



Public Path Orders Directions for Agents

to be used when consulting on applications
to extinguish or divert rights of way
under sections 118 and 119
of the Highways Act 1980

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1. Introduction

It is possible for applicants for Public Path Orders (“PPOs”) under sections 118 and 119 of the Highways Act 1980 to instruct agents to act on their behalf. If you have been appointed as an agent, the County Council requires that you read this pack carefully and follow the procedure outlined in this document.

Agents may be appointed to:

- assist applicants in making their application, and/or
- consult and negotiate with the public and all affected landowners to produce a proposal for the County Council’s decision, including preparation of a statement of case and supporting an order at inquiry.

Whilst input from the County Council will be kept to a minimum, please note charges will be made for officer time spent dealing with agents’ queries. Beyond the initial broad guidance and details of relevant consultees, the County Council does not expect to provide help, assistance or advice on the complex legislative, prescribed and technical processes that have to be followed. It is therefore recommended that as an agent you have a good understanding of and preferably previous experience working with the rights of way legislation, procedures and guidance, such as Defra’s Circular 1/09. Natural England’s publication “A guide to definitive maps and changes to public rights of way” also provides information about the process. It is also recommended that you read the Planning Inspectorate’s guidance on dealing with objections. Links to the relevant websites are given in Appendix 1 and Appendix 2.

As an agent, the first thing you should establish is that the definitive line of the existing path is currently open and is at all times kept open and available for public use. An inaccessible path will normally lead to the application being rejected. Proposals to change rights of way are often emotive issues and support for them is easily lost if the public cannot use the existing route. There is no guarantee that an order will be made or, if made, be confirmed.

If there are any works that must be carried out to the proposed new route(s), these will need to be carried out at the landowner’s expense and to the County Council’s satisfaction before the right of way is diverted. The appropriate District/Borough Council may need to be contacted to check whether the works would be permitted development or require planning permission.

As a general estimation of timescales, the time period from when the County Council receives the consultation pack to the confirmation of an order (if made) is likely to be at least 6 months provided there are no objections and may be considerably longer. It should not be underestimated how long achieving consensus prior to this can take. If there are objections and agreement cannot be reached, it can take several years. Once consensus has been achieved processing the order to completion should then be relatively straightforward.

The County Council expects its costs to be paid in full when indicated. If its costs have not been paid in full prior to the making of an order or prior to that order’s confirmation, the County Council will not progress the application further until its costs have been paid. Details of the likely costs for an order can be found on the

separate Fee Sheet. Whilst the County Council aims to keep these to a minimum, they may be increased in more complex cases or where there is greater than normal officer involvement.

The Agent's role is as follows:

- to complete the application for the landowner (if required)
- to produce and display on site an explanatory notice of the proposal
- to consult with the local councils, user groups, statutory undertakers, adjoining landowners affected by the diversion and other affected or interested persons or bodies, using the approved draft order
- to give clear reasons as to why the application is considered to meet the relevant legislative tests
- to negotiate with any opposing parties before any order is made
- to compile the necessary Consultation and Determination Reports to enable the County Council to make its decisions at the necessary stages of the process
- to produce a statement of case for a public inquiry and present the case in support of the order at any inquiry held.

The County Council's role is as follows:

- to log applications received
- to check that the status of the route is correctly recorded (small investigation of historical documents)
- to draft the order(s) and plan(s)
- to inform the agent of when consultation can be started
- on receipt of a properly completed Consultation Report to hold a decision meeting to decide whether an order should be made
- to draft a section 119(5) agreement regarding any required works and compensation. This agreement will need to be completed by the County Council and the landowner(s) prior to any order being made
- if the decision is made to make an order, to engross, seal, and advertise it once the section 119(5) agreement has been completed
- if the order is made, to receive the properly completed Determination Report and use that to make the decision as to whether the order should be confirmed, abandoned or sent to the Planning Inspectorate for determination. This could take the form of written representations, a hearing or a public inquiry
- to facilitate any public inquiry held. The County Council will normally support the order. However, the applicant will be expected to take the lead role in presenting the case at any inquiry
- if the decision is made to confirm the order, to advertise it.

Appendix 1 contains a list of relevant legislation; Appendix 2 contains links to useful websites; and Appendix 6 contains a summary of the County Council's policies in respect of rights of way. These and the other appendices will assist you in processing each stage of the PPO.

