

PUBLIC RIGHTS OF WAY PUBLIC PATH ORDERS

(Highways Act 1980 section 118 and 119)

Guidance Note

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www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

1. Introduction

- 1.1 Under Section 118 and 119 of the Highways Act 1980, the Borough Council may make an order (Public Path Order) for the stopping up or diversion of a footpath, bridleway or restricted byway on receipt of an application from the owner, lessee or occupier of land crossed by the path.

- 1.2 These Guidance Notes have been produced to advise applicants on the procedures and costs involved in the process.

These notes do not apply to orders made in connection with approved development under the Town and Country Planning Act 1990.

- 1.3 Before the Borough Council makes a diversion order, it must first be satisfied that the order would be in the interests of the owner, lessee or occupier of the land, and/or in the interests of the public. The Council must also be satisfied that the new route will not be substantially less convenient for the public to use and that the proposal has the agreement of all affected landowners. Consideration must also be given to the effect that the diversion would have on the public's enjoyment of the path as a whole, on the land subject to the existing right of way and on the land over which the right of way is to be created.

It is always a good idea to talk to the local Parish Council and the East Berks Ramblers before finalising any proposals. This can help to identify any potential problems at an early stage.

- 1.4 Before making a stopping up order, the Borough must be satisfied that the path is no longer needed for public use.

- 1.5 Fees are payable in stages as outlined in Appendix 2. The fees and charges apply regardless as to whether or not the application is successful.

2. What Happens?

- 2.1 The public path order procedure is complex and often lengthy. It involves widespread consultation and advertisement, and there are many opportunities for individuals and organisations to object to the proposal. The grounds upon which objections can be made are also complex, and there can be no guarantee of any proposal succeeding. As a general rule however, applicants should consider the details from a 'public' perspective, in addition to their own requirements. A proposal that offers tangible benefits to the public is far more likely to succeed than a proposal tailored solely to meet the applicant's needs.

Where a new path is to be physically created, the Council will generally specify and supervise the works needed, and in signing the application form, the applicants will agree to meet the costs incurred by the Council in arranging for the route of the new path to be brought up to an acceptable standard. An estimate of the costs involved will be provided upon request, and the applicant will be required to meet all costs incurred by the Council in preparing estimates, specifications, drawings and contracts, in addition to the cost of and supervision of the works. (See Appendix 3 for design guidelines)

2.2 Stage 1

It is recommended that the details of the application are discussed with the Council's Public Rights of Way team prior to submitting an application. When the borough receives an application further discussions with the applicant may be needed, including a site visit, to clarify the details of the application. If the application needs amendment, a fresh application may need to be submitted.

- 2.3 Stage 2
When the Council is satisfied with the application, it will carry out informal consultations with statutory undertakers (Gas, Water, Electric etc.) and other interested parties such as the local parish council and walking or horse riding groups, to reveal possible objections, concerns and other comments.
- 2.4 Stage 3
The Borough will discuss with the applicant any problems, and any amendments needed for the proposal to be progressed.
- 2.5 Stage 4
A report and recommendation will be prepared and submitted to the Council's Rights of Way and Highways Licensing Panel. If approval is given by the Panel to proceed with the order, go to Stage 5, if it is refused, the applicant will be informed and the process is stopped.
- 2.6 Stage 5
If members of the Panel approve the proposal, the Borough will draft the order and pass a copy to the applicant(s) for approval. The Borough will then publish the Public Path Order by advertising in the local newspaper, circulation to interested parties and posting notices on the site at each end of the section of path to be diverted/stopped up.

If the proposed public path order is unopposed, please proceed to Stage 8

- 2.7 Stage 6
The Borough will receive any objections to the public path order and problems and possible solutions will be discussed with the applicant. If the applicant wishes to proceed, negotiations can be undertaken with the objectors in an attempt to seek withdrawal of the objections.

If objections to the proposed public path order are withdrawn, please proceed to Stage 8

- 2.8 Stage 7
If the objections are not withdrawn but the applicant still wishes to proceed, the Borough Council will decide whether the order can still be justified. The matter is reported once again to the Borough's Rights of Way and Highways Licensing Panel for a decision either to abandon the order or to refer the order to the Secretary of State for determination. When there are unresolved objections, it is only the Secretary of State who can decide whether or not the order should be confirmed. The Secretary of State may deal with the order by holding a public inquiry, by arranging a hearing or by considering written representations.
- 2.9 Stage 8 (If no objections are maintained)
The Borough will confirm the public path order and advertise the confirmation by newspaper advertisement, circulation to interested parties and posting of site notices.
- 2.10 Stage 9
A Diversion Order will include the provision of a new route for the path. There will be a period following confirmation of the order in which both the 'old' and 'new' paths will both exist as public highway. During this period the original route of the path must remain open for use, and the Council (or the applicant by agreement with the Council) will carry out the works needed along the new route of the path to bring it into a suitable condition.

