

# **PUBLIC RIGHTS OF WAY PUBLIC PATH ORDERS**

**(Town and Country Planning Act 1990 section 257 and 261)**

## **Guidance Note**

Place Directorate  
Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

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[www.rbwm.gov.uk](http://www.rbwm.gov.uk)



Royal Borough  
of Windsor &  
Maidenhead

## **1. Introduction**

- 1.1 These Guidance Notes have been produced to assist applicants in the procedures necessary to make stopping up orders or diversions of footpaths or bridleways “Public Path Orders”. They are intended to outline and explain the processes to complete these orders and the necessary administration and costs that the Royal Borough of Windsor and Maidenhead charge to progress with an application.
- 1.2 Under Section 257 of the Town and Country Planning Act 1990, the Council may make an Order to stop up or divert any footpath or bridleway if it is satisfied that it is necessary in order for development to be carried out. Under Section 261 of the Act, the Council may make an Order to temporarily stop up or divert any footpath or bridleway if it is satisfied that it is necessary to do so for a minerals/quarry development to be carried out, the Order to remain in force for the duration of the extraction and restoration works. Following the amendment of Section 257 by the Growth and Infrastructure Act 2013, an Order may be made in anticipation of planning permission. However, an Order made in advance of planning permission cannot be confirmed until that planning permission is granted. An Order cannot be made if the development, in as much as it affects the path, has already been started.

## **2. What Happens?**

- 2.1 The public path order procedure is complex and often lengthy. It involves widespread consultation and advertisement, and there is a statutory right for individuals and organisations to object to the proposal. Opposed Orders must be referred to the Secretary of State, and cannot be confirmed by the Council. Applicants should therefore 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 specify the works needed for the route of the new path to be brought up to an acceptable standard. (See Appendix 2 for design guidelines).

### **2.2 Stage 1**

Proposals to stop up or divert public rights of way should be discussed with the Council prior to the submission of a planning application. Applicants are also encouraged to carry out an informal consultation with interested parties, including the local Parish Council and the East Berks Ramblers, and to take the responses into account prior to the submission of a planning application.

It is important that the effect of any development on public rights of way is fully considered at an early stage of the planning process. If it is not fully considered at this stage, objectors to an Order under s.257 will have good grounds for objection, and the Order may not succeed.

### **2.3 Stage 2**

The Council receives an application to stop up or divert the path(s) and further consultation with the applicant including a site visit takes place.

#### 2.4 Stage 3

The Council will carry out informal consultations with all statutory undertakers (Gas, Water, Electric etc.) and other interested parties (e.g. Parish Councils and path user groups).

#### 2.5 Stage 4

The Council will discuss any problems with the applicant, and agree any revisions to the proposals.

#### 2.6 Stage 5

The Council will report to its Rights of Way and Highways Licensing Panel. If approval is given by the Panel to proceed with the Order, go to Stage 6, if it is refused, the applicant will be informed and the process is stopped.

#### 2.7 Stage 6

The Council will prepare the Public Path Order in accordance with the details proposed by the applicant and as considered by the Panel. The Council will publish the Order by advertising in the local newspaper, circulation to interested parties and posting notices on the site at each end of the section of footpath/bridleway to be diverted/stopped up. There will be a period (minimum 28 days) within which people may submit comments to the Council.

If the proposed public path order is unopposed, please proceed to Stage 9

#### 2.8 Stage 7

The Council will receive any objections to the public path order. If the applicant wishes to proceed, the Council will negotiate 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 9

#### 2.9 Stage 8

If the objections are not withdrawn but the applicant still wishes to proceed, the 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 as to whether to progress with or abandon the Order.

If the Panel decides to progress with the Order, it will be referred to the Secretary of State, who may deal with the Order by holding a public inquiry, by arranging a hearing or by considering written representations. When objections are outstanding, it is only the Secretary of State who can decide whether or not the Order should be confirmed.

#### 2.10 Stage 9

The Council will confirm the public path order, and advertise the confirmation by newspaper advertisement, circulation to interested parties and the posting of site notices.

#### 2.11 Where construction of a new path is involved, the subsequent 'taking effect' of an Order is dependant upon the Council certifying that the new path has been constructed to a satisfactory standard.

### 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 5 or 8 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. 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 ensure that this work is carried out (under the direction of the Council) at their own expense. The work must be completed before the Order takes effect.

### 4. **Application Procedure**

- 4.1 Formal applications for the stopping up or diversion of a footpath or bridleway should be submitted to the PROW Team at the Borough Council. An application form can be obtained from [PROW@rbwm.gov.uk](mailto: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 line of the path by mean 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).* If the path is to be extinguished or reduced in width, the area to be stopped up must be clearly and accurately indicated on the plan.

- 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, and/or
- Written consent of all other parties with an interest in the land, over which the footpath or bridleway 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.

5. **Timescales**

- As a general rule, the simplest of orders, attracting no objections and requiring little or no practical works will take approximately 9 months between finalising the details of the application, and the order ‘taking effect’. Objections to a proposal may add approximately 6 –18 months to the period before determination of the application.

6. If you require any further information, please contact:

- [Prow@rbwm.gov.uk](mailto:Prow@rbwm.gov.uk)

| SUMMARY OF CHARGES   |            |   |
|--|------------|---|
| <b>1. Administrative and Legal Charges</b><br>Actual cost in making and confirming order varying from £2,500 minimum |            |   |
| Minimum £2,500 Charge .....<br>↓   | .....<br>↓ | UNOPPOSED<br>ORDERS<br>INVOLVING<br>MINIMAL<br>CORRESPONDENCE<br>↓<br>ORDERS WITH OBJECTIONS<br>WHICH ARE SUBSEQUENTLY<br>WITHDRAWN<br>↓<br>OPPOSED<br>ORDERS with Objections.<br>Possible referral to<br>DEFRA |
| Actual costs   | .....      |   |
| <b>2. Plus advertising charges typically varying between £500 and £900 each advert (minimum 2 adverts)</b>           |            |   |
| <b>3. Costs of bringing path up to suitable standard, varies depending on current situation and conditions.</b>      |            |   |
| <b>4. Any compensation payable e.g to neighbours affected.</b>   |            |   |

For example:

| Item   | Min      | Typical  |
|--|----------|----------|
| Administrative & Legal Costs   | 2,500    | 3000     |
| Advertising Costs (est.)   | 1000     | 1500     |
| 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  | ?        | ?        |
| <b>TOTAL COST</b>  | <b>?</b> | <b>?</b> |

## SCHEDULE OF ADVANCE CHARGES

***Fees are payable in stages as the application is progressed:***

|    | Timing                             | Amount   |
|----|------------------------------------|--|
| 1. | With application                   | <b>£150.00 (inc. VAT)</b><br><i>This covers the initial cost of opening a file, and internal notifications</i>   |
| 2. | Prior to Stage 2                   | <b>£950.00 (inc. VAT)</b><br><i>This fee contributes towards the legal and administrative costs involved in:</i> <ul style="list-style-type: none"><li>• <i>Informal consultation</i></li><li>• <i>Reporting the results of the consultation to the Borough's Rights of Way and Highways Licensing Panel</i></li><li>• <i>Negotiations to resolve informal objections</i></li><li>• <i>Drafting of the Order and passing for approval by the applicant</i></li><li>• <i>Publishing and advertising the Order</i></li></ul> |
| 3. | Prior to confirmation of the Order | <b>£ remaining costs</b><br><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 | <b>£ cost of practical works + VAT</b><br><i>The council's costs incurred in bringing the new route of the path into a condition suitable for public use.</i> |
|----|--|---|

### **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.