



Guidance Notes for Diversion or Extinguishment of a Public Right of Way

Highways Act 1980 Section 118 or 119

1 April 2023

Purpose

This document provides advice for landowners, tenants and occupiers who are considering applying to divert or extinguish a public footpath, bridleway, or restricted byway.

Background

The Public Rights of Way network provides an essential means of access to the countryside for travel and recreational purposes and forms an integral functional and sustainable link to shops, services and schools in urban and semi-urban areas.

Public Rights of Way are recorded on the Definitive Map of Public Rights of Way, which is a statutory document. This document records footpaths, bridleways restricted byways and byways but not footways/pavements or cycle tracks. The four classifications of Public Rights of Way are:

- Footpath - for use by walkers only
- Bridleway - for use by walkers, horse riders and pedal cyclists
- Restricted byway - for use on foot, horseback, pedal cyclists and carriages but not mechanically propelled vehicles
- Byway - open to all vehicular traffic (although mainly used as public paths) plus the above users.

Section 118 of the Highways Act 1980 makes provision to extinguish footpaths, bridleways and restricted byways (but not byways) on the ground that it is “*not needed for public use*”.

Section 119 of the Highways Act 1980 makes provision to divert footpaths, bridleways and restricted byways (but not byways) where it is considered expedient to do so in the interests of the owner, occupier or lessee of the land affected or in the interests of the public. Any new path must be “*substantially as convenient to the public.*”

Alteration to the legal alignment of any footpath, bridleway or restricted byway for this purpose can only be effected by way of a legal Order, which must successfully pass

through a period of public consultation and notification. The same procedure has to be followed regardless of how minor the proposed alteration may be.

Given the nature of the required statutory procedure that follows the submission of any diversion proposal to the Council, we cannot guarantee that the outcome of any Public Path Order will be successful.

In those cases where a made Path Order attracts objections which cannot be resolved at a local level, the order making authority must refer the Order to the Department for Environment, Food and Rural Affairs (DEFRA) for determination.

If you are considering applying to divert or extinguish a public right of way, please contact the Countryside Access Team in the first instance for an informal discussion about your proposals and the process required to do so. A site meeting can then be arranged should it be desired to pursue the application further.

Applications for Path Orders within the boundary of a National Park
are processed by the relevant National Park Authority.

<http://www.lakedistrict.gov.uk>

Routes affected by development

Applications regarding public path orders affected by development under the Town and Country Planning Act 1990 (including where the development relates to mineral extraction and waste) are also processed by Cumberland Council. The overall procedure is similar to the Highways Act Orders and guidance is available on request.

Explanation of process and factors to be considered prior to submission

Cumberland Council has powers to process applications for Public Path Orders under the Highways Act 1980. The Council will use its discretion to assess the merits of each

application, considering both the needs of users of the public path network and the landowner and/or interested parties.

Cumberland Council processes all such Orders (outside of the Lake District National Park) in the former Districts/Boroughs of Allerdale, Carlisle and Copeland.

Currently the Council keeps a register to manage all new applications in accordance with the date received unless there are exceptional circumstances. An indication of timescale can be given during initial discussions once the proposal can be detailed.

The Council will provide an appropriate level of advice before the submission of an application to ensure that the proposed alignments and necessary works are acceptable and undertake a full site survey of the proposal to ensure accuracy of the application and subsequent Path Order. Further site meetings will be available as the application progresses to ensure that any required works are located and undertaken in accordance with the requirements of the Path Order.

Charges for Public Path Orders include staff time and advertising fees.

Applicant requirements and responsibilities

Applicants for Public Path Orders will be expected to:

- agree, by submission of a completed application form, to pay the cost associated with the making and confirming of an Order. The signed application form is to be regarded as a legally binding contract. (Application forms are available as separate documents from the Cumberland Council's Countryside Access Team).
- pay all costs and agree to all works identified as required by Cumberland Council to implement the diverted route on the ground.
- undertake all required works to the satisfaction of Cumberland Council. Specification of any identified work will be provided prior to the application form being completed.

- ensure the current legal line is free of obstructions unless there are exceptional circumstances. In such cases, the applicant should ensure that there is a clear convenient way round the obstruction(s).
- ensure the on-site welfare of any consultees and Cumberland Council officers during site visits and ensure all affected landowners, owners and tenants are aware of the possible impending site visits by consultees.

Procedures

Thorough preparation on the part of the applicant is essential when making an application. The applicant will be responsible for the following:

- establishing an acceptable proposal
- obtaining full written agreement from other affected landowners

Stage 1 – Pre Order making

The Council will:

- provide preliminary advice to an applicant
- undertake initial site visit(s) to assist the application by surveying the routes in order to prepare an accurate Order plan and prepare a schedule of required works, containing all relevant specifications. The plan and schedule will be forwarded to the applicant prior to the application form being submitted.
- acknowledge receipt of the application within 5 working days. If the application form is incomplete, it will be returned to applicant with advisory notes.
- advise the applicant of the approximate processing date.
- on receipt of a completed application, undertake informal consultations with consultees and after the required consultation period, consider responses and advise the applicant of outcome.
- recommend modifications (if any) subsequent to the informal consultation period.

