



Basingstoke & Deane Borough Council Footpath Diversion Orders Notes & Guidance

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Overview of the Footpath Order process

Introduction

Although footpath matters are usually dealt with by the Local Highways Authority (typically the County Council), borough councils have been granted powers by S257 of the Town and Country Planning Act 1990 ("the Act") to make Orders for the diversion or extinguishment of footpaths, bridleways or restricted byways..

However, the Council will only be able to make an Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission. This will not be the case if the development has already been carried out. The Council must also have regard to:

- the need for an alternative highway to be provided; and
- the disadvantage or loss likely to arise as a result of the stopping up or diversion to members of the public generally, or to persons whose properties adjoin or are near the existing highway, weighed against the advantages of the proposed stopping up or diversion

If you wish to divert or extinguish a footpath following the granting of planning permission, you should apply to the Council using the accompanying application form.

Please note: a Footpath Order will take at least 3-4 months to complete, and may take substantially longer if the Order is opposed.

If the Council's officers determine that the above powers do not apply, the Council will not be able to make an Order. However, it may still be possible to divert or extinguish a footpath by applying to Hampshire County Council as the Local Highways Authority.

Procedures for making an order

When an application is received, the Council carries out informal consultations on proposals with the appropriate Parish/Town Council(s), the user groups (such as the Ramblers' Association, Open Spaces Society and British Horse Society), the local Councillor(s) and Hampshire County Council (Rights of Way section).

Both the Ramblers' Association and the Open Spaces Society have a policy of objecting to Public Path Orders unless a clear public benefit can be shown. It is often the case that initial proposals are amended at the consultation stage, and suggestions made by the consultees can help achieve a successful outcome. The Council is keen to encourage applicants and consultees to reach agreement on proposals where possible.

If it is not possible for agreement to be reached during the consultation process, the decision on whether to make an Order is made by the Council's Officers.

In view of the Ramblers' Association and Open Spaces Society's policy concerning public benefit for Orders, it is difficult for applications for stopping up orders to succeed unopposed, unless they are accompanied by other applications for diversions or creations that bring public benefit.

If an Order is made, notices advertising details of the Order are posted at both ends of the affected section of the Path. Similar notices are published in at least one local newspaper. The notice informs the public that they can inspect the Order at the Council's offices or by paying for a copy of the Order to be sent to them, and states that objections can be made to the Order within 28 days.

Unopposed Orders

If at the end of the 28 day objection period no objections have been received, the Council will confirm the Order. Notices are again posted on the Path and in the press to this effect, and the applicant will be informed that the Order has been confirmed.

At this stage, members of the public may not object to the contents directly, but may apply to the High Court within six weeks to quash the Order if they believe the legal requirements of the Act have not been complied with. If no application has been made to the High Court by the end of this period, the Order is considered valid and may not be further challenged.

The Council will then, on completion of the necessary works by the applicant, certify the work as satisfactory and the Order will come into operation. If no works were required, the Order will come into operation at the end of the six week period.

Opposed Orders

If objections are received to a draft Order within the specified time limit and are not withdrawn within two months after the expiration of the objection period, the Council must refer the Order to the Secretary of State for the Environment. The Secretary of State will decide the matter either by holding a Public Inquiry or by appointing a person to hear the representations of the objectors.

The Secretary of State then decides on the basis of the reports submitted to him at the Inquiry or by hearing representations whether to confirm the Order with or without modification.

The applicant is informed of any objections. Any action the Council may wish to take to resolve objections at this stage is not chargeable to the applicant. If objections are not withdrawn, or are considered by the Secretary of State to be irrelevant, payment of costs by the objector can be sought at the Inquiry, with this being decided by the Secretary of State.

Public Inquiries can take several months to arrange and complete, and it can take up to a year or more before an Order can be decided. It is therefore considered "time well spent" to try to resolve any problems at an early stage of the design of the development with a view to avoiding the need for a later inquiry.

Charges for Public Path Orders

Charges

The Council usually requires all applicants for Public Path Orders for the diversion and extinguishment of public rights of way to reimburse to the Council the whole of the charges involved.

The charges for Orders made under the Act comprise:-

Administration Charge

All new applicants are given an actual figure for the administration of their proposals following submission of a technically correct application and prior to the Council carrying out informal consultations on any proposal.

The current average administration charge for a one path/one order application is £1,500.

Once fixed, an administrative charge will only be increased if an applicant initiates changes that expand or substantially vary the application.

Advertising Costs

Public Notices of the making, confirmation and certification of Public Path Orders made under the Town & Country Planning Act 1990 have to be published in a local newspaper - the Basingstoke Gazette, Newbury Weekly News or Andover Advertiser. Costs are likely to be in the region of £400 per notice, for a total of approximately £1,200.

It should be noted that as the charge is dependent upon the amount of type required, it can vary considerably for different Orders. Also, depending on the exact location of the footpath concerned, it may be necessary to advertise each notice in more than one newspaper. This can substantially increase the above estimate.

Cost of the Works

Applicants are required either to prepare any new route to the Highway Authority's required standard and/or to meet the costs of having the works done. This may include installing way marking, signposts, bridges, ground-works etc.

Refunds

The Council will only refund an administration charge where:

- it fails to confirm an unopposed Order;
- having received representations or objections which have been made and not withdrawn, the Council fails to submit the Order to the Secretary of State for confirmation, without the agreement of the person requesting the Order; or
- the Public Path Order is not confirmed by the Council or on submission to the Secretary of State, by him, on the ground that it was invalidly made.

It is up to the applicant to make an application for refund of charges.

Waivers

The Secretary of State expects authorities to use their power to recover costs, and applicants should expect to bear the cost of making an Order.

