

Chapter 6

Desire Lines*

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Abstract

Desire lines occur wherever we find human and animal movement. Desire lines dissect the planned spaces of Milton Keynes and have done since its creation 50 years ago, and they will continue to show us how people use, abuse, and manipulate the spaces of Milton Keynes long into the future. Accompanying Robert Herian's chapter is a short video installation¹ bringing together local council planning documentation, bureaucratic theory, personal accounts, storytelling, photography, and music to describe the nature and power of desire lines in our lives and imaginations.

1. First impressions

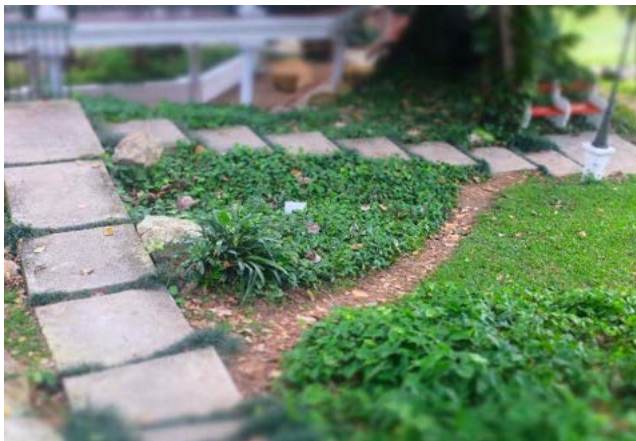


Figure 1: Just that bit quicker! Image by Robert Herian

You will probably use a desire line in your life or already rely on one to make a habitual journey on foot or bicycle just that bit quicker. At the very least you will have seen these lines criss-crossing the grass of a local park between 'formal' pathways or bisecting a verge by the side of a main road to give the user a more direct route to the other side. A desire line is an *informal path* that enables a *direct journey*, what we might also call a *short-cut* or in some circumstances a *detour*. As well-trodden pathways, desire lines imply a wish for *straightforwardness* and greater *efficiency* than planned spaces provide. However, desire lines are more sophisticated and nuanced than this,

and calling them "short-cuts" or a more efficient means of getting from A to B does not fully explain what they are or how, why and when they appear as they do in the landscapes.

* This Chapter came out of the project, Desire Lines, by Dr Robert Herian and the artist Lucy Atherton. For more information on Lucy's work see: <www.lucyatherton.com>.

¹ To see the short video installation please visit: <http://www.open.ac.uk/blogs/50YearsOfLaw/?p=73>. This page is part of our 50 Years of Law blog, where we showcase this and other research from the Law School. Please visit the page <http://www.open.ac.uk/blogs/50YearsOfLaw/> to find out more and join the discussion..

Pathways are physical *impressions* left on a landscape by moving bodies, someone walking, riding a bike or horse for example. We can equally interpret desire lines as social, political, cultural, ecological, psychological, legal and economic *forms, expressions* or *representations* made by individuals and communities. Often, they are a combination of these. This makes desire lines complex *phenomena* capable of showing us something not only about the way we (individuals or communities) leave our mark on landscapes, but how we *experience* and *belong* (live, work, enjoy leisure time) in a landscape both consciously and unconsciously. What we think of as our *desire* is unknown to us, as Sigmund Freud described, because it is beyond conscious knowledge and understanding. When we apply Freud's reasoning to the "desire" in "desire lines", therefore, we find veiled meaning and hidden truths in the pathways we use.

The aim of this Chapter is to critically evaluate the phenomena of desire lines from a variety of perspectives. By exploring what lies behind or beneath desire lines, the aim is to reveal meanings that all too often go unseen in the landscape, and in communities, societies, even the world, in which we live. As a lawyer, I'm keen to explore the way desire lines embody but also resist and disregard laws and social norms. Law does not exist in a vacuum, and we should always see it *in context*. As Baroness Hale famously declared: 'In law, "context is everything"'². To appreciate the relationship between law and desire lines means appreciating the dialogue between law and the contexts in which law operates. Understanding law in this way shows us something's ultimate legal character, even a humble pathway. There's a lot of ground to cover, so let's get started.