The Applicant shall:

Before the Cumberland Council will agree to progress with the proposal, the applicant will:

- complete relevant application form
- agree to the prepared Order plan
- agree to the provided Schedule of Required Works
- supply any third party written landowner agreements

Applicant to respond to any additional information requested.

Stage 2 – Order Making

The Council will:

- prepare to make formal Order by seeking approval from the appropriate Council Committee
- make the Order
- post notices of making of Order on site
- place public notices in a local newspaper
- deposit Order and notice in a library in the local area for public inspection
- allow 28 days for representations or objections to be made
- collate and analyse all submitted responses

Opposed Order

If objections to an Order are received, the following procedure will apply:

- objections are considered by Countryside Access Officers and discussed with applicant
- if objections are considered not relevant to the statutory tests for making or confirming the Order negotiations with objector(s) will commence to seek withdrawal.
- if objections are considered to raise valid issues related to the statutory tests for making or confirming the Order, then the Countryside Access Team may recommend;
 - a. reviewing and revising the proposal
 - b. submitting to the Secretary of State - Planning Inspectorate (PINS) for determination
 - c. or, in some cases withdrawing the proposal

- if the Order is referred to PINS, the final decision will be made by an independent Inspector by way of either a written representation procedure, a Hearing or a full Public Inquiry
- the decision of the Inspector is final and binding unless overturned by the High Court within a specified period

Note 1. Cumberland Council's costs incurred when an Order is submitted to the PINS cannot be recharged to the applicant.

Note 2. The applicant will be required to defend the case at a Hearing or Public Inquiry, which will include appearing at these proceedings to justify the proposal, with any legal representation appointed by the applicant defrayed at their own expense.

Unopposed Order

If no objections or representations are received during the statutory objection period or any received have been subsequently withdrawn, Cumberland Council is able to confirm the Order as unopposed and will progress to Stage 3.

Before the Order is confirmed:

- applicant will be instructed to undertake all works as agreed to provide the new route to a condition appropriate with its status. Before commencing any works, a further site meeting with officers is advised to ensure these are completed and located as specified in the Order.
- once complete, the new route will be inspected by a Countryside Access Officer to ensure the route is as specified in the Order.
- the Council will arrange for any necessary waymarking to be installed.
- if the works are not satisfactorily completed, the Council may carry out the works and recharge applicant.

