

DIVERSION/STOPPING UP OF A PUBLIC RIGHT OF WAY UNDER s.257 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

Guidance Notes for Applicants

IMPORTANT: Please read these notes carefully before completing the application form as incorrect or incomplete information can cause delays. All applications must meet the required legal tests under Section 257 of the Town and Country Planning Act 1990. Those applications which do not meet the necessary criteria will not be accepted. It should be noted that, whilst the Council has a power to process Diversion or Stopping Up Orders, this is not a statutory duty. The County Council and the Peak District National Park Authority also have the power to make public path diversion/stopping up orders but where the District Council have granted the planning permission they would normally make the order for a diversion where one is required, provided the development has not been substantially completed.

In this guidance note references to diversion or diversion order include stopping up and references to footpaths include bridleways and restricted byways.

No authority for the diversion of a footpath, bridleway or restricted byway is granted unless and until a Diversion Order has been confirmed and brought into effect. So until the Order is confirmed the existing line of the footpath must remain. Any obstruction of the definitive path is an offence and may make it impossible to proceed with the Diversion Order.

The County Council is the Highways Authority in relation to all footpaths in the District and so the Council will take the advice of the County Council throughout the order making process. The County recommend that anyone thinking of diverting a public right of way first finds out the correct, legal line of the path (this may not be exactly how the path is used in practice) by contacting the Public Rights of Way Team at the County Council. They may recommend that a site meeting is conducted before an application is submitted as this may save time determining whether the proposal meets the requirements of the County Council. Each public right of way is uniquely referenced by the name of the parish/area in which it is located, and a number. We will need this information to process the application. The County can assist you by supplying this information, alternatively you can visit the mapping portal which can be accessed online via the Rights of Way page on the Staffordshire County Council website.

1. Legal Tests

- 1.1 The Council may make a Public Path Diversion Order under Section 257 of the Town and Country Planning Act 1990 where the Council are satisfied that it is necessary to do so either to enable development to be carried out in accordance with planning permission that has been granted under the Town and Country Planning Act 1990, or by a government department.
- 1.2 The Council can also make a Public Path Diversion Order under Section 257 of the Town and Country Planning Act 1990 in respect of an application for planning permission that has been made that if granted would make it necessary to make a diversion to allow the development to be carried out. However, where this is the case the application will not be processed until such time as the planning officer indicates that approval of the application may be possible, usually after consultation responses have been made and time given for consideration of the application by the planning officer. Such orders cannot be confirmed until planning permission is granted
- 1.3 A Public Path Diversion Order cannot alter a point of termination of the path if that point is not on a highway, or a highway connected with it, but a stopping up order can, however, neither order can be made unless it is absolutely necessary in order to accommodate the proposed development and so proposals that divert paths further away from their original line than required in order to accommodate the development are unlikely to be acceptable. Please note that in the context of footpath diversions “necessary” does not mean essential or indispensable only that it is required in the circumstances.
- 1.4 The procedure for diverting or stopping up paths for developments that are already substantially complete are by way of application to the County Council for an order under the Highways Act 1980 and they have guidance notes on their website to assist you. Applications for completed developments cannot be dealt with by the District Council.

2 Applications

- 2.1 Due to the large number of planning applications being processed the Council operate a waiting list for new applications. If there is a reason why delay will hinder development you need to let the Council know at the time of your application. You may need to apply for a temporary diversion while your application is being dealt with if necessary (eg for safety reasons) but permanent structures must not be built over the footpath until such time as it is confirmed. Applications for temporary closures should be made to the County Council.
- 2.2 Please ensure that you answer **all** questions correctly and fully in accordance with the instructions provided on the application form.
- 2.3 It is your responsibility to show that the diversion you are applying for is necessary and that the new path is the closest or most conveniently available route.