2. (In)formal Pathways

As "informal" pathways, desire lines offer alternatives to existing ways within normative and usually highly planned spaces such as housing estates, town centres, or public parks. The distinction may seem straightforward, but it is important to understand, precisely, what makes a pathway either "formal" or "informal". There are two obvious examples of formal pathways, both of which are defined by the *Highways Act 1980*: footways (pavements or sidewalks) and footpaths³. We find both in urban and rural landscapes and make up the wider highway network.

² *Stack v Dowden* [2007] UKHL 17, 69.

³ *Highways Act 1980*, s 329(1): "footpath" means a highway over which the public have a right of way on foot only, not being a footway; "footway" means 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.



Figure 2: Footpath & Footway. Images by Robert Herian

Of the two perhaps public footpaths, especially in the countryside, seem less planned than their asphalt counterparts, pavements. Yet, both show human ingenuity in planning routes and journeys that inscribe the physical landscape, while creating *rights of way* that describe legal character within the landscape. For good or ill, and like writing on a page, pathways tell stories of movement through traces that begin tentatively (informally) but inevitably become fixed and formal. The formalization of pathways is described in law by the establishment of rights of way:

The most common way that rights of way come into existence is by presumed dedication. There is a long established principle that extensive use by the public without challenge can provide evidence that the landowner intended to dedicate the used route as a public right of way. Presumed dedication can take place by common law or statute law. Statute law requires a period of use of 20 years from the point the use of the path is questioned. Common law dedication may require less time⁴.

⁴ Emma Downing. 'Establishing in a Right of Way' (*House of Commons Library* 2011) <<https://researchbriefings.files.parliament.uk/documents/SN06026/SN06026.pdf>> accessed 13 May 2019.



Figure 3: *Enjoy the land!* Image by Robert Herian

Establishing and importantly also formally recording rights of way, on an Ordnance Survey map, for example, has long been important to ramblers and those who enjoy walking in the countryside. Accurate knowledge of rights of way opens the countryside for exploration. It would be too much of a distraction to talk in depth here about property law. But, worth briefly noting is that, whilst we might commonly think of “property” as a physical thing such as a car or a piece of land, the law regards it instead as a *bundle of rights*. Among these rights is the right to exclude, which, in land, means the right to stop people from entering (trespassing) or crossing privately owned land. One reason a right of way is significant, therefore, is because it represents a compromise between owners

and non-owners within the context of a broader private property regime. While the right to exclude absolutely might be preferable economically (it can secure and maintain land value for example, e.g. in cases of so-called “land-banking”), from the point of view of social and what we might also call *spatial* justice, including giving people a reasonable opportunity to explore and enjoy their environment, rights of way are a precious if limited sharing of space.



Figure 4: *Disciplining movement.* Image by Lucy Atherton

Wherever we turn in towns, cities and the countryside, we must negotiate planned spaces that, even when thought of as “public” like a canal path for example, are in fact shaped by private ownership and the rights that ownership entail. Formal pathways are just one example of how planning rules and norms overseen by private property law and a variety of other regulations govern and discipline movement. Signs and defensive architecture, like the barriers and fences in figure 4, with pathways, channel movement and ensure walkers and other users of the pathways stay on the right path, so to speak. Formal paths, in this sense, are thick with metaphor but also reflect contemporary bureaucratic concerns to manage demands for efficiency and mitigate

risk. The aim is to ensure, as far as possible, control over and predictability of individual and collective movement. Whilst the likelihood of injury or death to occur if the mix between cars and pedestrians is not planned for or managed properly suggests some bureaucracy is a good thing, the notion that one is not fully in control of where or how one moves through the landscape (the essence of being governed and disciplined) is more jarring to our sense of self. For Michel Foucault, for example, the governance and discipline of movement is one element that produces ‘docile bodies’. The individual body becomes an element that others may place, move, or articulate: ‘Its bravery or its strength are no longer the principal variables that define it; but the place it occupies, the interval it covers, the regularity, the good order according to which it operates its movements’⁵.

⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan trn, Penguin 1991) 164.



Figure 4: The "Official Route". Image by Robert Herian

It is often useful to be told which way to go. A well-worn path and clear signs that point the way make life easier, require less self-planning or initiative, and make the experience of a journey less stressful. Many of us probably accepted long ago, without even really noticing, complacency towards planned space that makes us easily annoyed when we lose the path. Re-tracing your steps is time consuming and can take you in the wrong direction after all. Through a bureaucratic lens, losing the pathway has a negative impact on efficiency, so we must require more planning.