2. The process

The County Council processes applications following a strict procedure, and that same procedure must also be followed by any agent carrying out the work on behalf of a client. This will ensure that the necessary information is submitted. Failure to do so will mean the County Council will reject the application as we will be unable to make a decision.

Applicants can inform the County Council that an agent is, or will be, involved at any time, but it is preferable to do this when the application is submitted. The County Council will let the applicant/agent know when they may start the consultation process. The agent will be informed of the contact details of the case officer allocated.

a) Making an application

Prior to making an application, it is recommended that the applicant (or their agent) talks to the Rights of Way Officer for the area as to their hopes for the scheme and what they wish to achieve. The officer should be able to advise as to the feasibility of the proposal or possibly suggest other alternatives and give an outline idea of what works might be required to make the new route suitable for use by the public. They will also indicate what will be required to meet the legislative criteria and the County Council's policies such as for widths and structures. If following this outline discussion an application is made, then the detail of what is required will need to be agreed as described in b) below.

If you, as an agent, have been instructed by your client to carry out the work involved in making the application, you will need to have this discussion prior to completing the County Council's application form.

If an application has already been made, you will need to check what was previously agreed and arrange to have a detailed discussion.

b) Preliminary assessment and section 119(5) agreement

As part of the process your client will need to be willing to enter into an agreement under s119(5) of the Highways Act 1980. This will make them responsible for paying any compensation for which the County Council becomes liable as a result of the confirmation of the order.

Your client will also need to meet with the Project Officer (Access) for the area to agree the details of the works that will be required to make the new route suitable for use by the public. Again, these will be paid for by your client. The Project Officer will provide you with the County Council's specifications of what is required so that you can ensure any works are carried out to the correct standard. Any amendment to these works required will need to be agreed in advance with the Project Officer in writing. Any change may also require you and your client to meet again with the area's Project Officer on site to discuss further what is required.

If works are required, these will need to be included in the s119(5) agreement. The agreement will be drafted by the County Council and will define the required works.

Your client will need to agree to complete the necessary works to the County Council's satisfaction within a given timescale or failing that to pay the County Council's costs to carry out the works specified on the public right of way. The wording of the Agreement needs to be agreed by your client and the County Council. The works originally required may need to be altered as a result of the consultation process.

Appendix 3 below includes a specimen section 119(5) agreement. Do not complete this specimen agreement. The first draft of the section 119(5) agreement will be sent to you by the County Council. Please note that entering into a section 119(5) agreement does not place any obligation on the County Council to make or confirm an order.

If the proposal is to divert the path along your client's boundary or onto someone else's land, then you will need to discuss with them as the County Council will require their written consent (unless there is justification for proceeding without their consent).

If the affected path(s) meet a public road the County Council will need to consider how any required works on the existing public highway will be carried out. If your client is going to carry out the works, this may require them entering into a section 278 agreement with the County Council which may include your client providing a bond for the works. Alternatively, the County Council may carry out the works itself and require your client to pay for them.

c) Drafting the Order

Once the County Council has agreed your proposal, it will be responsible for drafting the order. This draft order should be used as the basis for your consultation with the relevant bodies, whose opinion must be sought before the County Council can decide whether or not to make the order.

d) Consultation

Once you have a draft order and plan, these should be used to consult on the proposed diversion/extinguishment to ensure that the scheme receives broad support. Whilst the statute only requires consultation with the local authority, the County Council expects you to carry out a much broader consultation at this stage in an effort to try to avoid objections once any order is made. This includes putting up non-statutory notices on site explaining the proposal and sending us a copy of your notice to put on our website. Remember that if any parties object to the proposals now and their objections are not resolved, they will almost certainly object to any order when it is advertised. This may result in the County Council abandoning your client's application. **Please ask us for the most recent copy of the consultation list to ensure that you consult with all necessary parties;** we will forward this to you electronically unless otherwise requested.

When consulting it is advisable to send as much information to the consultees as possible, as this will help foster an understanding of the proposals and hopefully avoid any unnecessary objections. PPO applications are often emotive and so you

should give full consideration to how the application will be viewed by the users of the route. Give the consultees at least 28 days to respond.

