

Public Path Orders under the Town and Country Planning Act 1990 Guidance Notes - 1st April 2022

These Guidance Notes cover applications that can be made to Oxfordshire County Council for permanent or temporary extinguishments or diversions of public paths under the Town and Country Planning Act 1990 sections 257 and 261.

Under the Town and Country Planning Act 1990, applications may be made to Oxfordshire County Council to extinguish or divert public footpaths, bridleways or restricted byways. The following table lists the main types of application, according to the relevant section of the Act. To enable 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 specific details in this regard.

Section of the Act	Description / Purpose	Criteria
257	Stopping up or diversion of footpath, bridleway or restricted byway in order to allow development to take place.	See Note 1
261	Temporary stopping up or diversion of footpath, bridleway or restricted byway for surface working of minerals. Following working, the right of way must be restored to a condition not substantially less convenient to the public.	See Note 2

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 takes 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 regarding the proposal 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 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 If there are no objections or if any objections made are withdrawn, the Council can confirm the Order (go to stage 10 below).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 to not withdraw the Order, the Council is able to pursue the matter by forwarding the Order to the Secretary of State who would 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: -

- To avoid any potential delays to a development, proposals for changes to a public right of way should be considered well in advance of a planning application being made.
- Whilst an Order can be made once a planning application has been submitted, an Order cannot be confirmed until planning permission has been granted.
- If a diversion Order is confirmed, the new route will need to be created to the satisfaction of the Council before the old route can be closed.
- If the matter is submitted to the Secretary of State it will take much longer than a straightforward case.
- Applications are dealt with on their own merits, as the circumstances of each path are unique.

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 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).
- 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 Costs.

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

***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
andy.sylvester@oxfordshire.gov.uk

NOTE 1

Stopping up or Diversion Orders, Section 257 of the Act (Applicable to Footpaths, Bridleways and Restricted Byways)

The Council may authorise the stopping up or diversion if it is satisfied that: -

- a) It is necessary to do so in order to enable development to be carried out, in accordance with planning permission granted under Part III of the Act, or
- b) Where an application for planning permission in respect of development has been made under Part III and, if the application were granted, it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

NOTE 2

Temporary Stopping up or Diversion Orders, Section 257 / 261 of the Act (Applicable to Footpaths, Bridleways and Restricted Byways)

The Council may, by Order, provide for the stopping up or diversion of any of the above rights of way for a temporary period where it is satisfied that: -

1. The Order is required to enable minerals to be worked by surface working;
and
2. The right of way can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public.