The idea of stepping off or leaving the beaten track may be romantic or fill us with a gratifying sense of mischief. As alternatives to the norm, desire lines are manifestations of a type of rejection of formality and thus also an attempt to reject the discipline that accompanies it. Yet we all eventually fall back into line, return to the paths we *should* be on, don't we? Desire lines exist only to bring points of formality closer together, not to undo or destroy formality, or postpone it indefinitely. When we stop to think about this, of course, the very idea of leaving the beaten track, romantic or not, means nothing without having a beaten track to begin with. Law clearly makes distinctions between formal and informal pathways, but as the title of this section implies, what is formal is always already (in)formal. Informality breeds formality, and informal ways, in turn, are re-found in formal, planned spaces. All pathways intertwine to produce what Michel de Certeau calls 'a rhetoric of walking':



Figure 5: The Efficient Route. Image by Robert Herian

Walking affirms, suspects, tries out, transgresses, respects, etc., the trajectories it "speaks". All the modalities sing a part in this chorus, changing from step to step, stepping in through proportions, sequences, and intensities which vary according to the time, the path taken and the walker. These enunciatory operations are of an unlimited diversity. They therefore cannot be reduced to their graphic trail⁶.

Well-known sayings such "off the beaten track" or "off-piste" describe something like the deviation from the normal way of doing things (the formal path) that desire lines culturally represent. "Cutting corners" is another well-known saying usually used to describe someone who has performed a job or task poorly or cheaply, perhaps also with a lack of attention to detail or even illegally. To cut corners is a pejorative term not used to describe a person who has been well meaning in striving for efficiency but excessive in their stinginess, perhaps even reckless or negligent. Yet, a desire line that "cuts corners" is the best and, perhaps, the only authentic kind of desire line there is.

⁶ Michel de Certeau, *The Practice of Everyday Life* (Steven Rendall trn, University of California Press 1984) 99.

3. Auditing a Landscape: The Public Park

How do law and legal norms shape space and the way bodies experience and move through it? Bodies can respect, defy and resist laws, but never disregard them. As a strategy for the coming day, we intertwine the political with law in accounts of property, spatial justice, and the negotiations of socialized bodies, each with desires, demands, anxieties and frustrations. Recognizing points in which law and bodies meet in space in subservience to (or the creation of) norms is difficult, however. Law, all too often, is invisible, unconscious, missed. A desire line across a local park represents combinations of *forms* and *expressions*. Using an image of a typical park, like the one in *figure 7*, we can audit the space for its material and symbolic content to examine these forms and expressions.



Figure 6: "Desire line" by Eric Fischer is licensed under CC BY 2.0

Based on the line of sight in *figure 7*, we see the desire line cutting straight-though into the distance, along a path that deliberately bisects and rejects the planned order. Just because it rejects the planned order does not mean those who use it will avoid the discipline imposed by the space (the park) as a whole, however. We can assume the goal for most users is to proceed more directly and quickly than meandering around the formal path and this use of space, even in its relative informality, describes discipline. We can, for example, imagine users of the park who may choose to walk the desire line, some to increase their efficiency in terms of time, energy and so on, but for others this may only be a second-order consideration:

- Someone rushing through the park to reach the station for the morning train to work: if he misses the train today, he may lose his job.

- Someone jogging to get fit after a long period of recuperation following a hip operation: she knows the more exercise she does, the quicker her recovery will be, but the shorter route is just that bit easier.
- Someone walking their dog: they use the desire line out of habit because the dog always goes that way.
- Someone taking their child to school: they wouldn't normally walk through the park, but it's a sunny day and they like to spot birds.
- Someone working as a bicycle courier: she isn't meant to ride through the park but will get a bonus if the delivery is quicker than promised.

Parks are public spaces in the sense that anyone is free to use one for recreation or, perhaps, as a more pleasant route to avoid pedestrian traffic and busy roads. Because we call a park "public", however, does not mean people can do as they please there day or night. This might mean, for example, closing park gates each evening to prevent entry after a set time. Locking the gates on a park touches on several social policy issues, including those relating to rough sleepers and the homeless prevented from using the space after it is "closed to the public".

Section 3 of the *Vagrancy Act 1824*, for example, describes as an offence an 'idle and disorderly person' 'wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms'. More recently the government *Rough Sleeping Strategy* describes people sleeping rough as: 'People sleeping, about to bed down (sitting on/in or standing next to their bedding) or actually bedded down in the open air (such as on the streets, in tents, doorways, parks, bus shelters or encampments)'⁷.

