

Public Path Orders

Applications made under the Highways Act 1980

NB, The Highway Authority has a legal duty to keep all Public Rights of Way available to the public. The granting of planning permission DOES NOT give the right to alter, obstruct or move a Public right of Way.

Introduction

Most Public Path Orders are made under Sections 118 (extinguishments) and 119 (diversions) of the Highways Act 1980. In addition, Section 116 may also be used. Anyone can apply for an order under these parts of the Act although the Council would usually require that written agreement of all affected landowners is gained before agreeing to proceed.

What type of order do I need?

It is important that applicants are aware of the relevant criteria for the type of order they are applying for prior to the submission of an application.

Diversion Orders (Section 119 Highways Act 1980)

Diversion orders are used to move a route or part of a route, onto another line.

These orders can be made either in the interests of the owner, lessee or person using the land crossed by the right of way or in the interest of the public. Before making an order, the authority must be satisfied that this test will be met.

The authority must also be satisfied that the diversion order either does not alter any point of termination of the path where that is not on a highway; or that where the path terminates on a highway, it only moves the point of termination to another point on the same highway, or a highway connected to it, which is substantially as convenient to the public.

The Council should also make sure that the route shown in the order as the alternative route is not an existing public right of way.

The authority has the power to require the applicant to cover the costs of the order and the cost of making up the new path, as well as any compensation that may be payable.

When making a diversion order, the Council must also consider:

- How it will affect the public use of the path as a whole
- How it will affect land served by the existing path
- How it will affect land it is diverted through
- Whether the diverted path is less convenient to the public
- If the order is in the best interests of the persons or persons named in it.

Extinguishment Orders (Section 118 Highways Act 1980)

Extinguishment orders are used to remove public rights from all or part of a right of way.

These are more likely to attract objections than diversions and the council will only agree to make such orders where the legal tests can clearly be met.

The law states that it must appear to the authority before making an order, that it is necessary to stop up the path or way on the grounds that it is **not needed** for public use; these are the only grounds under which such an order can be made. It can also be used if other paths adequately serve the area or because the path, although available for use by the public, has not been used for many years. Lack of use due to unavailability of the path does not constitute grounds for extinguishment; the obstruction of a path, for example, development, does not alter its legal status or the test for making an extinguishment order.

The authority **MUST** look not just at any present use of the path but at the use **THAT IT IS LIKELY TO BE USED** and the effect that its closure would have on land served by it. Any temporary circumstances preventing or diminishing the use of the path by the public must be ignored.

Section 116 (Highways Act 1980)

The test to be applied to Section 116 of the Highways Act 1980 is that the path is **unnecessary** (considered to be surplus to highway requirements).

Subject to the highway being declared unnecessary, but before proceeding with the application, the future ownership of underlying land must be resolved.

- If the underlying land is owned by the applicant, the application can proceed
- If the underlying land is owned by Wolverhampton City Council, the applicant will be required to successfully negotiate for the purchase of that land if the stopping order is granted prior to the application proceeding.
- If the underlying land is owned by a third party, the applicant will be required to indemnify the Council against any and all claims and costs should the applicant fail to secure title to the land in future before the application shall proceed.

Before confirming an order the authority or the Secretary of State must be satisfied that it is necessary to confirm the order having regard to the likely use that would be made of the path and to the effect which closure of the route would have on land served by it and also must have regard to any material provisions set out in the authority's Rights of Way Improvement Plan. The authority or Secretary of State must ignore any temporary circumstances preventing the use of the path by the public. These tests must be applied even where the order has attracted no objections.

Once the highway rights are terminated, control over the land reverts to the freehold or leasehold owner of the subsoil. In many cases, this will not be the Highway Authority. Where the owner of the subsoil is known, you will need to negotiate a transfer of land to yourself; for example on more modern estate developments, the land often still belongs to the developer or builder.

Where the owner of the subsoil is not known and cannot be found, there is a rebuttable legal presumption that the owners of the adjoining properties own the subsoil beneath the former highway, out to the centre line of the former highway. This is more often the case with older areas

of maintained highway. If you are the adjoining landowner, the extinguishment procedure may therefore be sufficient to allow you to acquire some of the land without a formal transfer title in the land to yourself.

Making the application

In the first instance, you should contact the Rights of Way officer to outline your proposals. Following an inquiry by a prospective applicant, a site visit will usually be arranged (if necessary). The site meeting is an ideal opportunity to view the current definitive line of the right of way and the proposal. The officer will usually give advice about the suitability of the proposal, the statutory requirement, and brief details of the procedures and costs involved. The applicant will also be advised if they would be required to do any works on the ground to the proposed diversion to bring the route up to a suitable standard.

When applying for a diversion, the applicant will need to supply a plan of the proposal when the application form is submitted. This plan should be at a scale of either 1:1250 or 1:2500 and it must be accurate. It is the applicant's responsibility to produce a plan which accurately illustrates the proposal, as any alteration to the plan may result in extra costs for the applicant and delays in the process.

Please note that in the case of a diversion order, the Order will NOT come into effect (i.e. the existing path may not be removed or obstructed) until the design/specification of the proposed path has been checked by the Transportation Department. Once this has been complied with, Legal Services will bring the Diversion Order into effect.

What costs are involved?

Applicants will be expected to pay both the administrative costs and the cost of advertising required by law.

The applicant will be required to make an up-front payment of £4000 with an undertaking to pay additional fees if they arise. Any monies owed, will be refunded upon completion of the process.

Who needs to be consulted?

Normally the applicant will informally consult with the various consultees at an early stage (list can be supplied). They will need to be provided with a plan and a letter explaining the proposal. This consultation can be carried out by the council at an extra cost.

It is also wise to consult adjoining landowners or anyone else who has an interest in the path. A self-addressed and stamped envelope should be provided with the letter for the reply.

Consultation letters should specify any work that will be carried out on the new route and any limitations or conditions (gates or barriers) to which the new route will be subject should also be stated with this letter.

The council feel that it is beneficial for the applicant to carry out the informal consultation as it gives them the opportunity to judge the likely support/opposition their application might receive and whether or not it is possible to accommodate the views expressed by those consulted within the final proposal. Informal consultation at this stage should speed up the process of the application through the more formal stages by identifying any problems or conflicts of interest and allaying any concerns of those likely to be affected. As a result of informal objections, applicants may decide to modify their proposals or even abandon them where agreement is unlikely.

The council cannot give assurances that an application will be successful in the event of objections. Applicants must be aware that they may incur costs without the order eventually succeeding. The council will endeavour to resolve objections if at all possible and applicants will be able to withdraw their applications prior to objected orders being sent to the Planning Inspectorate for determination. In these circumstances the council will only recover costs up to the point that this event occurs.

Procedural advice

The following information may be of use to you when submitting your application. The procedures we use are as follows:

STAGE 1	Receipt of application form and payment
STAGE 2	Report to Members for authorisation to make application to Legal Services for a draft order
STAGE 3	Informal notices to Utility Companies
STAGE 4	Following Members approval, application form and all associated documents sent to Legal Services
STAGE 5	Legal Services arrange for notices to be placed in newspaper and on site. Copy of the draft Order circulated to interested parties
STAGE 6	28 day objection period (notices checked on site)
STAGE 7	If no objections, and new path certified by Highway Authority, Order is confirmed
STAGE 8	Six weeks High Court Challenge. (If no objections are received by the end of this period, a letter of confirmation is sent to the applicant and the stopping-up may commence)

If an objection is received and cannot be resolved, then a public inquiry will be held.