The Council must certify that these works have been carried out satisfactorily before the extinguishment of the 'old' path can take effect.

Note

The Borough Council's power to make stopping up and diversion orders is purely discretionary. Applications will only be processed upon receipt of a fully completed application form together with the Council being satisfied that the proposal meets the requirements of the relevant section of the Highways Act.

3. Costs and Charges

- 3.1 In accordance with the Local Authorities (Recovery of Costs for Public Paths Orders) Regulations 1993 as amended by the Local Authorities (Charges for Overseas Assistance and Public Paths Orders) Regulations 1996, applicants will be charged for the costs incurred in making and confirming a public path order. **The requirement for applicants to meet the costs applies whether or not the proposal succeeds. Costs are payable if the proposal is abandoned by either the applicant, or by the Borough under Stages 4 or 7 above.**
- 3.2 Costs from a minimum of £2,500 (inc.VAT) on each application/ each order, depending on its complexity will be charged to the applicant. The charge will be calculated on the basis of the costs actually incurred by the Borough. Where an application relates to two or more paths, the costs may be multiplied according to the number of separate orders necessitated by the proposal. Applicants are required to give an undertaking that they will meet these costs on their application form (see Appendix 1 for summary of charges).
- 3.3 Applicants are additionally required to defray any compensation which may become payable (Highways Act 1980 Section 28). This applies if it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a diversion order. Applicants are advised to discuss the proposal at an early stage with all neighbours who may be affected, both in order to work around any objections and in order to assess the possibility and extent of any compensation that may become payable.
- 3.4 The written consent of all other parties with an interest in the land, over which the public right of way passes and/or is to be diverted i.e., owner, lessee or occupier, is required before an application can be processed. In cases where this is applicable please complete the relevant section on the application form.
- 3.5 Where it appears to the Council that work is required to be carried out to bring a new route into a suitable condition for public use, applicants are required to meet the reasonable costs incurred by the Council in carrying out the work (see section 2.1). By written agreement with the Council, the applicant(s) may carry out the works themselves in accordance with specifications to be agreed in writing by the Council.

4. **Access for inspection of new routes**

- 4.1 The applicant will be required to make arrangements to allow the inspection of any proposed new/ diverted routes to be created, and to provide details of the arrangements as part of the application. This is to allow anyone who is interested to be able to assess the merits of the proposal.

5. **Application Procedure**

- 5.1 Formal applications for the stopping up or diversion of a public right of way should be submitted to the PROW Team at the Borough Council. An application form can be obtained from PROW@rbwm.gov.uk. Please note that applications cannot be dealt with unless all appropriate sections of the form are completed and signed and the form is accompanied by the following enclosures:

- An extract from a current edition of an Ordnance Survey Map (minimum scale 1:2,500) showing the definitive line of the path by means of a bold black line and if the path is to be diverted, the line of the proposed diversion by a broken black line.

The map should be endorsed "Reproduced from (or based upon) the date Ordnance Survey 1:2,500 scale map with the sanction of the Controller of HMSO "©Crown Copyright" (An extract from the relevant Ordnance Survey Map can be provided on request subject to paying the Council's reasonable charges).

- Proof of ownership of the land crossed by the path(s) e.g., copy of title deeds and, in the case of a lessee or tenant of land crossed by the path or bridleway, a copy of the lessee or tenancy agreement.
- Written consent of all other parties with an interest in the land, over which the public right of way passes and/or is to be diverted, i.e., owner, lessee or occupier. In cases where this is applicable, please complete the relevant section at the end of the application form.
- Cheque payment (made payable to The Royal Borough of Windsor and Maidenhead) for the initial charge of £150 (see Appendix 2).

6. **Timescales**

- As a very general rule, the simplest of orders, attracting no objections and requiring little or no practical works will at best take a period of around 8 months between finalising the details of the application, and the order 'taking effect'. This will be subject to the Council's other work priorities, and the timing in relation to meetings of the Rights of Way and Highways Licensing Panel.
- Objections to a proposal may add a minimum 6 – 24 months to the period before determination of the application. This period will be needed in order to try and overcome the objections, and if this is not possible, for the matter to be referred to, and considered by the Secretary of State.
- Where works need to be carried out to a new route created under the proposal, an additional period of 6 months may be needed before a confirmed order will take effect. This period varies according to the works required, but may be needed in circumstances where the works will be dependant upon suitable ground conditions, preparation of contracts, mobilisation of contractors, or the timing of the works needs to be delayed for reasons of nature conservation. A longer period will generally be needed where a grassed surface is to be established before a new route is made available to the public.