Based on this single example, we can see that, while parks are public the space is *governed, regulated, and managed* under the direct control of a council (county, district or borough) or some other authority that has a legal power to exclude and prevent entry. The first element of our audit, therefore, identifies the park as public yet not an entirely open or free space. It is a *qualified* space, meaning public movement and occupation are limited and constrained. Parks are *highly planned* spaces with boundaries defined by a wall or fence. Within the boundary the landscape is designed or shaped over time to satisfy community welfare and health concerns (we may refer to a park as 'the lungs of a city'), and broader philosophical and aesthetic ideals of nature, beauty, and escape. The planned landscape also provides and guarantees access, and, importantly, manage how people move around and (temporarily) stop and spend time in the park.

As *figure 7* shows, park planning includes benches for stopping and resting, and for contemplation of the surroundings (trees, flowers, birds etc.). Bench design such as those with fixed armrests explicitly prevent repose (lying down), however, thus discouraging rough sleepers from using them. This is one example of how planned spaces, such as parks, are *governed, regulated, and managed* spaces that make use of *defensive architecture* and *obstacles* to *discipline* those who inhabit them, often using subtle but effective methods. As Naomi Smith and Peter Walters suggest: 'defensive architecture seeks to discipline 'undesirables' by designing against alternative uses [...] with the explicit purpose of excluding from public space those engaged in unsanctioned or undesired behaviours'⁸.

⁷ Ministry of Housing, Communities & Local Government, *Rough Sleeping Strategy*, (2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733421/Rough-Sleeping-Strategy_WEB.pdf> accessed 11 May 2019.

⁸ Naomi Smith and Peter Walters 'Desire Lines and Defensive Architecture in Modern Urban Environments' (2018) 55(13) *Urban Studies*, 2982.

Other than benches, the planned park in *figure 7* has well-tended green spaces around which wrap a uniform network of pathways that lead the walker in a defined and ‘disciplined’ manner. It doesn’t appear to be the case in our present example, but some planned spaces with green space, such as a well-manicured lawn for example, will request walkers stay on the path by asking, often politely, to “please keep off the grass”. This raises a further interesting point about the role of discipline in the governance of public spaces. While the sign politely states “please keep off the grass”, the likelihood of receiving a formal legal sanction or punishment as imprisonment or a fine should you decide to ignore the sign is very unlikely. Instead, the sign relies on extra-legal principles and rules of conduct such as common sense and good manners. The aim, simply, is to ask politely and expect this to be respected.



Figure 7: "welcome" by Laura Billings is licensed under CC BY-NC 2.0

We find many signs in a park, not just ones telling us to keep off the grass, and each plays a role in directing both movement and behaviour. To protect themselves against liability for accidents and claims of negligence, park authorities often deploy signs warning of hazards such as hidden steps or steep slopes. In most cases signs have no legal force, nor are they supposed or intended to. For instance, there is nothing overtly legal about a sign telling you where the public toilets are. Yet, where the toilets are in the park (whether there are toilets at all) and how you are directed to them is part of the planning and has a disciplinary effect. Park planning may deliberately lead people to key points of cultural or economic interest and consumption, including strategically placed sculptures or a café and shop. This form of discipline has no obvious legal character. Instead, the design encourages park users to consume what the park offers, so to speak, to linger in the space for longer, enjoy the opportunity to relax and to do so, preferably, with a drink purchased from the café.

Increasingly parks, especially those in cities, have CCTV to monitor activity, including who comes and goes and at what time of the day (or night). Along with signage, CCTV and other more traditional means of surveillance including park wardens, gardeners or groundskeepers, further reveal that the implied freedom and openness of parks as public space is always qualified. To use or move through the park is to find oneself disciplined into meeting certain agreed standards of behaviour, and increasingly to be watched to ensure that we meet these standards. We should remember that discipline of this sort is not necessarily a bad thing, however. We might argue, for instance, that being part of a community requires a person to accept agreed norms and values of conduct and behaviour. Adherence to a social contract ensures, to a large extent at least, that everyone has an equal opportunity to enjoy the park, and the price of safeguarding this enjoyment is accepting some discipline and surveillance.

