

West Sussex County Council

Public Path Order Application Pack

Information and Directions for Applicants and Agents **July 2023**

It is important to note that the diversion or extinguishment of a public right of way can be a long and protracted legal process. It is therefore highly recommended that you seek independent advice from a suitability qualified professional when making an application.

Prior to submitting your application, you are advised to discuss your proposal with the Rights of Way Team using the contact details below.

1) Introduction

It is open to the County Council to consider applications from landowners for the diversion or extinguishment of public rights of way. The power (not a duty) to make Public Path Orders is provided under Sections 118 and 119 of the Highways Act 1980. This document has been produced to help landowners and agents when making an application and sets out the relevant details needed to complete the application form. After reading this document, should you have any other questions please contact the Public Path Order Team on PROW@westsussex.gov.uk

A Public Path Order, once confirmed, has the effect of permanently diverting or extinguishing Footpaths, Bridleways or Restricted Byways respectively. Before making an Order, the County Council must be satisfied that the legal tests can be met. The County Council is under no obligation to make an Order and in cases where it does, due to the public consultation element, there is no guarantee that it will be successful. Further, should the County Council decide to make an Order it is again under no duty to refer it to the Secretary of State for confirmation, should objections be received.

The law relating to the most usual types of diversions and extinguishments can be found in Section 118 and Section 119 of the Highways Act 1980. This guidance document sets out the procedure by which an application under this legislation is dealt with from the point of an initial request through to the making and confirmation of an order and includes information on the applicant's responsibilities.

Further details and information from external sources relating to Public Path Orders can be found in appendix 1.

2) The Application Form

Applications will not be accepted unless all parts of the application form have been fully completed.

The table below provides several guidance notes to assist you in completing the application form.

Guidance note number	Details
1	Please ensure that full land registry details are submitted with the application. Copies can be requested online via the government website: https://www.gov.uk/search-property-information-land-registry
2	It is the responsibility of the applicant to ensure that all affected landowners' consent to the proposal. Please ensure that the written consent of all landowners is submitted with the application. This consent must include a signed proposal plan.
3	Please ensure that an extract from the Definitive Map and Statement is submitted with the application. An extract of this can be requested from the legal services team at legal.services@westsussex.gov.uk
4	You must submit a plan with your application. This plan should be at a large enough scale so that we can easily see where the affected path(s) run. Please show the existing length of path to be extinguished (removed) as a continuous black line and the new length of proposed path as a dashed black line. The Imap on the Council's website can be used for this purpose.
5	As detailed in paragraph 5 below there are strict legal tests that need to be satisfied before the County Council can make and confirm an order. Please provide full details of how you consider your application meets the specific criteria set out in Section 118 or 119 Highways Act 1980.
6	Please provide full details of the works you intend to carry out on the new length of path. This should include details on the width, surface and any proposed structure(s) Please give as much detail as possible. See appendix 2 for more information.
7	Early engagement with the local user groups, prescribed amenity groups and relevant Parish or Town Council is key. Responsibility for carrying out these early consultations sits with the applicant. Appendix 1 of the application form provides a template consultation report and covering letter for you to complete and send to all those listed below. See section 3 below for more detail.

3) Pre-Application Consultation with local user groups and council's

Prior to submitting your application, you are required to carry out several pre-application consultations with the local user groups and the Town or Parish Council.

This is an important part of the application process as it is likely to establish whether any objections will be made at the order making stage. Applications that have not carried out this process will be returned.

At annex 1 of the application form you will find a template letter and report for consultation which needs to be completed with as much detail as possible and sent to all those listed below together with a detailed proposal plan.

Path status	Organisation	Contact details
Bridleway or restricted byway	Auto-Cycle Union	admin@acu.org.uk
Bridleway or restricted byway	British Horse Society	access@bhs.org.uk
All	Byways and Bridleways Trust	notices@bywaysandbridlewaystrust.org.uk
Bridleway or restricted byway	Cycling UK	Planning@cyclinguk.org
All	Open Spaces Society	office2@oss.org.uk
All	Ramblers	westfootpath@sussexramblers.org.uk
Restricted Byway	Green Lane Association (GLASS)	tro@glass-uk.org
All	Trail Riders Fellowship (TRF)	Notices@TRF.org.uk
All	Relevant Parish/Town or Community Council	Details can be obtained online . Please mark for the attention of the Council's Clerk

All consultees should be given at least 28 days to respond to your consultation and requests to visit the site and view your proposal should be accommodated.