2.4 The following documentation must accompany your completed application form:

(a) A **clear map** at a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily available. The scale and north point should be clearly shown as well as grid references. The map should also contain sufficient detail to show the existing line of the path or way, the proposed alternative, and any effect on those highways connect to it. Detailed guidance on what the plan must contain is given by the Planning Inspectorate (PINS) in their advice note no.22 that can be found on their website or by using this link:

<https://www.gov.uk/government/publications/rights-of-way-advice-note-22-use-of-correct-notation-on-definitive-map-modification-orders-and-public-path-orders>

Please note: you must ensure that you do not use plans that may be subject to copyright restrictions, such as plans provided by the Council or County Council for information purposes. The applicant must obtain their own plan for submission with their application.

Any applications received with a copyrighted plan or that do not comply with PINS guidance cannot be processed and will be returned to the applicant.

- (b) If any person other than the applicant has an interest in either the land over which the existing path runs, or the land over which the alternative path runs, a letter of authority from that person confirming their agreement to the proposal must accompany the application together with their authority for the applicant to access the land to carry out the works authorised or required by the Order.
- (c) If the land over which the diversion is proposed is held in joint names then the application form will need to be signed by **all** legal owners.
- (d) If the applicant has proof of ownership of the land affected by the diversion then this should be provided with the application. If this is not provided or the documentation is considered to be too old to be relied upon, then the Council will carry out a Land Registry search and obtain the necessary proof of title documents. This will be recharged to the applicant as part of the processing costs.
- (e) Applications on behalf of companies should be signed by a director with capacity to act on their behalf and the position of the signatory should be indicated. Should an agent be acting on behalf of the company then a letter from a director providing authority should accompany the application.

- (f) Applications completed by an agent must also be signed by the applicant.

3. Improving access

- 3.1 The Council and County Council are committed to improving access to the countryside for people of all abilities and therefore applicants are required to provide an alternative route which is as accessible or more accessible for use by the public.
- 3.2 Applicants must construct diverted routes to a standard acceptable to the County Council and in some instances may be required to carry out suitable surfacing works such as tarmac or crushed stone, drainage or grading works to provide a route that is suitable for public use. The County Council are likely to object to applications unless the surface of the proposed alternative is the same as or better than the existing route.
- 3.3 The County Council are likely to object to applications if the width of the proposed alternative route is less than that of the existing route. Required minimum widths are:-
 - (a) Unenclosed:
2 metres for a footpath and 3 metres for a bridleway
 - (b) Fenced on both sides:
2 metres for a footpath and 5 metres for a bridleway
 - (c) Hedge on one side:
The centre of a footpath should be a minimum of 2 metres from the centre of the hedgerow and the centre of a bridleway should be a minimum of 3 metres from the centre of the hedgerow
 - (d) Hedges on both sides:
As above on both sides
- 3.4 As part of the County Council's commitment to improve access the County Council is striving towards a barrier free rights of way network. Gaps should be provided where possible, gates can only be installed on an alternative route in the interests of public safety or where they are necessary to control the movement of stock on agricultural or forestry land. The County Council may object if obstructions are placed on paths without the need for them.
- 3.5 The County Council may ask the Council to place requirements on any diversion order if they consider that access can be improved along a section of the path unaffected by the diversion, such as drainage works or replacing stiles with gates, then the right is reserved to insist that these works are carried out in conjunction with the diversion.
- 3.6 The diverted route will be waymarked to the satisfaction of Council. Should the diversion require the installation or relocation of a signpost then the costs of these works which would be carried out by the County Council will be re-charged to the applicant as part of the application fees.