I have already described how design steers people through the park in a manner planned for using signs and other disciplinary and defensive architecture such as a pond or lake, fencing or bollards. Formal pathways, such as the tarmacked one’s in *figure 7*, are channels that carry a person either through the park (from an entrance to an exit), or to a defined destination within it, the café for example. They encourage staying on formal pathways, as the “please keep off the grass” signs attest. But park users always try to bend the space to meet their wishes and demands. Discipline, therefore, acts to contain and shape desire between park planners, authorities and users.



Figure 8: Desire Line in Manchester. Image by Robert Herian

The materiality of the pathway plays an important role in encouraging us to use it rather than not. Walking on an asphalt or tarmac pathway is arguably preferable to the mud of an informal pathway or the wet grass. This isn't only a question of a discipline as we have described it so far, therefore, but concerns a whole array of other "civilizing" criteria adopted by societies in which bureaucratic efficiency and maintaining economic viability in all walks of life is the absolute aim. As Tim Ingold says, 'In modern societies, it seems, straightness has come to

epitomize not only rational thought and disputation but also values of civility and moral rectitude'⁹ On Ingold's terms, therefore, the use of informal paths is a means of bending the straightness of rational or bureaucratic thought. Informal paths do *queer* planned space by challenging what we call "traditional" both in terms of property and space, or exclusive terrain¹⁰.

The decision not to use pathways provided but seek alternative (queer) routes brings us back to the subject of desire lines. *Figure 9* illustrates the basic and practical function of a desire line: to enable a journey that is direct. To achieve this goal requires the creation, usually by the erosion of the land under many footsteps, of a pathway that bisects an existing planned route. The direct nature of desire lines means they do most times improve efficiency. In *figures 7 and 9* we see common types of desire line that cut the corners of planned space and provide a more efficient route. If two people were to set off at the same time and at the same speed, one using the formal path, the other the desire line, the person using the desire line would (presumably) arrive first having covered the least distance to get there. It would also save energy for the one who used the desire line because of the marginal gain in distance leading to less effort, therefore, providing greater efficiency.

If we consider a person whose income is based on getting from point A to point B in the shortest time possible, a bicycle courier for instance, then desire lines quickly reveal the economics in their use. Similarly, a person crossing not a busy junction to the shop where they buy their lunch every day may well habitually take a more direct line to get there to maximise the amount of break time they have. This latter example may not result in the formation of a physical line in the landscape, but is the essence of a desire line as pure demand for efficiency.

⁹ Tim Ingold, *Lines: A Brief History* (Routledge 2016) 5.

¹⁰ Margaret Davies, 'Queer Property, Queer Persons: Self-Ownership and Beyond' (1999) 8 *Social and Legal Studies* 330.

So, whilst the lure of the smooth tarmac may be enough to encourage some people to stay on the formal, planned pathway, there are several plausible efficiency gains from choosing the desire line, even if this means suffering some inconvenience (muddy shoes) or discomfort (a bumpy ride on a bike). Desire lines can also carry risk associated with their use, which takes a variety of forms. For example, the terrain that the desire line crosses may be significantly more hazardous than the route of the formal path, this may be because of a steep incline for example, or because it leads to a road crossing away from a formal pedestrian crossing. In both cases the person using the desire line may save time, energy and perhaps even money, but they also risk injury or death.

Some desire lines are longer than others, yet all achieve the same basic goal of conjoining formal routes within planned space. Desire lines are often “straighter” than what they offer an alternative to, and to construe them as a rejection of straightness, as Ingold describes it, is not entirely accurate. What might have first appeared as the queering of space is in fact the opposite: the collective effort of individuals to improve the efficiency of planned space. This makes desire lines channels of *hyper* efficiency, and to use them is an act of demanding greater efficiency from oneself, to self-discipline and self-govern under socioeconomic norms and values.

Roads made using tarmac provide comfortable, safer, and above all more efficient journeys in terms of fuel (energy expenditure) and speed (time, money). We could argue, all movement involves the need to improve (economic) efficiencies. To be complicit in this is not always to recognise oneself as an economic subject shaped for better economic efficiency. This truth escapes many people day-to-day. Instead, we act out unconsciously movements that take us in that same direction, along the same pathways and highways every day.