If you require any further information, please contact:

- PROW@rbwm.gov.uk

SUMMARY OF CHARGES		
1. Adminstrative and Legal Charges Actual cost in making and confirming order minimum £2,500		
Minimum £2,500 Charge ↓ ↓	UNOPPOSED ORDERS INVOLVING MINIMAL CORRESPONDENCE ↓ ORDERS WITH OBJECTIONS WHICH ARE SUBSEQUENTLY WITHDRAWN ↓ OPPOSED ORDERS with Objections. Possible referral to DEFRA
Actual Costs	
2. Plus advertising charges varying between £250 and £900 each advert (min 2 adverts).		
3. Costs of bringing path up to suitable standard, varies depending on current situation and conditions. Surveys may be needed.		
4. Any compensation payable eg to neighbours affected.		

For Example:

Item	Min	Typical
Administrative & Legal Costs	2,500	3,000
Advertising Costs (est.)	1,200	1,500
Survey Costs - (when needed to accurately plot the proposed new route of the path onto an OS plan or for site investigation works)	?	?
Compensation to others affected	?	?
Cost of works	?	?
TOTAL COST	?	?

SCHEDULE OF ADVANCE CHARGES

Fees are payable in stages as the application is progressed:

	Timing	Amount
1.	With application	£150.00 (inc. VAT) <i>This covers the initial cost of opening a file, and internal notifications</i>
2.	Prior to Stage 2	£950.00 (inc. VAT) <i>This fee contributes towards the legal and administrative costs involved in:</i> <ul style="list-style-type: none"> • <i>Informal consultation</i> • <i>Reporting the results of the consultation to the Borough's Rights of Way and Highways Licensing Panel</i> • <i>Negotiations to resolve informal objections</i> • <i>Drafting of the Order and passing for approval by the applicant</i> • <i>Publishing and advertising the Order</i>
3.	Prior to confirmation of the Order	£ remaining costs <i>Once an Order has been made and published, and after the period for objections is over, the applicant will be billed for any outstanding administrative, legal and advertising costs, plus the projected costs for preparing and advertising confirmation of the Order.</i>

Refunds will be made where any payment received exceeds the Council's actual costs incurred

An Order will not be confirmed by the Council or submitted to the Secretary of State for confirmation unless all outstanding bills have been paid.

4.	Prior to certification of any works needed along the new route of the path	£ cost of practical works + VAT <i>The council's costs incurred in bringing the new route of the path into a condition suitable for public use.</i>
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DESIGN GUIDELINES FOR THE CREATION OF NEW PATHS

Works to establish a new path (either a completely new path or the new route of a path that is being diverted) will generally be carried out by the Council at the expense of the applicants. Notwithstanding this, the following requirements should be considered by applicants when considering a new path's route.

Accessibility/ Barriers

Under the Equalities Act 2010, any new paths will be required to be fully accessible to all members of the public. No stiles will be permitted, and any gates will need to be fully accessible to those in wheelchairs, and be designed and installed in accordance with BS 5709 (2018). The Council is able to supply details of suitable gates upon request.

Gradients

The maximum gradient along the length of a path shall be 1:12. For slopes longer than 15 metres in length, the maximum gradient shall be no more than 1:16.

The maximum slope across the width of a path shall be 1:15.

Widths

A new section of path will usually be required to be at least as wide as the section of path that it replaces. The following **minimum** widths apply to proposal for new sections of path

Public Footpath	-	2 metres
Public Bridleway	-	4 metres
Restricted Byway	-	5 metres

Increased widths will be needed for well used paths, or paths in built up areas. Increases in width will generally be considered as a positive benefit to any proposal.

Barbed wire

Where barbed wire is necessary to enclose a path, increased width is generally required, and the barbed wire must be secured on the field-side of the posts, with a corresponding taught strand of plain wire on the path-side of the posts to prevent users of the path coming into contact with the barbs.

Surface standard

New sections of path will need to be drained and surfaced to a standard that will allow and withstand use at all times of the year. Where a path is being diverted, the new route of the path may well be required to be of a higher standard than the existing route.

Gates

Any new gates will need to conform to BS5709 (2018)
(Details available upon request)

Maintenance of the route

When considering gates, applicants will need to consider and provide for access for path maintenance.

If the new route of the path would place an increased maintenance burden upon the Council, acceptability of the proposal may be reliant upon the applicant entering into a separate 'maintenance agreement' with the Council. This typically requires future maintenance to be carried out by the applicant, with powers for the Council to carry out the works and to recharge its costs to the applicant in default.