

West Sussex County Council

Highways Act 1980 Section 119:

Diversion of Public Footpaths, Bridleways and Restricted Byways – Notes for Applicants

April 2016 – March 2017

Introduction

It is open to the County Council to consider applications from landowners for the diversion of public rights of way. This is a power rather than a duty (except where a diversion is sought for the purposes of facilitating agricultural or forestry operations or the breeding or keeping of horses) however West Sussex County Council has long been one of the few authorities prepared to accept private applications from landowners. The law relating to the most usual types of diversions is in Section 119 of the Highways Act 1980. This guidance 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.

1. The Grounds for Making and Confirming an Order

1.1 It will be for applicants to satisfy the County Council on the ground for making an order. In law, a diversion order can be made on one of two grounds, i.e. "in the interest of the owner/lessee/occupier of land crossed by the way" or "in the interests of the public". The first ground normally applies to most applications, and applicants are asked to provide detailed reasons for making the diversion request, e.g. applicants may feel that the diversion they are seeking would improve the security/privacy of their property.

1.2 Additional and separate tests have to be applied before a made order proceeds to confirmation stage (confirmation enables the order to take effect). Under the test for confirmation, a diversion order shall not be confirmed until the confirming authority is satisfied that the diversion meets the test in 1.1. above, and further that the way will not be substantially less convenient to the public in consequence of the diversion, and that it is expedient to confirm the order having regard:-

- (a) to the effect which the diversion would have on public enjoyment of the way as a whole;
- (b) to the effect which the coming into operation of the order would have respects other land served by the existing public right of way; and,

- (c) to the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

- 1.3 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.

Therefore, in reaching a conclusion with regard to the legislation, the County Council will take a number of wide ranging considerations into account, including:

- Physical features which include distance and direction of travel, path widths, gradients, levels and condition, convenience and future maintenance of surfaces and structures;
- Assessment of the public's enjoyment of the path which requires subjective judgements to be made about views, amenity value and quality of the experience offered to users of the path;
- The possible impact of any new path on other properties would also be taken into account; 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;
- That generally a proposed route would need to compare reasonably favourably with the length of path proposed to be stopped up under the application in terms of distance, other physical characteristics and amenity value;
- That, taking into account its responsibilities under the Equalities Act 2010, the County Council would also bear in mind the needs of the disabled. Open access would generally be expected on the new route - 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 66, 115 or 147 of the Highways Act 1980, upon confirmation of a diversion order;
- The County Council will also have regard to any material provisions of the Rights of Way Improvement Plan that may be relevant to the proposal.

2. Proof of Ownership and Consent(s) of Any Other Landowner(s) Affected

- 2.1 Applicants will need, when making an application, to provide proof that they own the land affected by the diversion they propose by supplying an official Land Registry copy with corresponding plan. If there is any other landowner affected by the requested diversion a separate official copy(s) is required for such land together with the written consent of the other landowner(s). Paragraph 10.1(f) below refers.

3. Consideration/Inspection of the Diversion Proposal and Consultations

3.1 The applicant's agreement to the points summarised in paragraph 10 of this note, together with a non-returnable deposit of £500 and documentation as also summarised in paragraph 10, should be sent to the Rights of Way Team who will then add the application to the list of such applications awaiting consideration. When the application falls to be considered, a site inspection will be undertaken. Applications will generally be investigated and considered in order of receipt though priority will be shown to proposals that include a positive benefit to the public, for example, allowing walkers to avoid a busy stretch of road, offer a valuable link between two paths, or increase a path's status such as from footpath to bridleway. While applications are inspected largely in order of the date received, this may be varied in the interests of efficiency, for example if a site can be inspected whilst an officer is in the area on other business. Generally though applicants must expect to wait some months before an inspection is made and their application considered. While applicants may wish to be present when an inspection takes place, this is not arranged as a matter of course as it can introduce delays by hindering the effective and efficient programming of site inspections. Usually the information provided by applicants beforehand will be sufficient for the inspecting officer to reach a view, although specific requests from owners who wish to be present will be considered. After the inspection, the applicant will be advised whether or not the proposal can be supported. In reaching a conclusion about support for a diversion application, the inspecting officer would take into account the considerations in paragraph 1 of this guidance. In terms of width, a minimum of 2 metres for a footpath and 3 metres for a bridleway would usually be expected, but in some circumstances a greater width may be required and most likely would be required for a diverted restricted byway.

4. Procedure after the Inspection has been made

4.1 If the requested diversion cannot be supported following an inspection, applicants will be supplied with the reasons for this, and if an applicant then wished to pursue a proposed diversion that did not have officer support, it would be open to him or her to ask that a report be made to the Rights of Way Committee for a decision by elected members. In the event that an application is not supported either at officer or member level, applicants should note please that the deposit referred to in 3.1 above is non-refundable.