Looking at the path in *figure 7* we might say that all these efficiency gains we have discussed would be modest. The distance isn't far, and the savings made not all that great. And yet, its well-worn appearance tells us that people continue to use it regularly, almost to where we can say it is now the *de facto* formal path rather than an alternative or detour. As we saw in the earlier section, looking at the transition of informal pathways to formal pathways, we can see that how desire lines end up shaping the planned landscape is not new. Instead, it holds a firm place in planning orthodoxy, especially concerned with demands to increase efficiency. As at Ohio State University, where the transformation of the landscape by desire lines is obvious, and incorporating them into the planned space was the only realistic option. In our park the desire line may eventually be formalized, may become another of the planned routes. Albeit a formal path that memorializes the failure of planning either to predict user behaviour or maintain discipline.

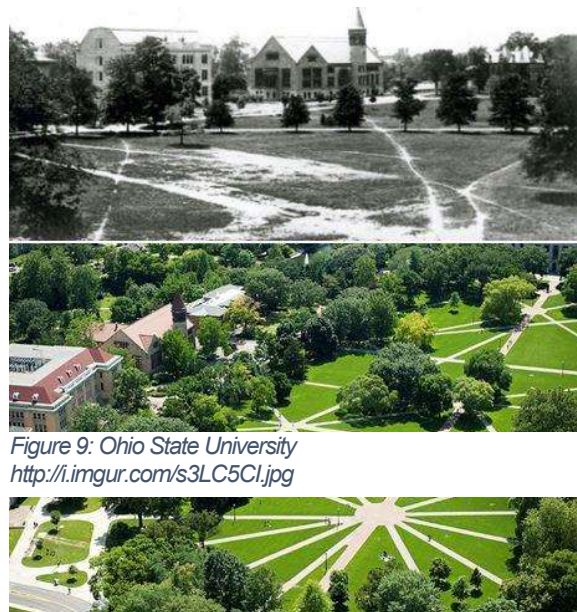


Figure 9: Ohio State University
<http://i.imgur.com/s3LC5Cl.jpg>

4. Two Legal Impressions

The two legal cases that follow describe the law's approach to and interpretation of desire lines and informal pathways predominately in terms of negligence¹¹. There is no need to offer a great deal of commentary around the two cases as the facts speak for themselves, and will reflect upon, I hope, the discussion so far. Significant in both cases is that the informal pathways described intertwine with effects. Both cases offer an intimate glimpse into the relationship, as a point of traumatic recognition, between a path and its user.

If desire lines show a user's commitment to efficiency, a matter that both cases touch on, it can equally be said that in creating and adding to desire lines a user who leaves their mark on the landscape is seeking recognition from others by doing so; a simple statement that "I was here". Recognition is the foundation of Hegel's understanding of desire, as Alexander Kojève explains:

Desire is shown to be distinctively human when it is directed either toward another desire, or to an object which is 'perfectly useless from the biological point of view ... Desire is human only if the one desires, not the body, but the Desire of the other ... that is to say, if he wants to be 'desired' or 'loved', or, rather, 'recognised' in his human value ... In other words, all human, anthropogenetic Desire... is, finally, a function of the desire for 'recognition'¹².

In the following two cases, recognition is not expressly apparent in using informal paths by the claimants (the injured parties), but comes later in court, from a judge whom claimants hope will award compensation for negligence. Yet this type of recognition remains a desire tied to the recognition of others. It follows the same path.

4.1 Case I: Slopes & Moats – *Taylor v English Heritage*¹³



Figure 10: Carisbrooke Castle. Image by Steve Gascoigne, Available Light Photography

Mr Taylor, in his 60s, was visiting Carisbrooke Castle in the Isle of Wight with his wife and grandchild. He had been on an elevated cannon firing platform. Below the platform was a grass pathway at the base of a steep slope. There was also an informal path down the slope from the platform to the pathway and at the other side, beyond a wall, was a moat. He set off down the informal path but fell across the pathway, over the wall and into the moat suffering a serious head injury. He claimed English Heritage were in breach of their duties under s.2 *Occupiers Liability Act 1957* for failing to take reasonable steps to ensure his safety.

¹¹ For present purposes, *Halsbury's Law of England* describe negligence as a "notional duty to take care" and: a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all.

¹² Alexander Kojève, *Introduction to the Reading of Hegel* (Allan Bloom ed., James H. Nichols, Jr trs., Basic Books 1969) 6.