The following should be sent to the consultees:

- a letter explaining:
 - the reasons and benefits behind the proposals
 - how the proposals meet the legislative tests and County Council's policies
 - how the new route will be made up to suitable standard (and if works are considered necessary)
 - details of the width of the new route and any other physical features that have been agreed
- a copy of the draft order and plan
- an extract of the Definitive Map, as order plans are sometimes difficult for a layperson to decipher
- You may also wish to include a copy of the non-statutory site notice

Remember to request that the consultees respond to you in a given timescale with comments and/or suggested improvements to the scheme. They may suggest alterations which, if incorporated, would benefit the scheme and would help prevent objections to it.

There is a statutory requirement in the Highways Act 1980 to consult the district/borough council for the area. We consider it good practice to also consult the parish council (see the County Council's website for their contact details). In the event of any order being determined by the Secretary of State, we as the order making authority will need to certify that the necessary councils were consulted during the order making process. We will require you to provide written confirmation that the relevant councils have been consulted. You will need to provide us with copies of your correspondence with them and their replies.

Please note that Hertfordshire Highways need only be consulted if either the existing or proposed route joins a highway maintained by Hertfordshire Highways, or involves a structure (such as a large bridge) that is maintained by Hertfordshire Highways.

You will also need to consult with the statutory undertakers in the county to check whether they have any wayleave rights along the current route of the right of way which they wish to retain. **Please ask us for an up to date list of the relevant statutory undertakers.** If there are wayleave rights to be kept, these will need to be referred to in the order. You will need to ensure that you ask the statutory undertakers firstly if they have any wayleave rights which they wish to retain, and secondly (if they don't have any wayleave rights) if they wish to be kept informed of the progress of the application. You should make it clear that if the statutory undertaker does not respond, it will be presumed that they do not wish to be contacted further.

It is essential that you ensure that none of the statutory undertakers object to the scheme, as this may prevent the order being confirmed. We will require a copy of the consultation letter you sent to them and their correspondence to be included in

the Consultation Report. You will also need to let us know which statutory undertakers have a wayleave, and who has requested to be kept informed. It is possible that you will not receive a reply from all statutory undertakers, but we would expect you to make every effort to ensure that they are happy with the proposed change to the right of way.

In some circumstances, agents have encountered difficulties when dealing with statutory undertakers, who occasionally charge private companies for information. If you have similar problems, please contact us for a letter confirming that you are acting in relation to a highway matter.

You should produce a non-statutory notice to be placed on site and send a copy to us to put on our website. The notice will need to give a précis of the proposed scheme and explain the reasons for it in layman's terms and giving a deadline allowing at least 28 days for comments. It will need to be accompanied by a plan showing the path(s) subject to the application. You will need to provide your contact details, making it clear that you do not work for the County Council, to allow any interested persons the opportunity of obtaining further information or make comments. These notices should be erected at either end of the affected path and at junctions with other paths. We recommend that the notices are on site for at least 28 days, and that you check them every 7-10 days to ensure that they remain in place. The notice is to ensure that users of the path who have not been directly contacted will be informed of and able to comment on the proposals.

Please note that the more generous the proposal the more likely it is to succeed. However, it is possible that you will receive objections to the proposals, or part of them. If you do receive any objections it is your responsibility to try to negotiate with the objectors to resolve their difficulties. This may involve making amendments to the proposals in order to reach a workable compromise. If you do receive objections to what is proposed, do not make promises to amend the scheme without first consulting with the County Council and getting our agreement. There may be issues that would prevent us from making certain changes and we can advise you more thoroughly on a case by case basis.

Consulting more than once. If the proposal is amended, you will need to re-consult to inform everyone of the amended proposal. If there are outstanding objections to the scheme which show the legislative tests would not or could not be met, these will be considered at the decision meeting on the application and are likely to result in no order being made.

e) Consultation Report and Decision

Once you have completed the negotiations with the consultees and resolved any objections you should report to the case officer at the County Council. This will allow us to consider the proposal and make a decision as to whether the order will be made.

Please give us at least three weeks' notice of when we may expect to receive the Consultation Report. This will enable us to book time ahead for our decision meeting and therefore avoid delays.

The Consultation Report needs to be complete and accurate, having followed all these requirements, as the County Council will base its decision on this report. When there has been more than one consultation, the report must be clear as to what the original proposal was and the responses to it, and then how it has been amended, including a copy of the amended proposal and the responses to it. Any missing information may lead to no order being made, or any order made receiving objections, which may in turn lead to the County Council deciding to abandon it rather than seek its confirmation.

