

## Public Path Orders under the Highways Act 1980

### Guidance Notes - 1st April 2022

**This document covers certain types of application that can be made to Oxfordshire County Council under the Highways Act 1980 to permanently create, extinguish or divert a public path.**

Under the Act, applications may be made to extinguish or divert public footpaths, bridleways and restricted byways. The following table lists the main types of application, according to the relevant section of the Act. In order for an application to be successful it must meet certain legal tests or criteria. The Notes referred to at the end of this document provide more detail.

Section of the Act	Description / Purpose	Criteria
118	Stopping up of footpath, bridleway or restricted byway where it is not needed for public use.	See Note 2
118B	A 'special' extinguishment order. Stopping up of footpath, bridleway, restricted byway or byway open to all traffic for the purposes of crime prevention and school security where it is either (a) in an area designated by the Secretary of State or (b) crossing land occupied by a school to protect pupils or staff.	See Note 4
119	Diversion of footpath, bridleway or restricted byway in the interests of the owner, lessee or occupier of land crossed by the way, or of the public.	See Note 1
119B	A 'special' diversion order. Diversion of footpath, bridleway, restricted byway or byway open to all traffic for the purposes of crime prevention and school security where either (a) in an area designated by secretary of state or (b) where crossing land occupied by a school to protect pupils or staff.	See Note 4
25/26 or 119 + 118	Creation or diversion of footpath, bridleway or restricted byway made concurrently with S118 stopping up order where use of S119 on its own is not appropriate.	See Note 3

**Ahead of any formal application, an applicant should first discuss proposals with the Rights of Way Officer who will provide initial advice and assessment and explain the procedure further. See page 6 for contact details.**

## **Procedure**

The procedure for dealing with an application can be complex and take time. The basic stages are as follows: -

1. Informal discussions with the Council's Rights of Way Officer to include a site visit.
2. Receipt of application.
3. Informal consultations undertaken by the Council with user groups, local councils and interested parties.
4. Negotiations with any objectors.
5. Review of any unresolved informal objections and a decision taken on whether to make an Order.
6. If an Order is made, preparation and publication of the Order will be followed by a 29-day public advertising at a local library, the Council's public website, posted on site, in the local press and at the local district council offices.
7. Negotiations with any formal objectors to the Order received during the 29-day period.
8. If there are no objections, or if any objections made are withdrawn, the Council can confirm the Order (go to stage 10 below). If objections are received it is possible that the Council may decide to withdraw the Order.
9. If there are any unresolved objections and the Council decides not to withdraw the Order, the matter must be forwarded to the Secretary of State who will appoint an inspector to determine the matter and decide whether or not the Order should be confirmed. Depending on the circumstances, the Inspector may reach a decision on the basis of an exchange of correspondence, or the case may be taken to a public inquiry or hearing.
10. If it is decided that the Order should be confirmed, a notice of the decision is published.
11. Where works are required, a site visit by the Rights of Way Officer is required to ensure satisfactory provision of the new route.

### **Please note the following: -**

- If an Order is confirmed, the new route will need to be provided to the satisfaction of the Council before the old route can be closed.
- If the matter is submitted to the Secretary of State and a public inquiry or hearing is called, it will take much longer than a more straightforward case.
- Applications are dealt with on their own merits, as the circumstances of each path are unique.
- Applications will not be accepted as a means of avoiding obstructions or nuisances that can be removed, nor in lieu of correct procedures under the Town and Country Planning Act 1990 to divert paths affected by development.
- In certain circumstances, it may be that Diversion Order-making powers will not be able to effect a change in the route of a path. However, a proposal may still be able to be taken forward by extinguishing the right of way and creating a new path at the same time (see Note 3).