However, authorities have discretion not to charge, or to charge only part of the cost. They will only do this in very exceptional circumstances, such as financial hardship or potential benefit to Rights of Way users. The Council will judge each case on its merits in the light of local circumstances, in the absence of any standard definition of hardship or rules to determine the benefits to Rights of Way users.

Application Form Guidance Notes

Section 1 - Proposal

1. Insert the name(s) and address(es) of the individual(s) making the application. This would normally be the owner and/or the occupier of the land crossed by the affected route. Details of all the landowners/occupiers/ lessees should be given in Section 4 of the form. If the land is owned by a business the form should be completed in the name of the business by the Company Secretary or one of the partners. If the form is completed by an agent, written authority to act on behalf of the applicant should accompany the application. If you are not the owner/ occupier/ lessee of the land crossed by the affected route, state in what capacity you are applying and why in Section 5 of the form.
2. The application must be accompanied by an A4 or A3 extract from the current Ordnance Survey map at a scale of 1:2,500, accurately showing the definitive route of the footpath/bridleway to which the application relates (by a bold continuous line) and any proposed route (by a bold broken line). The scale and orientation should be clearly shown as well as the grid reference to enable the public to identify rights of way concerned. The maps should also contain sufficient detail to show the effect, not just on the path or way to be stopped up or diverted, but on those highways connected to it. Any other adjoining public rights of way should also be accurately shown on the plan.

As many copies of this plan will be required, it is recommended that an electronic copy be provided to allow for easier and more accurate reproduction.

The application should also be accompanied by copies of the plans submitted with your planning application, to which you should also accurately add the definitive route of the existing footpath/bridleway and any proposed route.

Section 2 - Development Information

3. Give details of the proposed development, including the planning application reference number (BDB/xxxxx) if known
4. Please note that the footpath/ bridleway should not be obstructed unless and until a Stopping up or Diversion Order has been confirmed and, if appropriate, certified.
5. Please attach a copy of any relevant correspondence with the Highway Authority.

Section 3 - Permission to Inspect Route

6. Please indicate whether you wish to meet representatives of the user groups (such as the Ramblers' Association) who may wish to view the proposed route. If so, please provide a contact name and telephone number.

Section 4 (Part A) - Description of Existing Footpath or Bridleway

7. Refer to each section by letter (A-B, C-D etc). Add the letters to the plan accompanying the application.
Where there are no sections insert 'Whole Path' in this column.
8. Describe each section of the route (e.g. along field edge, following river bank).
9. If you do not know the recorded definitive width of the route put 'Unknown'.
10. Give details of any limitations on the public's right of way along the route, such as gates and stiles, and of any structures, such as bridges which exist on it. Indicate if any limitations have been authorised by the County Council.

11. Give details of the owner, occupier and lessee of the land crossed by each section of the route. You should supply written confirmation from all owners, occupiers and lessees that they are in agreement with the proposal. The Council reserves the right to request proof of ownership in cases of dispute.
12. Give details of the rights of any Statutory Undertakers (such as electricity, gas and communication suppliers) along each section of the route.

Section 4 (Part B) - Description of Proposed Highway

13. Refer to each section by letter (W-X, Y-Z etc) and add the letters to the 1:2,500 Ordnance Survey map extract accompanying the application
14. Indicate if footpath, bridleway, road, or estate road. The use of roads and estate roads for alternative routes should be avoided wherever possible. There is preference for alternative footpaths or bridleways to be provided which pass through landscaped or open space areas away from vehicular traffic.
15. Describe each section of the route with reference to geographical features which will exist if the development is completed as proposed (e.g. within eastern boundary of proposed public open space)
16. Minimum widths for proposed routes are 1.5 metres for a footpath and 3 metres for a bridleway. These widths apply when the existing route is not already recorded at a greater width. If a greater width is recorded then you should propose a width at least the same as the existing, unless there is good justification (such as a short section passing between two buildings) for less. Greater widths may also be appropriate if increased use of a route is likely as a result of the development or if the route is fenced on both sides.
17. Give details of any limitations and structures you are proposing along the route, such as gates and bridges.
18. Give details of the owner, occupier and lessee of the land crossed by each section of the proposed route and indicate if ownership is likely to change when the development is complete. You should supply written confirmation from all owners, occupiers and lessees that they are in agreement with the proposal. The Council reserves the right to request proof of ownership in cases of dispute.
19. Give details of the rights of any Statutory Undertakers (such as electricity, gas and communication suppliers) along each section of the proposed route.

Section 5 - Statement of Reasons

20. You should be aware that under S257 of the Town & Country Planning Act 1990 ("the Act"), the Council may make an order to stop up or divert a footpath/bridleway only if it is satisfied:
 - a. that it is necessary to do so to enable development to be carried out in accordance with planning permission granted by the Council under Part III of the Act
 - b. with regard to the disadvantage or loss likely to arise as a result of the stopping up or diversion to members of the public generally, or to persons whose properties adjoin or are near the existing highway, weighed against the advantages of the proposed stopping up or diversion
 - c. with regard to the need for an alternative highway to be provided
 - d. that the development affecting the route has not already been carried out

State clearly the reasons for making the application, explaining how the reasons meet the above criteria.

You should give details of the effect of the development on the footpath/bridleway (e.g. refer to the number and location of the properties that would otherwise obstruct it).

Section 6 - Agreement

21. A site inspection may be held. You are therefore asked to agree that, in that eventuality, a group of Council officers and other interested parties may inspect the proposed route(s) on a pre-arranged date.
22. For details of the charges payable refer to the "Charges for Public Path Orders" section.
23. The Council will manage your application in accordance with the provisions of the Data Protection Act 1988, which controls the processing and disclosure of personal data, and the Freedom of Information Act 2000.
24. The form should be signed and dated by the individual(s) named in Section 1.