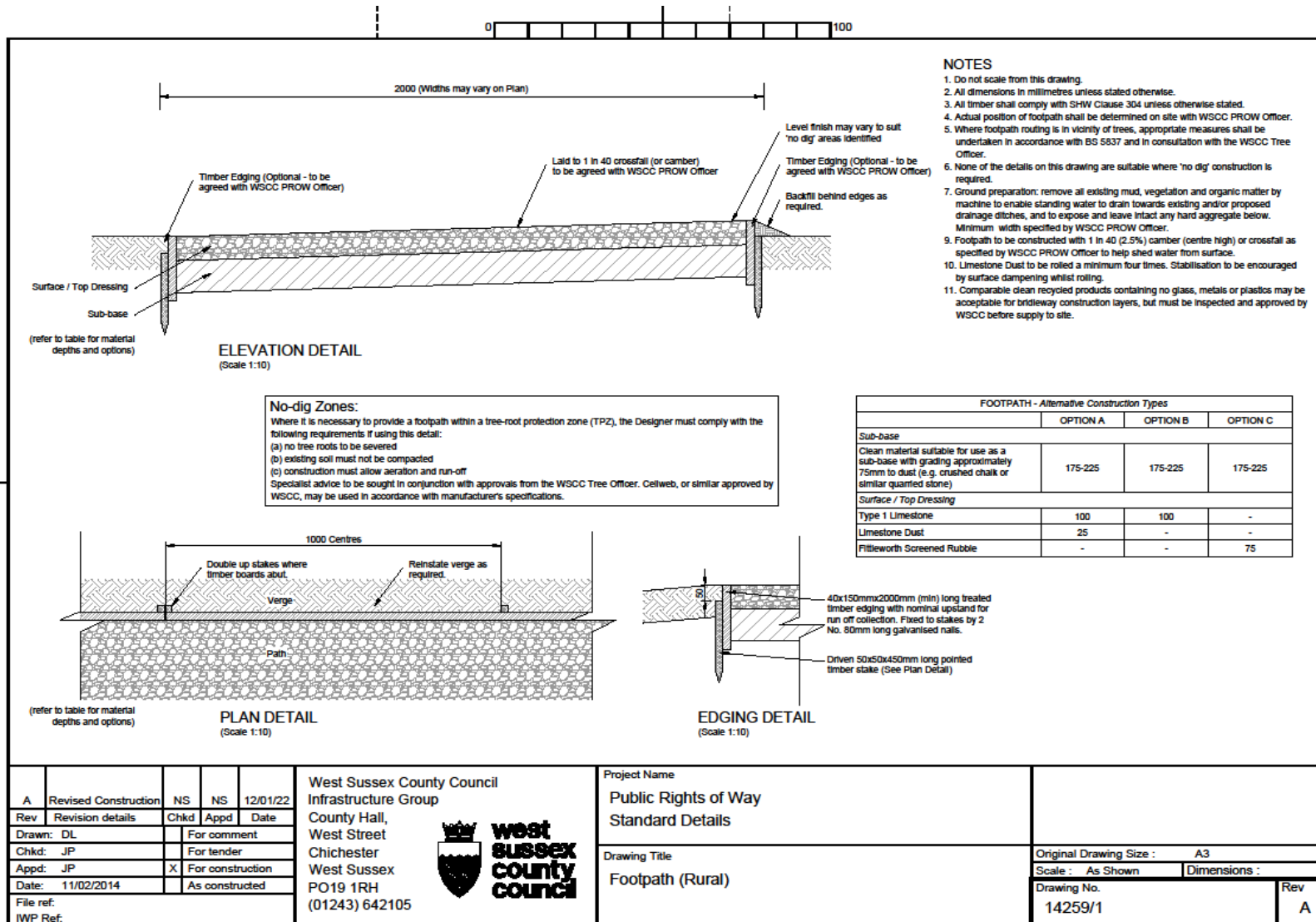
Legal Services team:

Contact: Legal.services@westsussex.gov.uk

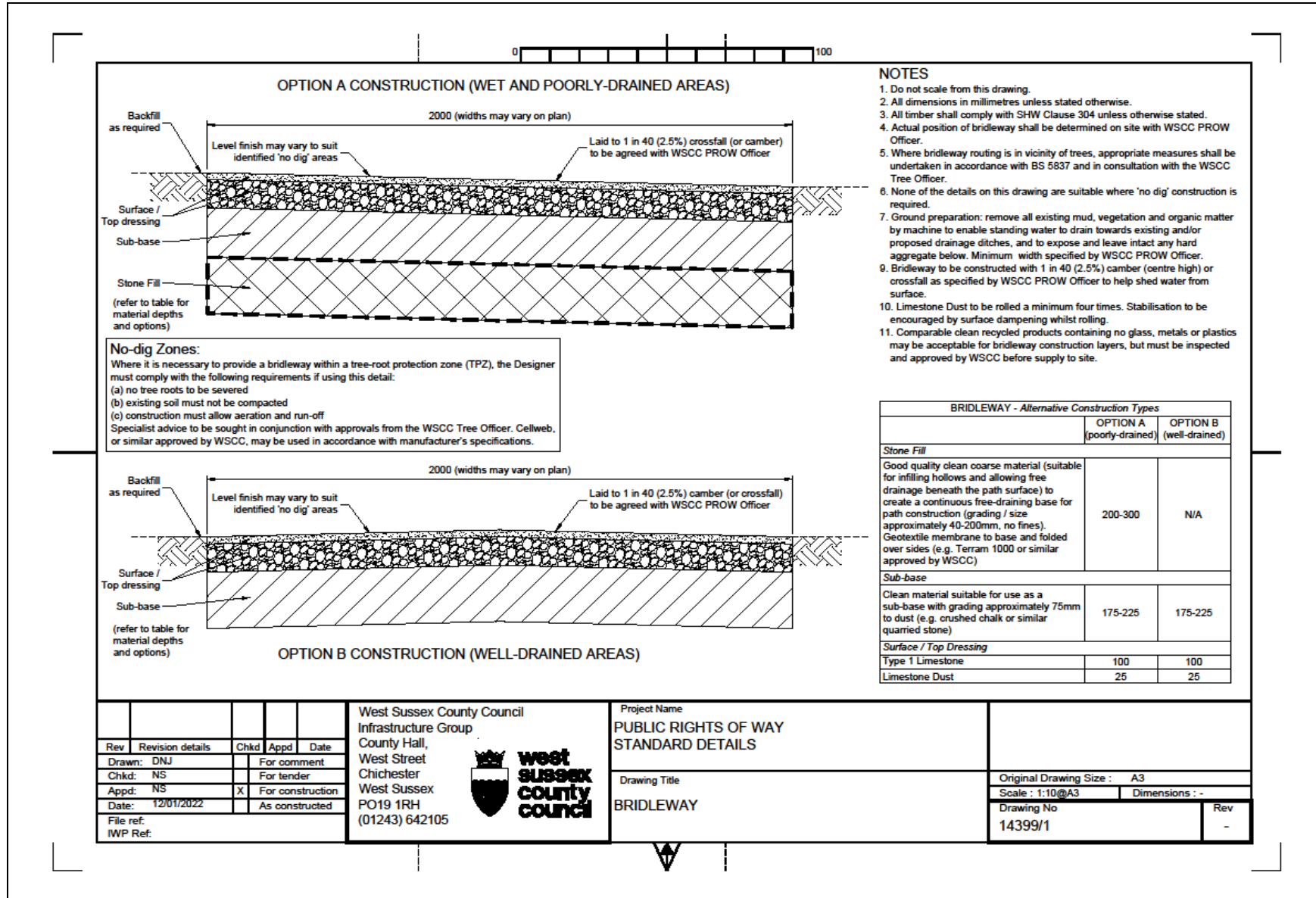
Advise on:

- Provide extracts from the Definitive Map and Statement

Annex 1: Standard Footpath Specification




Annex 2: Standard Bridleway Specification



Rev	Revision details	Chkd	Appd	Date
Drawn:	DNJ			For comment
Chkd:	NS			For tender
Appd:	NS	X		For construction
Date:	12/01/2022			As constructed
File ref:				
IWP Ref:				

West Sussex County Council
Infrastructure Group
County Hall,
West Street
Chichester
West Sussex
PO19 1RH
(01243) 642105



Project Name
**PUBLIC RIGHTS OF WAY
STANDARD DETAILS**

Drawing Title
BRIDLEWAY

Original Drawing Size : A3	
Scale : 1:10@A3	Dimensions : -
Drawing No 14399/1	Rev -