4.2 If support can be given to the requested diversion following an inspection, the relevant District and Parish Councils will be

consulted on the proposed diversion. Details will also be sent to the local member, the County Local Committee, the Police Crime Prevention Officer and the prescribed national user groups and, in line with usual practice, to the representative(s) of the amenity groups in the County concerned with public rights of way, as it has been found from experience that such early consultation with them can be valuable. The applicant should be prepared to allow an inspection of the proposed route by the representative of any of these parties and to provide a telephone contact to enable consultees to make prior arrangements for access to the proposed route (paragraph 10.1 below refers).

4.3 If there is no reason for the matter to be determined by the Rights of Way Committee (i.e. the tests are met and none of the circumstances in paragraph 4.5 below arise) it will then be signed off as a delegated decision and a diversion order will be made.

4.4 The County Council will then prepare a formal application statement for the applicant's signature. The application statement will include details of the works that will be needed on the new route, if the order is successful in due course, including any changes to/additional waymarking that the County Council will arrange at the applicant's expense.

4.5 Applications which are subject to any of the following will be referred to the Rights of Way Committee for a decision and applicants will be kept informed:

- the application is opposed by the local member, County Local Committee, District or Parish Council, a prescribed user group or Sussex Police;
- where substantive adverse comment(s) have been received from members of the public;
- where applications, if permitted, would incur an unreasonable cost or liability for the County Council;
- where a request is made by the applicant for consideration by the Committee following a refusal by officers; or,
- where a decision is very finely balanced.

If the Committee then approve the application, a diversion order will be made

5. When the Order has been made

5.1 The County Council will, as required by law, publish a Notice of the making of the order in a local newspaper, and there will then follow a twenty eight day period in which objections may be received. Applicants will be notified after that time whether or not there have been any objections.

6. Unopposed Orders – Procedure

- 6.1 If no objections are forthcoming within the time stated in the Notice, the order will be capable of confirmation and the applicant will be notified. Before the order is confirmed, applicants will be expected to undertake, to the satisfaction of the inspecting officer, any works on the new route for which they are responsible and to settle the County Council's waymarking account (4.4 above) and its administrative and advertising accounts (8 and 9 below). The County Council will then be in a position to publish the Notice of confirmation in the press. The order will come into operation shortly afterwards.

7. Opposed Orders – Procedure

- 7.1 Where an objection(s) is received, normally its content will be conveyed to the applicant and to the inspecting officer for comments and the County Council will then write to the objector(s) to seek withdrawal by explaining the reasons for the order and by addressing the points of concern.
- 7.2 If the objection(s) is withdrawn the procedure is as outlined in 6.1 above.
- 7.3 If the objection(s) is not withdrawn the County Council cannot confirm the order itself and will need to consider whether to adopt the only course available if the order is to proceed, i.e. its submission to the Secretary of State for determination. This may involve referral back to the Rights of Way Committee. There is no statutory duty on the Council to submit an opposed diversion order, or to promote it at any ensuing public inquiry or hearing if it is submitted, and normally the County Council will have only minimal involvement in an inquiry or hearing. If an opposed order is submitted, this will be done in accordance with the County Council's priorities and its list of opposed orders awaiting submission and paragraph 10.1 (h) below explains the applicant's role in the event that an order is submitted. Prior to submission the applicant will be required to settle the County Council's administrative and advertising account (excluding the cost of publishing the notice of confirmation - paragraphs 8 and 9 below refer).
- 7.4 If the order is sent to the Secretary of State, he may appoint an Inspector to hold a Public Local Inquiry, or arrange a Hearing, before reaching a decision. If the Secretary of State/his Inspector's decision is given in favour, the County Council will be in a position to publish the Notice of Confirmation in the press and the order will become operative shortly afterwards. The applicant will then be required to undertake any works on the new route for which he is responsible and to settle the County Council's waymarking account (4.4 above) and its advertising account for confirmation.

- 7.5 If the Secretary of State/his Inspector decide not to confirm the order, the path will remain on its existing route and accounts for waymarking and confirmation advertising will not arise.
- 7.6 Where, in the light of the objection(s) received, it is decided by the County Council following consultation with the applicant that the order should not proceed (i.e. that it be not submitted to the Secretary of State for determination), the path will remain on its existing route and the applicant will be required to settle the County Council's administrative and advertising account (excluding the cost of publishing the notice of confirmation - paragraphs 8 and 9 below).

8. Administrative Costs

- 8.1 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations, 1993 and The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 enable the County Council to recoup the costs incurred in connection with processing applications for the diversion and stopping up of public paths up until the point where an opposed order is submitted to the Secretary of State.
- 8.2 The amount of officer time will vary according to whether an order is opposed or unopposed or if more than one order is needed hence applicants should note the different levels of fee payable. The current charging rates are listed at the foot of these notes. They are subject to change annually in April.
- 8.3 While applicants will normally be expected to bear the costs of processing an order, in exceptional circumstances, e.g. where a diversion would result in substantial benefits to rights of way users, the County Council may decide to waive all or part of the charge where it considers it appropriate.
- 8.4 In the event that a made order is not confirmed, the applicant is not entitled to request a refund except where:
- (i) the County Council does not confirm a properly made unopposed diversion order; or,
 - (ii) without consultation with the person who requested the order, it does not submit an opposed order to the Secretary of State for determination; or,
 - (iii) the order cannot be confirmed because it has been invalidly made.

