

1. Introduction

- 1.1 The creation, diversion or extinguishment of public rights of way may be achieved by means of a Public Path Order. The power to make Public Path Orders is currently at the discretion of Bath & North East Somerset Council (“the Council”). In its Joint Rights of Way Improvement Plan 2007-2011, published in partnership with Bristol City and South Gloucestershire Councils, an action was identified to produce a “joint diversion policy including specification standards for diverted paths”. This policy statement is considered to fulfil that action.
- 1.2 An Equalities Impact Assessment has been considered in the drafting of this policy.

2. Applications for Public Path Orders

- 2.1 All applications for Public Path Orders (creations, diversions and extinguishments) will be assessed against the appropriate legislative tests and the criteria set out in this policy below. The Council will only exercise its discretion to make an order if it is satisfied that the order is capable of being confirmed (i.e. it believes the legislative tests are met) and it is reasonable to do so with reference to the criteria.
- 2.2 Generally proposals will only be acceptable where they maintain existing links to connecting paths and offer at least a comparable alternative path or provide new links to other paths. Consideration should be given to whether there is an alternative to altering the public right of way. The Council will seek to enhance the network wherever possible by improvement to the current route and network.
- 2.3 Applications will normally be dealt with in chronological order of receipt. However the Council reserves the right to prioritise some applications out of sequence for instance if the resulting order affects development; offers substantial improvement to the network; or requires to be expedited for any other reason.
- 2.4 Applicants for a Public Path Order will be expected to:-
- i. provide an initial assessment of their proposal against the legislative tests and additional criteria;
 - ii. agree in writing to meet all reasonable costs associated with making the order;
 - iii. pay any compensation which becomes payable in consequence of the coming into operation of the Order;
 - iv. pay all costs to set out any new line of the path on the ground;
(In exceptional circumstances the Council may agree to waive costs in whole or in part.)

- 2.5 The Council does not generally support applications for extinguishment orders unless they are part of a wider package with compensating public benefit. The Council will accept stand-alone applications for extinguishments only in exceptional circumstances.
- 2.6 The Council has developed its procedure for dealing with Public Path Order applications in accordance with government guidance and best practice. An application form and guidelines are available from the Council. These guidelines cover the consultation process, form of orders and charging. Further guidance on the alteration of public paths is contained within the booklet '**NE112 - A guide to definitive maps and changes to public rights of way**', available on the Natural England Website.

3. Effect of Public Path Orders and existing Public Rights of Way

- 3.1 A Public Path Order will not become operative until it is confirmed or certified where required. No path is to be obstructed or disturbed until an order has been finalised. All paths should be open and available for public use until such time as an order has come into operation. The case officer may agree to waive this requirement where it is deemed appropriate having regard to all the circumstances of the particular case; for example where the criteria of the Policy 3 of the PROW Enforcement Policy are met:

*“1. The obstruction does not appear to have been a deliberate attempt to interfere with the public's use of the route;
2. The obstruction is not of recent origin (the use of PPOs to deal with obstructions placed after the date of adoption of this policy will only be considered in exceptional circumstances);
3. In the opinion of a B&NES PROW Officer, an alternative route exists that will fulfil the requirements of the relevant PPO legislation.”*

4. Public Path Orders and Development

- 4.1 Where the diversion or extinguishment of paths are required as a result of development, these may be secured by means of a Public Path Order made under the Town & Country Planning Act 1990. Developers should note that the granting of planning permission in no way authorises the disturbance or obstruction of a right of way. A TCPA order cannot be confirmed if the relevant development is substantially complete and developers should thus ensure that an application for the PPO is made as soon as possible. Developers should be aware that applications that seek to divert existing paths alongside new estate roads will normally be rejected as this is contrary to government guidance in Circular 1/09¹.

¹ See paragraph 7.8 Circular 1/09

5. Legislative Tests

5.1 The legislative tests, that a particular application must meet, depends upon the type of order being sought. This policy applies to the following types of order:

- **Public Path Creation Order – section 26 Highways Act 1980:** A new right of way may be created where it can be shown that there is a need for it.
- **Public Path Extinguishment Order – section 118 Highways Act 1980:** A right of way may be extinguished where it is not needed for public use.
- **Public Path Diversion Order – section 119 Highways Act 1980:** A right of way may be diverted where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where: i) the diverted route would not be substantially less convenient to the public; and ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway. The effect the diversion would have on public enjoyment of the path as a whole must also be taken into account before a decision is made.
- **Rail Crossing Extinguishment / Diversion Order – section 118A / 119A Highways Act 1980:** A right of way which crosses a railway may be extinguished (section 118A) or diverted (section 119A) where it can be shown that it is expedient to do so in the interests of public safety, but only if it is not possible to make the crossing safe.
- **Special Extinguishment / Diversion Order – section 118B / 119B Highways Act 1980:** A right of way may be extinguished (section 118B) or diverted (section 119B) for reasons of school security {for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity}, or, if it falls within a designated high crime area, for reasons of crime prevention.
- **SSSI Diversion Order – section 119D Highways Act 1980:** A right of way may be diverted in order to protect a Site of Special Scientific Interest.
- **Public Path Order (extinguishment or diversion) – section 257 Town & Country Planning Act 1990:** A path may be diverted or stopped up if it is necessary to enable development to take place.

5.2 The Council now has the power under Sections 129A to 129G of the Highways Act 1980 to make what are known as Gating Orders. Gating Orders may be used where the authority consider that a highway is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses. Such orders have the effect of temporarily removing the rights of the public over the highway but they do not permanently extinguish them. Please refer to the Council's separate policy on Gating Orders for further information.