¹³ [2016] EWCA Civ 448.

In the case the Recorder dealt with a key issue of causation, in which it was stated that: “Being the person that he is, a man who has engaged in *responsible, rational and methodical* activities all his life, I consider it unlikely that Mr Taylor would have stood up on that slope as he went down the informal path if he had known of the existence of the sheer drop. I conclude, on the balance of probabilities, that he did not, and hence that the defendant’s breach of duty in failing to provide adequate warning of the sheer drop was causative of his accident.” [emphasis added]¹⁴

The Recorder also dealt with the matter of contributory negligence: “As the bank is sufficiently steep for there to be a risk of injury, even if the sheer drop had not been there, had any person attempted to negotiate the informal path, or part of it, whilst standing, I consider that there is a considerable degree of contributory negligence in this case. Mr Taylor, even if he was not aware of the sheer drop (as I have found he was not) must have been aware as he stood on the artillery platform and looked down, just how steep the bank was, and, accordingly, the appropriate assessment of contributory negligence is that he was fifty per cent to blame for his accident”¹⁵.

In his case study examining the incident, Mark Daniels concluded that:

‘The steep ‘desire line’ path is a key element in this. If descending by this route, it would be difficult to control the rate of descent, and the overrun at the bottom could easily take a person across the grass pathway and over the edge into the moat. There were other informal and less steep pathways off the bastion, and one solution would be to manage visitor access by making one of these a more obvious route for descent to the grass pathway, and blocking off the steep desire line until grass could regrow. A person making a controlled descent on a gently inclined path would arrive on the grass pathway and have time to appreciate the hazard of the vertical drop into the moat’¹⁶.

4.2 Case II: Louise Byrne’s Ankle - *Byrne v Ardenheath Company Ltd*¹⁷



Figure 11: Mountview Shopping Centre. Source: Google Maps

On 25th February 2016 the Irish Times reported the following story:

A woman has been awarded €75,000 damages at the High Court after she slipped and broke her ankle when crossing a grassy embankment to leave a shopping centre car park. Louise Byrne (48), Parslickstown Avenue, Mulhuddart, Dublin, sued Ardenheath Company and Ardenheath Management

Company, owners and operators of the Mountview Shopping Centre, Blanchardstown, Dublin. The accident happened on December 20th, 2012, after Ms Byrne, an information officer, had parked her car and was crossing the embankment which she claimed was slippery and dangerous¹⁸.

¹⁴ [2016] EWCA Civ 448 41.

¹⁵ [2016] EWCA Civ 448 42.

¹⁶ Mark Daniels, ‘Case Study: English Heritage v Taylor – Court of Appeal’ (25th April 2016) <<https://www.historichouses.org/uploads/assets/uploaded/daddadfe-7375-4868-918108d2cea8a1fb.pdf>> accessed 13 May 2019.

¹⁷ [2017] IECA 293

¹⁸ ‘Court awards woman who broke ankle in fall €75,000’ (*Irish Times*, 25 February 2016) <<https://www.irishtimes.com/news/crime-and-law/courts/high-court/court-awards-woman-who-broke-ankle-in-fall-75-000-1.2548462>> accessed 13 May 2019.

The judge at trial in the High Court stated the following concerning the location of the accident:

The only designated exit, as I have said, in this instance was a shared vehicular entrance. There was a cutaway as one entered or exited the entrance which could physically accommodate pedestrians, I suppose, but it wasn't marked out, it wasn't indicated as such, and there was no way really of saying that pedestrians were to use that or not. A pedestrian, if one were to be very strict about it, would have to wander down past the entrance and carry on to one of the two pedestrian entrances in the other half, as it were, of the car parking area and then carry on up again. Very often, as we know, people don't do that, people will take shortcuts, as is evident from the photographs. People were taking shortcuts all over the place in this area because that's what people do and that's why people have to be given the choice. But were they given an appropriate choice in this case?