## **Applicant's Preliminary Enquiry**

Before proceeding with an application, it may be in the applicant's interests to make enquiries of the local parish council, immediate neighbours and relevant user and amenity groups such as The Ramblers and The British Horse Society. Whilst their opinions are not in any way conclusive, they will be taken into account by the County Council when it considers any application. It may benefit the application's outcome and save time and money if any potential opposition can be resolved at this stage.

Should an application be submitted, the written consent should be obtained from other owners of the land crossed by the existing and proposed routes, as well as proof of title to that land.

### **Applicant's will be expected to meet all of the following criteria: -**

- The statutory tests within the relevant legislation must be met.
- The existing legal line of the path should be open for use so that the Council can make a reasonable assessment against the proposed route (other than where affected by substantial obstruction due to permanent development).
- The status of the path is not in dispute.
- The applicant is known to keep rights of way on land in his / her ownership clear and safe to use and in all other respects to meet the requirements in the Highways Act 1980.
- The applicant must meet the costs of administration and advertising up to the maximum permitted by regulation. (The Council may use its discretion to waive charges fully or in part in exceptional circumstances).

### **In addition: -**

- Applications will be processed in chronological order by date of receipt of a duly completed application form.
- In exceptional circumstances, the Council may exercise its discretion to process individual proposals as a one-off priority.
- There is no guarantee that any proposal will be successful. The level of likely support or opposition to an accepted application will be tested through informal consultation. This may result in the Council not pursuing the matter to Order-making stage.

## **Widths**

Most public rights of way do not have recorded widths and it is a myth that footpaths and bridleways have standard or minimum widths. Widths will vary based on their particular locality and geographic circumstances and their historic use. They are also likely to be the full extent between any boundaries, such as hedges, ditches, etc. For anyone seeking to apply to change the route of a path, the Council will seek to maximise the width of the new route to ensure a safe and enjoyable route for public use. It is also very much in the applicant's interest to consider this. In all cases the Council will seek a width that appears appropriate having regard to all the relevant factors which may include, for instance, the type of user, the path's location, the nature of the surface and other physical features.

If the proposed path is to be made up in any way (i.e. surfaced) then it is not always necessary to do so to the full stated width of the path.

## **Advertising Costs and Fees.**

The Council charges a fee for the administrative and legal work involved in dealing with any Order, in accordance with the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996. The fee charged in each case is dependent on the progress of an Order and is related to the time spent on its processing. The amount of fee is reviewed annually and will be charged at the rate applicable on the day the application is considered by the Council to be duly made.

Applicants will be invoiced for the administrative and advertising costs in accordance with the schedule below, at the end of the procedure. There can be up to three notices requiring advertising and cost from between £350 to £450 each.

## Schedule of Fees and Charges

<u>Progress Level</u>	<u>1<sup>st</sup> April 2022– 31<sup>st</sup> March 2023 Fees</u>
Initial advice / assessment / informal consultations in pursuit of an application	<b>No Charge</b>
If an Order is made and subsequently confirmed by the Council as unopposed or without representation having been made	<b>£3700*</b>
If an Order receives representations / is opposed but these are subsequently withdrawn, and the Council confirms the Order OR an Order receives objections and the Order is withdrawn.	<b>£4200*</b>
Where the Council is unable to remove objections / representations received to the Order and it decides the order should be submitted to the Secretary of State for determination.	<b>£5330*</b>

**\*Plus advertising costs**

Relevant charges will apply if, at any stage after an Order is made, the applicant decides not to proceed with the Order.

## **Refunds**

If an Order is not confirmed, this does not mean that the applicant is automatically entitled to a refund. An applicant may apply to the Council for a refund of charges where: -

1. It fails to confirm an unopposed Order; or
2. In the case of an opposed Order, it does not submit the Order to the Secretary of State for confirmation without the agreement of the applicant or;
3. Proceedings preliminary to the confirmation of a Public Path Creation Order are not taken concurrently with proceedings for a Public Path Extinguishment Order or;
4. The Order cannot be confirmed because it has been invalidly made.