The report should be sent in pdf format. It should be divided into the subtitled sections listed below so that the County Council can clearly see the evidence to be considered at the decision meeting.

Front Sheet	<ul style="list-style-type: none"> • a copy of our checklist (see Appendix 5) showing that all relevant documents are included
Proposal	<ul style="list-style-type: none"> • a comprehensive statement detailing the proposals and both how the changes will meet the legislative tests and the County Council’s relevant policies for new routes. It will not be sufficient to merely say “this meets the legislative test”, you need to fully explain <u>how</u> and <u>why</u> it meets the legislative test • a plan showing the path(s) affected and the proposed changes
Ownership	<ul style="list-style-type: none"> • evidence of your client’s title to the land or, • where the changes affect land not owned/managed by your client, letters of consent from any affected landowners, tenants or lessees, as well as evidence of their title to the land
Agreements	<ul style="list-style-type: none"> • You do not need to send copies of any agreements as these will be dealt with separately. However, you do need to include (and send electronically to the case officer) the wording of the agreed required works.
Consultation	<ul style="list-style-type: none"> • list in tabulated form of those parties consulted and those who responded, along with a short précis of their comments and a tick box to indicate whether they agree to the proposals or not. If there are any unresolved objections, please state this clearly as the County Council is unlikely to make an order where the legislative tests would not or could not be met. • For those statutory undertakers who replied you need to clearly indicate if they have a wayleave they wish to retain, which statutory undertakers wish to receive further communications, and which statutory undertakers are likely to object to the order

Consultation	<ul style="list-style-type: none"> • copies of the letters of consultation that were sent out noting which draft order was used, along with the site notices that were erected with a note of the dates they were advertised, identifying whether they are from the “First Consultation”, “Second Consultation” etc. where necessary. If there is more than one consultation, please note on the consultation letter which draft order was used. If the same letter is sent to several parties, send the letter and list of addressees who received that letter rather than multiple copies of the same letter showing different addresses. • copies of any correspondence from the consultees clearly divided into subsections according to consultee and where more than one consultation has been carried out identifying whether the response is to the “First Consultation”, “Second Consultation” etc. • Copies of correspondence from the local district/borough and parish councils confirming that they have been consulted • evidence that any objections made have since been withdrawn • a copy of the relevant part of the Rights of Way Improvement Plan, or confirmation that there isn’t any relevant provision.
Draft Order	<ul style="list-style-type: none"> • copies of the draft order and plan, along with any subsequent amended copies, clearly marked as such.

Upon receipt of the Consultation Report, with confirmation that the County Councils fees have been received, the case officer will arrange a decision meeting. The application will be considered in relation to the legal tests, the County Council’s policies and the comments of the consultees. You will be notified of our decision and whether there are any further costs at this stage. If we decide that an order could be made your client will need to complete a section 119(5) agreement before any order is made. This should have already been discussed under the preliminary assessment of the route, but requirements may have changed as a result of the consultation.

Please note that while the amount charged normally covers the cost of two adverts (the most cost-effective way of paying for them) it does not mean that we will confirm the order unless the necessary tests are met. Please note that if the process leading to the making of the order has required more officer time than would normally be the case, your client will be charged for this. The order will not be sealed and advertised until we have received our full costs for the work carried out. If the County Council decides not to make an order, payment for making the order and advertising it will be refunded.

If a Consultation Report is submitted to the County Council but is not complete, has not followed the legislative process or has any other sort of problem that means we are unable to make a decision, it will not be within our remit to correct it or help with any further work that may be required to get it to an appropriate standard and we will

reject the application. We will provide broad feedback on why a report is considered inadequate or flawed.

In some circumstances it may be possible to present an amended Consultation Report to the County Council. If this does apply, it would be explained in the feedback. If the report was then resubmitted, you would need to be able to explain why the application now meets the legal tests.

f) Making the Order

If we decide that the application meets the legal tests, we may make an order. If so, and once we are in receipt of the full balance of costs and have a completed s119(5) agreement, we will engross and seal the order and retain it in our registry at the County Council. We will forward a photocopy of the sealed order to you.