9. Advertising Costs

9.1 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 on average is in the region of £700 - £1000 exclusive of VAT for a confirmed order relating to one path. This figure will increase when two or more paths are involved, and will be reduced where the Notice of Confirmation is not published (7.5 and 7.6 above). Applicants will be charged the actual cost of advertising.

10. Summary

10.1 In summary the applicant will be responsible:-

- (a) For the actual advertising charges;
- (b) For the County Council's administrative fee;
- (c) For implementing the works required by the County Council to bring the new path into being and for bearing the cost of the waymarking required. Details of the works will be included in the formal letter of application (Para 4.4 above refers) in due course;
- (d) For allowing inspection of the proposed route by consultees and for providing a point of contact to enable arrangements to access the site to be made (4.2 above refers), and also for confirming, in the event that an opposed order is submitted to the Secretary of State, that there is no objection to an inspection by his representative;
- (e) For satisfying the County Council on the grounds for an order (please include as much information as possible in support of your application, paragraph 1 above refers);
- (f) For supplying proof of legal title, e.g. a Land Registry Official Copy document, to all the land affected by the proposal (including the land crossed by both the present path requested to be stopped up and the land crossed by the proposed new path). If any other person(s) owns any of the land either crossed by the present path requested to be stopped or by the proposed new path, separate proof(s) of title are required. The consent(s) to the proposal of any other owner(s) must also be provided;
- (g) For supplying a plan showing the length of path proposed to be stopped-up, and the proposed route;
- (h) For confirming that, in the event that a made order receives objection, the applicant will:
 - (i) provide comments on objections when requested to do by the County Council to assist in the decision as to whether the order

is to be submitted for determination to the Planning Inspectorate (the Secretary of State's office);

- (ii) provide a detailed statement of case in support of the order for the Planning Inspectorate when requested to do so, if it is decided that the opposed order will be submitted;
- (iii) following submission, provide all other information required by the Planning Inspectorate within the timetable that will be specified by the Inspectorate in due course; and,
 - (iii) attend and promote the opposed order at any resulting public inquiry or hearing, and give evidence to the inquiry in support of its confirmation.

10.2 To proceed with a diversion application, applicants are requested to:-

- forward their consent to points (a), (b), (c), (d) above;
- send with the application a non-returnable deposit of £500 (cheques to be made payable to West Sussex County Council);
- supply at the time of making the application the information/documentation requested at points (e), (f) and (g); and,
- confirm their agreement under (h) (i-iv)

to the Public Rights of Way Team, Countryside Services, Northleigh, Tower Street, Chichester, West Sussex PO191RH.

10.3 Finally, applicants will appreciate from the information given that the procedures involved in the processing of a diversion order are lengthy. Additionally, because the team's workload is extremely heavy, the list of priorities necessarily means a delay in dealing with some tasks, including the consideration of diversion applications.

Tony Kershaw, Head of Legal and Democratic Services
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diversion guidance notes for applicants for period April 2015 – March 2016

Highways Act 1980 Section 119:
Diversion of Public Footpaths, Bridleways and Restricted Byways
Administrative fee rates
April 2016 – March 2017 (paragraph 8.2. above refers)

- (i) the County Council's administrative fee for orders where no objections have been received is £1330.00 including VAT (which includes the non refundable deposit of £500 - paragraph 3.1 above refers);
- (ii) where an application relates to more than one path as part of a package, or where additional orders are necessary as part of an application because the application may also require alteration to another path, an extra charge of £330 per additional order will be made to cover the resulting extra administrative costs incurred;
- (iii) normally one site inspection by the case officer is sufficient prior to determining the application and the fee at (i) above is based on one site inspection being necessary. However, if and where an additional inspection(s) is required, each additional inspection will incur a flat fee charge of £110 including VAT; and,
- (iv) the County Council's administrative fee for opposed orders is £2160 including VAT (which includes the non refundable deposit of £500 - paragraph 3.1 above refers). This figure comprises the £1300 referred to in (i) above plus an additional charge of £860 to cover the costs to the Council of corresponding with the objector(s), preparing a formal submission and Statement of Case for the Secretary of State and attendance at the Inquiry (in an administrative support capacity only). In the event that no objection is outstanding following the Council's correspondence, thus avoiding the need for the order to be submitted to the Secretary of State, the additional charge of £860 will be reduced to £330, making a total of £1630 including VAT (including the non refundable deposit of £500).