## **Data Protection Act and GDPR**

The following may be disseminated widely and made available to the public: -

- Details of an application
- Correspondence and comments as a result of an application
- Any correspondence, objections, representations and comments received as a result of informal or formal consultations or as a result of the Notice of Making an Order.

## **Contact for Public Path Orders (Diversion etc)**

Andy Sylvester, Rights of Way Officer,  
Countryside Records  
Oxfordshire County Council  
County Hall, New Road  
Oxford OX1 1ND  
01865 815302  
07919 306237  
Email: [andy.sylvester@oxfordshire.gov.uk](mailto:andy.sylvester@oxfordshire.gov.uk)

## NOTE 1

### **Diversion Orders, Section 119 of the Act (Applicable to Footpaths, Bridleways and Restricted Byways)**

Before **making** any diversion Order under section 119, it must appear to the Council that it is expedient to divert the path: -

- a) In the interests of the owner, lessee or occupier of the land crossed by the path or;
- b) In the interests of the public.

Before then **confirming** any Order, the Council must be satisfied that: -

- a) The diversion is expedient in the interests of the person(s) stated in the Order;
- b) The path will not be substantially less convenient to the public as a consequence of the diversion;
- c) It is expedient to confirm the Order having regard to the effect it would have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by the proposed new path, taking into account the provisions for compensation.

## NOTE 2

### **Extinguishment Orders, Section 118 of the Act (Applicable to Footpaths, Bridleways and Restricted Byways)**

Before **making** any extinguishment Order, it must appear to the Council expedient to stop up the path or way on the ground that it is not needed for public use.

Before then **confirming** any Order, the Council must be satisfied that it is expedient to do so: -

- a) Having regard to the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and
- b) Having regard to the effect which the extinguishment of path would have as respects land served by it taking into account the compensations provisions.

## NOTE 3

### **Concurrent Extinguishments Orders, Section 118 of the Act and Creation Orders, Section 26 of the Act (Applicable to Footpaths, Bridleways and Restricted Byways)**

In certain circumstances, it may be that diversion Order-making powers (see Note 1) are not able to effect a change in the route of a path. However, a proposal could still be taken forward instead by concurrently: -

1. Extinguishing the existing right of way (*as under s118 above*) and;
2. Creating a new alignment using s26 as outlined below.

Advice will be given to the applicant to explain how these two methods are used in conjunction with each other.

### **Creation Orders, Section 26 of the Act.**

The Council must be satisfied that there is a need for the new path and that it is expedient, having regard to: -

- a) The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
- b) The effect which the creation of the path or way would have on the rights of persons interested in the land.

### **NOTE 4**

#### **Special Extinguishment and Diversion Orders under Sections 118b and 119b of the Act (Applicable to Footpaths, Bridleways, Restricted Byways and Byways Open to all Traffic)**

Before **making** any extinguishment or diversion Order under these sections, it must appear to the Council that, as respects the highway which crosses land occupied for the purposes of a school, it is expedient for the purpose of protecting the pupils or staff from: -

- a) Violence or the threat of violence;
- b) Harassment;
- c) Alarm or distress arising from unlawful activity, or;
- d) Any other risk to their health or safety arising from such activity,

that the highway should be extinguished / diverted.

Before then **confirming** any Order, the Council must be satisfied that the extinguishment / diversion is expedient as mentioned above, the above conditions are satisfied and, further, that it is expedient having regard to all the circumstances and in particular: -

- a) Any other measures that have been or could be taken for improving or maintaining the security of the school;
- b) Whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;
- c) The availability of a reasonably convenient alternative route or, if none is available, whether it would be reasonably practicable to divert the highway under section 119b (below) rather than stopping it up, and;
- d) The effect which the extinguishment of the right of way would have as respects land served by the highway taking into account the provisions of compensation.

In particular, it should be noted that any application under these sections is likely to require a high level of evidence in support of the various legal tests above.