

DIVERSION, STOPPING UP OR EXTINGUISHMENT OF PUBLIC RIGHTS OF WAY

Highways Act 1980, Sections 26, 118, 119, 120 and 121 Town & Country Planning Act 1990, Section 257

Notes for applicants

1. These notes are for guidance and help in applying to the Council for an Order diverting, stopping-up or extinguishing public rights of way. If you are in doubt on any matter, please contact the External Works Officer, Community Development & Wellbeing, Bridgwater House, King Square, Bridgwater, TA6 3AR Tel: 01278 435270
2. An application for the stopping up of a public right of way is more likely to succeed if an alternative route is provided and the written consent obtained of any landowner affected. You may also find it useful to make an informal approach to the Parish Council concerned before submitting a definite proposal to the District Council.
3. Section 28 of the Highways Act 1980 provides that compensation may be payable in respect of depreciation of the value of an interest in land, or by damage for disturbance in the enjoyment of land arising as a result of the coming into force of an Order, which the Council may decide to make under that Act. Applicants are asked to sign the undertaking on the application form to indicate that they will be prepared to defray any such compensation which may become payable. (Claims for compensation are seldom made, but could arise where, for example, a neighbour loses access to land as a result of the Order).
4. No authority for the closure of a public right of way is conferred unless and until the Order has been confirmed and brought into operation and notice of its confirmation has been published (or under Section 116 of the Highways Act 1980, without a final certificate issued by the magistrates, except in special circumstances). Any alternative route must also be satisfactorily constructed (and in applications dealt with under Section 257 of the Town and Country Planning Act 1990, the appropriate certificate issued) before the old route is closed. Prior obstruction of or interference with a public right of way is an offence and may make it impossible to proceed with the application.
5. An order under Section 257 of the Town & Country Planning Act 1990 stopping-up or diverting a public right of way to enable development to be carried out cannot be made unless full planning permission has already been given. However, if it is possible, it often saves time if the application for an Order is submitted at the same time as the application for full planning permission or approval of detailed plans. It is not possible for an Order under Section 257 to be confirmed where the development is substantially complete. It is important to ensure that the path is considered at an early stage.
6. Where a right of way is diverted to a field boundary or headland, the diverted route must not be ploughed at all, under the Wildlife and Countryside Act 1981, Section 61. A permanent width of 1.8 metres for a footpath and at least 3 metres for a bridleway must be left at all times by the owner of the field.

7. Proposals to stop-up or divert public rights of way often tend to arouse local feeling and the statutory procedure for an Order may take some time to complete, especially if objections to an Order made by the District Council are not subsequently withdrawn. This is because the proposal has then to be referred to the Secretary of State for him to determine, possibly after a public inquiry has been held. Considerable work is involved and applicants are asked to appreciate that matters of this sort, whilst dealt with as expeditiously as possible, cannot be completed overnight. On average, an Opposed Order can take up to six months to complete.

8. **LEGAL INTERESTS IN THE LAND**

Legal interests in the land include: -

- (a) Any easement, rights or privilege in or over the land.
- (b) Any rent charge in possession over the land.
- (c) Any charge by way of legal mortgage over the land.
- (d) Any other similar charge on the land which is not created by an instrument
- (e) Any rights of entry over the land.

9. **CHARGES**

The statutory procedure which has to be followed for the making of Diversion or Stopping-up Orders involves advertising the proposal in an appropriate local newspaper to enable persons to object, if they so wish, and similar further publication when the Order is confirmed. Diversion Orders made under Section 257 of the Town and Country Planning Act 1990 need to be advertised a third time, i.e. when the Order is brought into operation.

CHARGES FOR PROCESSING THE MAKING OF THE ORDER

The Council will charge the applicant the actual cost of preparing accurate, measured plans for incorporation in the order, site visits, administrative expenses (informal and formal consultations, making the order, and, prior to submission to the Secretary of State if applicable, dealing with any possible objections). The initial payment will be £1000 exclusive of VAT, which must be forwarded with the application.

Unopposed orders are orders where no objections have been received following the consultation process. The charges for opposed orders will apply to those orders where objections are received and subsequently withdrawn, following negotiation.

This Authority will not know what objections are received, if any, until the proposal has been formally advertised.

OTHER CHARGES

Advertising public notices – the actual cost (approximately £160 -£320)

The provision and erection of a fingerpost for the alternative route (if appropriate)
£80.00

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