When Louise Byrne's case came to Appeal, however, the Court saw the matter very differently, as the Irish Independent reported:

A €75,000 damages award to a woman who slipped and broke her ankle when walking down a wet grassy slope to leave a Dublin shopping centre car park has been overturned by the Court of Appeal (COA). Ms Justice Mary Irvine ruled the companies which own and operate Mountview Shopping Centre, Blanchardstown, Dublin, had not breached their statutory duty to take reasonable care for the safety of Louise Byrne. *A visitor is expected to take reasonable care for their own safety and if they decide to go down a wet grassy slope in unsuitable footwear instead of using a nearby safe tarmac surfaced entrance, "they will take responsibility for the consequences of that decision", she said.* If an occupier had to provide the type of preventative measures suggested by Ms Byrne's engineer to meet "reasonable care" obligations under the Occupiers Liability Act, such as installing a step with barriers either side of the slope, that would have "potentially significant adverse repercussions" for all who occupy land open to visitors, such as local authorities responsible for many "wonderful open spaces and parks"¹⁹. [emphasis added]

4.3 Last Impressions

We make desire lines on land by our movement, migration, and conveyance through space and time. Invariably, they are deviations from prescribed highways or formal paths. But, as the name suggests, they reflect and embody more than geospatial cuts and erosions linked to a need or demand for speed and efficiency. Desire lines are epistemic, ontological, and imaginary phenomena. Perhaps above all, they are psycho-political *imprimaturs*: modes of resistance, acts of defiance, means of escape. Whether desire lines succeed on these terms is hard to judge, however. My instinct is they don't, because we all return to the formal pathway. The shift in perspective of the planned world that momentary glimpse the desire line offers lives only for as long as the (short) cut allows.

A: Are people always concerned with getting to their destination as quickly as possible?

H: Not necessarily. Although you are in principle looking for abbreviations, they do not always choose the shortest link between the starting point and the destination. Sometimes they also make detours.

A: Because they get lost?

¹⁹ Tim Healy, 'Judge Overturns €75k Award to Woman Who Slipped on Grassy Slope Outside Dublin Shopping Centre' (*Independent.ie* 10 November 2017) <<https://www.independent.ie/irish-news/courts/judge-overturns-75k-award-to-woman-who-slipped-on-grassy-slope-outside-dublin-shopping-centre-36308484.html>> (accessed 13 May 2019).

H: No, for a much more interesting reason: trails have to be entertained as normal ways; if used too seldom, they disappear again under grass and scrub. Therefore, it may be useful if people who start in the same place, but want to [sic] different goals, share a part of the way

A: 'This is inevitably at the expense of a group'.

H: 'Surprisingly no. Trampling trails tend to be fair and all have the same relative detour ... This creates amazing mini-shortcuts, as you can see them in parks, where people prefer to walk four steps through the meadow rather than take a slightly longer path'²⁰.

Private, public and criminal laws inform our relationship to the land and environments in which we live, upon which we build and grow, and across or through which we journey, march, wander, and move. Desire lines are manifestations of a heterogenous and contingent social imaginary at play in these simple acts, translocations, and flows consciously and unconsciously inscribed on the landscapes we inhabit.

In human effort, the only source of energy is desire. It is not in a person's nature to desire what he already has. Desire is a tendency, the start of a movement towards something, towards a point from which one is absent. If, at the very outset, this movement doubles back on itself towards its point of departure, a person turns round and round like a squirrel in a cage or a prisoner in a condemned cell. Constant turning soon produces revulsion²¹.

Discussing the Land Art Movement in the latter half of the 20th Century, Francesco Careri suggests that: '*All this seems like a desire to start all over again from the beginning of the history of the world, to go back to point zero in order to find unitary discipline, in which the art of the Earth was the only means available with which to come to grips with natural space and infinite time*'²² [emphasis added]. Whether users of desire lines consciously appreciate this sense of fundamental being or raw philosophical insight is open to question. I rather fear the economic reason so prevalent in contemporary societies destroys such utopias. Instead, utopias of a different kind and measure are installed, and "unitary discipline" transformed into something bureaucratic and economic. Desire lines today are poetics of longing in bureaucracy, maps of productivity and efficiency, configurations of advancing and overbearing economic motion that no fence can stop.

²⁰ Part of a dialogue between Dr Christian Ankowitsch and Professor Dirk Helbing <<http://www.ankowitsch.de/2010/08/trampelpfade/>> accessed 13 May 2019.

²¹ Simone Weil, 'Prerequisite to Dignity in Labour' in Siân Miles (ed), *An Anthology* (Penguin Classics 2005) 265.

²² Francesco Careri, *Walkscapes: Walking as an Aesthetic Practice* (Culicidae Press 2017) 126.



Figure 12: Avanti! Image by Lucy Atherton