

Public Path Order Guidance Notes

Advice and directions for applicants/agents applying for the Stopping Up or
Diversion of Public Right(s) of Way(s) Section 257, Town and Country Planning
Act 1990

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Introduction to Public Path orders

A public right of way (other than a Byway Open to all traffic) which appears on the Definitive Map and Statement can be Diverted or Extinguished by a legal process where a local authority makes a Public Path Order.

Within the Broads executive area Public Path Orders can be processed by the Broads Authority (the Authority) as the planning authority, under the Town and Country planning Act 1990, where a change is necessitated to implement a planning permission.

Generally, in Norfolk however, the majority of Public Path orders are made under the Highways Act 1980 and are carried out by Norfolk County Council.

The Broads Authority has a power (and not a duty) to make public path orders under section 257 of the Town and Country Planning Act 1990. These orders, once confirmed, have the effect of permanently extinguishing or diverting footpaths and or bridleways only.

Before the Broads Authority decides to make an Order, the Authority must be satisfied that the legal tests relevant to the order can be satisfied. The Authority is under no obligation to make an order. Furthermore, if the Authority decides to make an Order which receives objections, it is under no duty to refer it to the Secretary of State for the Environment.

Applicants for Public Path Orders are invited to engage their own experienced rights of way practitioners, consultants or legal representatives (agents) to undertake the majority of the work involved in the process. In this way, the Authority's input will be kept to an absolute minimum and Applicants are able to undertake their own consultations and revisions independently.

Throughout these notes the Applicant and/or appointed Agent are referred to as 'the Applicant'

The Authority will decide on whether to make an Order within 3 months of a completed, technically and legally correct consultation report, being received from an Applicant.

If an Order is subsequently made, the statutory process for advertising and site notices will follow and if after 28 days from the first date of publication on site and in the press no objections are received, the Order may be confirmed by the Authority, subject to satisfaction of the legal tests for confirmation.

Once an Order is completed, it will be sent to the local Highways Authority who will create a legal event order. At this stage, the path will be legally Diverted or removed from the Definitive map and Statement.

Costs and charges

On receipt of a properly submitted application, we will write to you detailing the likely cost of the Diversion or Stopping Up and ask you to sign a declaration that you agree to pay

these costs and carry out specified works (which we will have discussed with you) to create any new paths.

All of the costs and charges associated with these processes, whether incurred by the Broads Authority or Rights of Way Practitioners, have to be paid for by the Applicant. The Authority's costs for a simple Order, involving one right of way, would be in the region of £1,850.00.

If you are applying for more than one path the costs will be greater. The costs are split into two payments, the first payment is payable once the Order is Made and advertised, the second is payable once the Order has been Confirmed. These costs include the administration of the Order as well as two newspaper adverts which are required by legislation.

Regulations about costs mean that if your application has to be forwarded to the Secretary of State you will not be required to pay any additional costs, even if the matter is heard at a public inquiry.

Note: The costs quoted are in addition to your planning application costs

Town and Country Planning Act 1990 Legislation

The provisions of Section 257 of the Town and Country Planning Act 1990 enable the diversion or stopping up of public footpaths and bridleways where it is necessary to enable a development to take place in accordance with planning permission. This legislation can only be used before or in the early stages of a development. It cannot be used if the development is completed or almost complete. The provisions do not apply to any highways with vehicular rights which are dealt with on behalf of the Secretary of State by the Government Office for the East of England.

Important

The granting of planning permission does not authorise a diversion or extinguishment of a footpath or bridleway. The diversion or stopping up of footpaths and bridleways is a separate process which must be carried out before the paths are affected by the development.

Initial consultation

We will consult with the local Parish and District council, the Highways Authority and the organisations prescribed by specific regulations (Ramblers' Association, British Horse Society, Byways and Bridleways Trust, etc). We will ask them to reply within one month. Where no objections are received, the Head of Planning will approve the making of a Diversion or Stopping Up Order.

When objections are lodged, we must deal with the proposals differently, regardless of the nature of the objection. Where appropriate, we will try to negotiate the withdrawal of objections but if we are left with an objection at this stage, we must present the proposals

to the Authority's Management team. The Management team will then either approve the making of an Order or decide to reject the proposal, based on all of the evidence provided to them. This could also be conferred to the planning committee for a decision.

The Diversion or Stopping Up/Extinguishment Order

An Order will be made and is subject to strict rules. It must be advertised at each end of the path/s affected and in the local press, stating the effect of the order and inviting representations within a period of not less than 28 days. For a Diversion Order It will specify details of the new path including its route and width. It will be served on all owners and occupiers of the land affected, the Highways Authority, the parish and District council and path user organisations. If any objections are lodged, we call this an opposed order whereas if no objections are lodged it is unopposed.

The Council may confirm an unopposed order. For Diversion Orders; normally the Order will specify that the new path will be created 28 days after confirmation and the old path closed once we are satisfied that the works to create the new path have been completed satisfactorily. This may also need an assessment from the local Highways Authority. We will expect you to erect any structures such as stiles, gates or bridges but we will move any signposts and ensure the diversion is adequately waymarked. It is possible for someone to contest a confirmed order, but this must be to the High Court and would be for a procedural or technical reason.

If the Order is opposed, we will try to seek the withdrawal of the objections. However, often they are the same objectors as at the consultation stage and negotiation will have already been attempted. Whatever the objection we must send the Order to the Secretary of State for the Environment, Food and Rural Affairs (DEFRA) who will appoint an independent inspector to consider the proposal. The inspector will normally decide to deal with the matter by an exchange of written representations between the Council, applicant and objector. Sometimes, where a proposal will be heard at a public inquiry at which all the parties can make their case.

Timescales

The average time for an unopposed Order to be completed is between 6 and 12 months. Where an Order is opposed it is likely to take about 2 years. We will however, endeavour to complete the Order as soon as practically reasonable.

Your Application

It is important that you provide us with as much information as possible on your application so feel free to provide further information on separate sheets of paper. You should clearly and in detail make the case for why the Diversion or Stopping is necessary. This is essential for when we are consulting and at a later stage e.g. if we have to present the case to the Planning Committee or Secretary of State. Although you will always be given an opportunity to present your case we will have to put your case forward for you also.

Please include an appropriate scale plan (1:2500) showing precisely what is proposed (route to be extinguished shown by a bold black line) with points of the compass, grid references and a key.

It is recommended that the map is entitled 'Proposed extinguishment'. The Authority will, for a fee, plot the Definitive route of the public right of way on this plan if requested.

Please ensure that you provide us with the correct information about landownership and occupancy. This is crucial and misinformation could invalidate an Order which would incur additional costs, charged to applicants.

Application Forms

Completed applications should be returned to:

Broads Authority

Planning

Yare House

62-64 Thorpe Road

Norwich, NR1 1RY

Tel: 01603 756059

Email: planning@broads-authority.gov.uk

Procedure for Public Path Orders
Please contact Lewis Treloar
If you require this information in
an alternative format.