Should you receive any objections or adverse comments from any of the above listed consultees then it is your responsibility to discuss these and try to come to a mutually acceptable proposal. **Please note: The County Council are unlikely to accept an application that has outstanding objections from any of the above consultees.**

A copy of your consultation report, together with all responses received will need to be submitted with your application.

4) The Process, Order Making and The Legal Tests

WSCC Process and decision making

Once you have carried out the consultation above and received satisfactory responses, please return your application together with the required documents to the Public Rights of Way Team. Applications are usually dealt with in order of receipt; however the County Council reserve the right to prioritise applications in certain circumstances. Upon receipt of your application, a request for payment of the non-refundable £500 deposit will be sent to you.

Once an application has been formally accepted and the non-refundable deposit received, a Rights of Way Officer will arrange to accompany you on a site visit. The purpose of this site visit is to walk through your proposal and discuss any works required.

When determining whether a diversion proposal meets the legal tests the County Council will take several wide-ranging considerations into account. Further details on the factors taken into consideration are detailed in appendix 2.

If your proposal is considered acceptable to Officers, a formal schedule of works will be provided. Your agreement to carrying these out will be needed before proceeding to the order making stage. It should be noted that no order will be made until the schedule is signed and returned.

As part of the application process, an internal consultation exercise is carried out informing County Council Members of your proposal and affording them the opportunity to comment. The County Council are also obliged to consult with statutory undertakers, local district or borough council and the police. If the location of the path falls within the South Downs National Park, there is a requirement to consult the South Downs National Park Authority and Natural England.

In the case of no substantive comments or objections by those mentioned above, it is more than likely that a decision on whether to proceed to make an order will be taken by officers under delegated powers.

In cases where substantial comments or objections are raised by those listed above, these will be passed to you to consider before a formal decision is taken whether or not to proceed to make an order. In cases where objections remain it may be the case that your application will need to be referred to the Planning and Rights of Way Committee for a decision. Should this be the case you will be offered the opportunity to speak at the meeting.

In cases where your application cannot be supported by Officers, you have the right to request that it is presented before the Planning and Rights of Way Committee for debate.

Details of the County Council's decision whether or not to make an order relating to your application will be communicated to you via a formal decision report.

5) The Legal Tests - Making and Confirming an Order

It will be for applicants to satisfy the County Council on the grounds for making and subsequently confirming an order, if unopposed. The legal tests are commonly split into 2 parts - the "making tests" and the "confirmation tests".

The Making Test – Diversion Orders

The County Council may make an order to divert a public path if it is satisfied that it is expedient that the line of the path or way, or part of it, should be diverted;

- a) in the interests of the owner/lessee/occupier of land crossed by the way, or
- b) in the interests of the public.

The County Council must also be satisfied that the diversion order does not alter any point of termination of the path, other than to another point on the same path or another highway connected with it, and which is substantially as convenient to the public.

Made orders are subject to 28 consultation period during which anyone can make object to the proposal as set out in the Order.

The Confirmation Test – Diversion Orders

Additional legal tests must be satisfied before an order can proceed to confirmation, if unopposed. Confirmation of an unopposed order brings it into effect.

A diversion order shall not be confirmed until the County Council is satisfied that:

- i. The proposed route will not be substantially less convenient to the public in consequence of the diversion.

And: further,

That it is expedient to confirm the Order having regard to:-

- a) the effect on public enjoyment of the way as a whole
- b) the effect on other land served by the existing way
- c) the effect on land over which the way is created

The Making Test – Extinguishment Orders

In law, an extinguishment order to stop up a footpath/bridleway/restricted byway, or to stop up part of its width, can be made only on the ground that the public way/part of the public way "is not needed for public use"

The Confirmation Tests – Extinguishment Orders

Before confirming an unopposed extinguishment order, the County Council must be satisfied that it is expedient to stop up the path having regard to:

- (a) 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) the effect that the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation.

The legislation also provides that any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

Although the tests for making and confirming an order are different and separate, it is only sensible to ensure that the requirements of both are satisfied at the outset.

In reaching a conclusion, the County Council will take a number of wide-ranging considerations into account, details of which can be found at appendix 2.

6) Order Making

There are 2 stages to the order making process for both diversion and extinguishment orders and it is important for applicants to be aware of these. It is also equally as important for applicants to realise that there is no guarantee that a made order will be successful.