6. **Additional Criteria**

- 6.1 This section sets out the criteria against which the Council will assess any application for a Public Path Order. These expand on and are in addition to the tests set out in the legislation. It establishes how the Council intends to exercise its discretion in deciding whether or not to make a Public Path Order. It should be stressed that the Council will seek to take a balanced view of the assessment against all the criteria as a whole. The criteria are:-
- 6.2 **Connectivity.** Any new proposed route should maintain links to existing paths and where possible offer links to improve the connectivity of the network. Under very few circumstances will proposals be considered that alter road crossings of paths except where it improves the safety for users.
- 6.3 **Equalities Impact.** All applications will be assessed for their impact on equalities issues. The Disability Discrimination Act 2005 requires the Council to promote equality of opportunity for disabled people and to make reasonable adjustments to physical features so that people with disabilities are not disadvantaged. The Council's assessment will take into account other relevant legislation and government guidance. Proposals should seek to improve access for all, particularly those with mobility or visual impairments. Careful consideration should be given to the choice of infrastructure and gradient – see below - and the principle of least restrictive option applied throughout.
- 6.4 **Gaps & Gates.** In line with government guidance and the principle of least restrictive access, the Council will seek to minimise the number of structures on, and at either end of, the new route. Where a gap would be insufficient and a structure is required on a new route for a boundary crossing (e.g. hedge or fence to contain livestock or to prevent unauthorised access), a suitable gate or kissing gate may be permitted. Stiles will only be accepted in exceptional circumstances. All structures must be to a standard specified by the Council. This specification may cover features such as the means of fastening / latching as well as the overall physical dimensions of the structure and its operational performance. Generally, the new route must not result in a greater number of structures and any structures must be of an equal or less restrictive nature compared with the existing route. The Council may record structures as part of the order or, if appropriate, may authorise them separately under section 147 Highways Act 1980. Nonetheless, the consultation process will seek to make clear to the public the proposed structures on the new route.
- 6.5 **Gradients.** New routes should not introduce any significantly increased gradients compared to the existing path and where possible should seek to lessen gradients. Whilst steps may be acceptable in some circumstances, there is a preference to see appropriately graded ramps / slopes.
- 6.6 **Maintenance.** The proposed new route should not result in any significantly higher maintenance liability for the Council. Applicants may be required to enter into a maintenance agreement with the Council under which they will take on the maintenance responsibility for the new route.

- 6.7 **Safety.** Any proposed route must take into account the safety of users. A new route should not introduce additional hazards. It should not encourage or be likely to encourage antisocial behaviour or criminal activity.
- 6.8 **Status.** Where possible and appropriate, consideration should be given to establishing routes that offer increased opportunities for other users – for instance, proposals that seek to divert a footpath and establish the new route as a bridleway.
- 6.9 **Width.** The width of any new proposed path must be clearly defined. Proposals that will lead to the enclosure of new paths may be discouraged unless agreement is made with the Council as to provision of surface and maintenance (see above). The minimum width for a proposed unenclosed path will generally be as follows:- Footpath – Minimum 2 metres; Bridleway – Minimum 3 metres; Restricted Byway – minimum 5 metres. Where paths are likely to be enclosed a greater width may be required.
- 6.10 **Features of Interest.** Any proposal must not remove public access from any feature of interest or place of resort other than in exceptional circumstances and the new route should not result in lower quality or diversity of views for the user. Proposals should take account of local distinctiveness and landscape characteristics when considering the design and choice of materials to be used.

7. **Further Information and References**

7.1 Legislation:

- Highways Act 1980
- Town and Country Planning Act 1990
- The Disability Discrimination Act (DDA) 1995
- The Disability Discrimination Act (DDA) 2005
- The Human Rights Act 2000

- Statutory Instrument 1993 No. 407 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993
http://www.opsi.gov.uk/si/si1993/Uksi_19930407_en_1.htm

7.2 Government Guidance:

- Defra - Circular 1/09. <http://www.defra.gov.uk/wildlife-countryside/pdf/access/prow/rowcircular1-09.pdf>
- Defra - Structures on Rights of Way Guidance for Local Authorities - including the implications of the Disability Discrimination (Draft Guidance published February 2009)

- The Planning Inspectorate - Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England December 2007
http://www.planninginspectorate.gov.uk/pins/appeals/rights_of_way/public_path_orders_01.htm

7.3 Other Guidance and Information

- Natural England - NE112 - A guide to definitive maps and changes to public rights of way - 2008 Revision
<http://naturalengland.etraderstores.com/NaturalEnglandShop/Product.aspx?ProductID=8f4433c1-0c14-488e-96b6-b7d67bacbfd4>
- Natural England - CA215 – ‘By all reasonable means: inclusive access to the outdoors for disabled people’
<http://naturalengland.etraderstores.com/NaturalEnglandShop/Product.aspx?ProductID=c267e581-70d3-4164-9d28-03d25d282846>
- Ramblers Association & Open Spaces Society - ‘ Rights of Way : A guide to law and practice’ by John Riddall and John Trevelyan
Email – bluebook@london.ramblers.org.uk
- Rights Of Way Review Committee, Practice Guidance Notes 1 : Code Of Practice On Consultation Over Changes To Rights Of Way Fifth Edition November 2008
http://www.iprow.co.uk/gpg/index.php/RWRC_Practice_Guidance_Notes

7.4 Relevant Council Publications

- Public Rights of Way Enforcement Policy, 2005
<http://www.bathnes.gov.uk/BathNES/transportandstreets/walkingandcycling/rightsofwayenforcement/default.htm>