4 Procedures for making an Order

- 4.1 The making of Public Path Diversion Orders is governed by statutory procedures of the Town and Country Planning Act and the waiting list and priority system adopted by the Council. The **minimum** time likely to be taken to secure confirmation of an unopposed Order is in the region of six months from the date of receipt of a valid application. If objections are received to the proposal, then the period of time taken before a decision is made to confirm and certify the order will be considerably longer.
- 4.2 Once a complete application has been received and accepted, the Council will carry out an informal consultation. This involves contacting the local user groups, statutory consultees and any affected landowners. Notices will also be posted on site inviting comments from members of the public. At the end of the consultation period any comments received will be considered and the proposal will be reported to the Development Control Committee with a request for authority to make the Order or to decline to make the order.
- 4.3 The making of a diversion order is a discretionary decision involving balancing the overall public interest in interfering with an established footpath. The fact that the development will require a diversion and the possibility of a suitable alternative route will have been considered at planning application stage and normally therefore if a planning permission has been granted the order making is likely to be approved, otherwise the development will not be able to go ahead. However, if there are new matters that have arisen or matters are raised that could not be considered through the planning process, such as economic impact on an individual, then consideration will be given to those issues at this time, this would also include any advantages or disadvantages the new path may have. The planning system and rights of way systems are separate though interlinked systems so grant of planning permission does not necessarily mean that a footpath diversion order will be made.
- 4.4 Once an Order has been made there is a statutory requirement to consult all statutory consultees and affected landowners. The notice of the making of the Order will also be advertised on site and in a local newspaper circulating in the area. There is then a statutory 28 day statutory consultation period from the date of the notice.
- 4.5 If no objections or representations are received to the making of the Order then the applicant will be contacted and advised that any works required on the diverted route should be carried out. Once these works are carried out to the satisfaction of the Council then the Order will be certified and confirmed and the Order will come into effect 28 days after the date of confirmation of the Order. Confirmation will be publicised in the same way as the making of the Order.

Please note you are advised not to carry out any works until you are contacted by the Council at the end of the objection period. Until this stage the Order cannot be confirmed as an unopposed Order and

it may not come into effect.

- 4.6 Should any objections be received to the making of the Order then the Council will attempt to resolve these by way of negotiation between the parties.
- 4.7 Where the objections are not withdrawn the Council will either decide not to continue with the application as it is not capable of confirming the Order or submit the Order to the Secretary of State for Housing, Communities and Local Government for determination.
- 4.8 If the order is referred to the Secretary of State then an Inspector will be appointed to determine the Order by written representations, a local hearing, or a Public Inquiry. If the Inspector decides to confirm the Order, then any works required by the Order will need to be carried out on the alternative route before the certificate can be issued to extinguish the existing path.
- 4.9 If the Inspector decides not to confirm the Order, then the Council cannot proceed any further and the path will not be legally diverted and **must** be available for continued use by the public.
- 4.10 Please note that 28 days after confirmation of the Order, the alternative route becomes the legal alignment and should be open and available for use but only certification that the alternative route is suitable for public use extinguishes the rights over the existing path.
- 4.11 The Council does not normally confirm an Order until it is satisfied that the required works have been carried out. However, should the Order be confirmed by either the Secretary of State or the County Council and the required works have not been carried out satisfactorily then the public will have rights over the existing and alternative paths and both routes will need to be open and available for public use.

5 Costs

- 5.1 A standard fee of £750.00 (as at 1.1.19 and subject to revision of fees and charges set out on the Council's website) is due with an application for a Diversion Order and the application fee is subject to the applicant agreeing to cover all reasonable costs incurred in processing the application and making the order including Land Registry fees, advertising fees and cost of any works (including the installation, removal or re-positioning of any signposts or statutory undertakers' apparatus in, or under the highways to be diverted) necessary as a result of the order coming into effect which may be payable.

Please note that there are statutory requirements to advertise the notice of the making of the Order and the notice of the confirmation of the Order and therefore two advertising fees will be incurred. Please note that these are not standard fees and will vary according to local advertising rates, however they are unlikely to exceed £1,000 altogether.

- 5.2 Interim payments will be requested as the matter progresses and applicants will be liable for payment of costs already incurred if they subsequently withdraw an application and any are due.

6 Return of Application Form and Enquiries

A copy of the application form with all necessary enclosures and any enquiries should be addressed to Regulatory Services, Staffordshire Moorlands District Council, Moorlands House, Stockwell Street, Leek, Staffs ST13 6HQ. Telephone 0345 605 3010 or email planning@staffsmoorlands.gov.uk.