If the County Council decides that an application meets the legal tests then we will proceed to make an order which sets out the details of the proposal, i.e for the diversion of a length of path. The made order is subject to a period of public consultation of no less than 28 days, during which anyone can make objections or representations on the order. In cases where an order receives no objection during this period, the County Council can confirm the order which then brings it into effect. Before confirming an unopposed order, landowners will be required to carry out all agreed works and pay the County Council's administrative fees and charges.

In cases where an order receives objection, it will be for the applicant to work with the County Council in trying to address these with the aim of securing the removal of all outstanding objections. If successful in this, then the order can proceed to confirmation as mentioned above.

In cases where objections are not withdrawn, the County Council will decide on a case-by-case basis whether to pursue the order by submitting it to the Secretary of State (the Planning Inspectorate) for determination. There is no legal requirement or timescale for this. Authority to submit an opposed order may need to be obtained from the Planning and Rights of Way Committee. Once submitted, applicants are required to adhere to the time scales and requirements set by the Planning Inspectorate. There are 3 ways in which an order can be determined once submitted and further details on this process can be found on the [Planning Inspectorate website](#).

If an order is submitted to the Planning Inspectorate applicants are expected to lead the case for confirmation of the order and appear at any public inquiry or hearing. The County Council's role in this process will be purely administrative.

7) Enhancements to the Network

Opportunities to improve the rights of way network by means of substantive additions, such as the creation of an additional link in the network, upgrading a footpath to a bridleway or by offering an additional permissive path should be explored wherever possible. Proposals that include a commitment to provide an additional worthwhile improvement are welcomed.

8) Fees and Charges

The Local Authorities (Recovery of Costs for Public Path Orders) Regulations, 1993 enable the County Council to recover the costs incurred in connection with processing applications, up until the point where an opposed order is submitted to the Secretary of State.

Below you will find details of the current fees and charges associated with the making of a Public Path Order application. All fees are reviewed annually and exclude VAT.

The County Council is required by statute to publish a notice of the making of an order in the press and, if the order is confirmed, to publish a further notice. The cost of advertising varies from one newspaper to another but can cost up to £1000 exclusive of VAT for both notices. This figure may increase when two or more paths are involved and will be reduced where the Notice of Confirmation is not published. Applicants will be charged the actual cost of advertising.

In addition to meeting the relevant fees and charges associated with the processing of an application, applicants are expected to meet the costs associated with any works needed to bring the path into a suitable condition and for the necessary waymarking.

If a made order is not confirmed, the applicant is entitled to request a refund where:

- a) the County Council does not confirm a properly made unopposed order
- b) without consultation with the person who requested the order, the County Council does not submit an opposed order to the Secretary of State for determination
- c) the order cannot be confirmed because it has been invalidly made.

Fee element	Charge
Non-refundable deposit – this fee is deducted from the costs mentioned below	£500.00
Unopposed Public Path Order	£2,746.00
Opposed Public Path Order – this fee is in addition to the fee quoted above	£1,553.00
Additional Order(s) - In addition to the fee stated as "Unopposed Public Path Order" & "Opposed Public Path Order" fee as applicable	£478.00
Cost of advertising the statutory notices in the press	Approx. £1000.00 for both notices

APPENDIX 1

List of Relevant Legislation and Further Guidance

Legislation

[Highways Act 1980](#)

[Public Path Order Regulations 1993](#)

Guidance

[DEFRA guidance circular 1/09](#)

[Professional organisations to assist and advise on your application](#)

APPENDIX 2

Other factors taken into consideration when considering diversion applications

The following should be considered and where appropriate, addressed in your application.

- Width - minimum widths to be provided:
 - 3 metres for a bridleway
 - 2 metres for a footpath
 - 4 metres for a restricted byway

Each application will be assessed on its own merits, and it may be the case that greater widths are necessary.

- Physical features - consider distance and direction of travel, path widths, gradients, levels and condition, convenience and future maintenance of surfaces and structures;
- Public's enjoyment of the path - consider views, amenity value and quality of the experience offered to users of the path.
- Impact of on other properties - for example, it may be considered unreasonable to divert a path so as to improve the applicant's privacy/security if the new route would have a significantly adverse effect on the properties of neighbours.
- Comparable - a proposed route would need to compare favourably with the length of path proposed to be removed under the application in terms of distance, other physical characteristics, and amenity value.
- Open access - any gate or barrier that may be required by the landowner would need to be the subject of a separate application to the County Council under the provisions of Sections 115 or 147 of the Highways Act 1980, upon confirmation of a diversion order.
- Safety – any proposal must not subject users to potential hazards or dangers.
- Rights of Way Improvement Plan - the County Council will also have regard to any material provisions of the that may be relevant to the proposal.