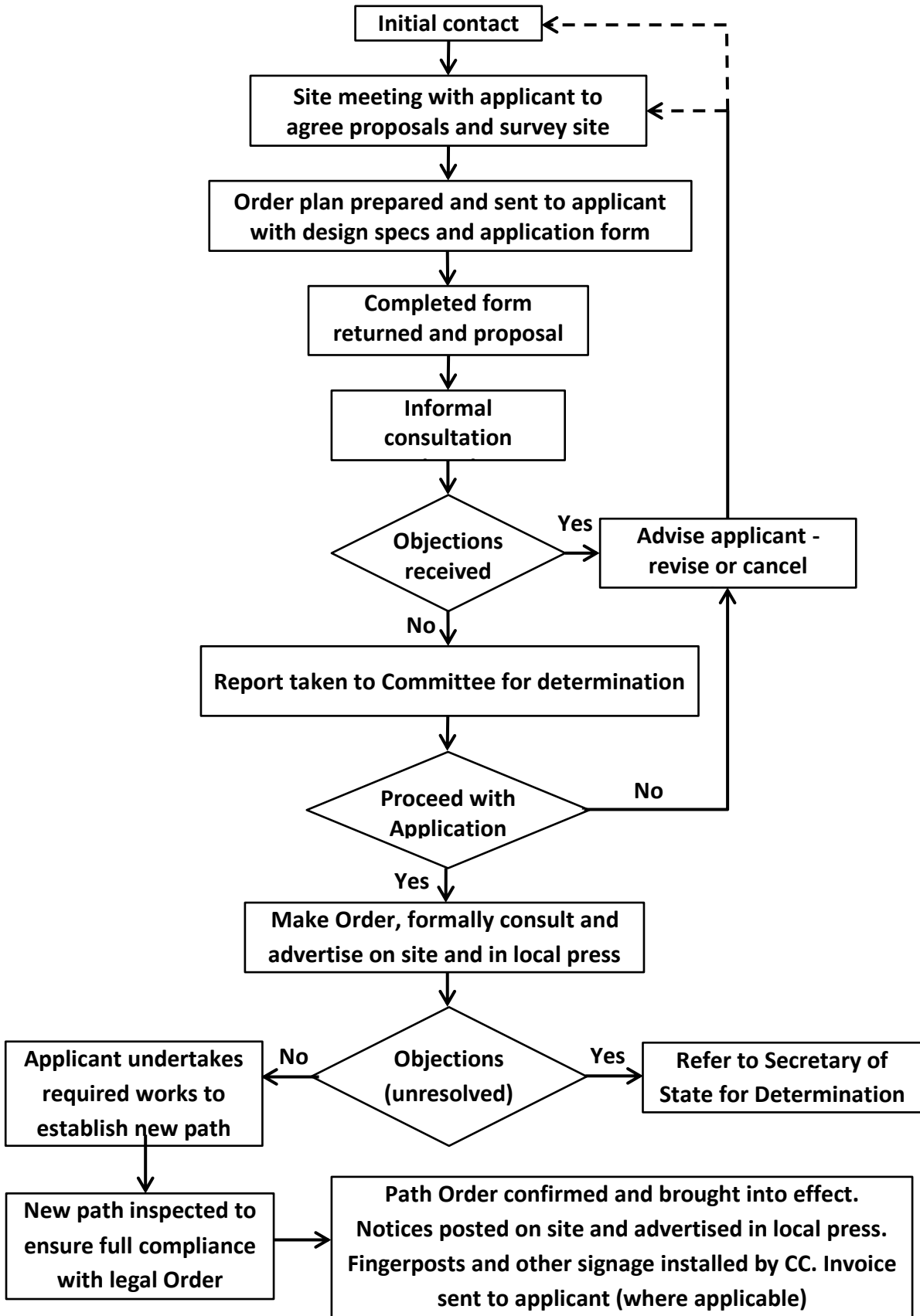
Stage 3 – Confirmation of Order

Cumberland Council will:

- post a notice of confirmation on site
- place public notices in a local newspaper
- deposit confirmed Order and notice at a library in the local area for public inspection
- allow a minimum period of 6 weeks for a procedural challenge to the High Court from date the confirmation of the Order is advertised in the local newspaper
- invoice the applicant for the costs associated with processing the Order

When the Order is confirmed, the Definitive Map and Statement to be amended to show the changes, and the Ordnance Survey informed.

Typical Highways Act Order Flow Chart



Factors to be considered prior to making an application Section 119 Diversion

Prior to submitting an application, the following criteria should be considered:

Needs of all users - The new route should incorporate the least restrictive furniture and features to improve accessibility for the mobility impaired user and be installed in accordance with British Standard BS5709:2018 - for example, gaps rather than gates, ramps rather than steps.

Structures across rights of way will only be authorised where deemed absolutely essential for the control of stock. In such cases gates are the default option and authorisation for the installation of stiles will be given only in very exceptional circumstances.

All necessary limitations will be included in the schedule of the diversion Order but may constitute a point of objection if their inclusion cannot be justified when the Order is advertised.

Width - The proposed new route should have a minimum width of 2m for a footpath 3m for a bridleway, and not less than 4m for a restricted byway. Cumberland Council may insist on a wider route depending upon historical width of the existing route, its expected use and location.

Enjoyment and convenience - The proposed new route should not unreasonably lengthen the path other than where it is in the interests of an overall improvement to the local network. The proposed new route should avoid introducing unnecessary “dog legs” into the path or be overly circuitous.

It should retain or improve a connection with another public right of way to reduce the distance travelled along metalled carriageways and not be substantially less convenient than the existing route.

Landscape - The proposed new route should not result in a lower quality of experience or diversity of views for the path users.

Features of Interest - Other than in exceptional circumstances, the proposed new route should not remove paths from significant features of interest, be they natural or man-made.

Status - There will be no downgrading of the existing rights other than where it is in the interests of an overall improvement to the local network.

Financial - The proposed new route should not result in significant additional maintenance costs. Applicants may be required to enter into a maintenance agreement with Cumberland Council. Applicants should also consider the provision for compensation

Safety - The proposed new route must not subject users to any potential dangers or hazards. It must not introduce conditions likely to encourage antisocial or criminal behaviour against users, nor should it create a perception that this may be the case (for example darkness, narrowness, poor visibility, and hiding places).

Use of Land - Applicants should consider the effects of the proposals on farming, forestry and the keeping and breeding of horses.

Termination point - Proposed new routes should terminate at the same point, or another point on the same path or another highway connected with it.

Alternatives - The applicant may be required to demonstrate that they have considered alternatives to the altering of a right of way, i.e. amending proposals, changing boundary locations etc.

Section 118 Extinguishment

Section 118 Highways Act 1980 can only be used to extinguish Footpaths, Bridleways and Restricted Byways (not Byways). The requirement of Section 118, as detailed previously, is that "*the path is not needed for public use*".

The statutory tests for extinguishments are very difficult to meet, therefore a diversion would normally be preferable and only in very exceptional circumstances would the Council support the making of a standalone extinguishment Order.

Contact details

All enquiries should be addressed to: countryside.access@cumberland.gov.uk