We will arrange for the order to be advertised in the necessary newspaper and will forward a copy of the advert to you for your records. We will also serve Notice on the necessary consultees, erect the site Notices and check them as required by statute. Our charges for this are normally included in the amount required with the Consultation Report. If you request it, we will confirm to you that the necessary statutory requirements have been carried out.

g) Determination

Any objections or representations made are to be sent to the Definitive Map and Enforcement Team at the County Council. At the end of the advertising period, we will confirm to you in writing whether any objections or representations to the order were received. We will provide you with the details of any objections or representations received subject to data protection legislation. It may be possible at this stage for your client to put forward proposals to address these objections and this may lead to them being withdrawn. This will need to be discussed with the case officer on a case by case basis.

The order can only be confirmed by the County Council if no objections to it are received or, if those that are received are withdrawn.

After the end of the advertising period you will need to send a Determination Report to the County Council, setting out the reasons why you consider the order should be confirmed. This will enable us to determine whether or not it is possible to confirm the order. As with the Consultation Report, please give us three weeks' notice of when we may expect to receive it so that we may book time for the meeting.

The Determination Report should be sent to us including the following information:

Frontispiece	<ul style="list-style-type: none"> a copy of our checklist (see Appendix 5) showing that all relevant documents are included
Objections (if made)	<ul style="list-style-type: none"> a statement of your comments on any objections and their validity/relevance to the legal tests
Tests for confirmation	<ul style="list-style-type: none"> a statement of the grounds upon which the order should be confirmed, with reference to the legal tests and the County Council's policies. You should focus on the reasons for which the order should be confirmed, as the County Council will refuse to confirm an order that it has made if it considers that the confirmation tests are not met.

Please supply the information as a pdf.

Please give us at least three weeks' notice of when we may expect to receive the Determination Report. A meeting will then be arranged to discuss whether the order could be confirmed. You will be notified of our decision.

In the event of there being outstanding objections it should be remembered that the County Council is not obliged to proceed with contested orders, particularly where the objections are valid and relevant. In such an event the County Council will seek to abandon the order and close the case.

If an amended order would overcome valid and relevant objections, your client will need to agree that the original order should not be sent to the Secretary of State for determination, but instead abandoned and a new order incorporating the desired amendments drafted and sealed. This will be at your client's own cost.

If only very minor amendments are required, the order could be submitted to the Planning Inspectorate with a request that they determine whether the order should be confirmed and amend the order.

If the order receives objections which are irrelevant and we believe the order has met the statutory tests and should be confirmed, we may consider sending it to the Planning Inspectorate for determination.

Before we submit an order to the Planning Inspectorate for determination, your client must understand that the County Council will only carry out such duties that it is statutorily required to do in such an event. Determination will occur following written representations, public hearing or public inquiry process, and we would expect you as the agent to be responsible for drafting the necessary statement of case and associated documentation and acting as your client's advocate at the inquiry itself.

If there are no outstanding objections the County Council may decide to confirm the order. Whilst the County Council may have made the order, there is no requirement that it continues to support the order or confirm it if it is apparent that the confirmation tests are not met. It is important, therefore, that your Determination Report offers a full and comprehensive explanation as to why these tests are met. As with the

Consultation Report we will base our decision upon the contents of the Determination Report and so you should ensure that you provide us with all relevant information to enable us to make an informed decision. If we confirm an order based on erroneous information, there may be a high court challenge which could result in the abandonment of the order.

h) Carrying out required Works

If the order is confirmed, any works that need to be carried out to the new path will need to be certificated before the old path is extinguished.

Please note that if you are carrying out works, you may need to confirm with the appropriate District Council whether the works are permitted development, or if they will need planning permission.

If works are required, you will need to contact us to arrange an inspection once they have been completed. Once we have agreed the works meet the specification, the County Council will certify them as being satisfactory. This is known as a Certificate of Completion. Only once we are happy with the standard of the new route or we have been paid the full cost of making it up on your behalf will the process have been completed.

i) Confirmation

The order can only be confirmed if necessary legal tests have been met. Provided there are no objections, and the tests are met, the County Council can confirm the order. Once the order has been confirmed we will again retain the originals at County Hall for safekeeping and send a photocopy to you.

We will arrange for the confirmed order to be advertised in the newspaper. We will also serve Notice on the necessary consultees, erect Notices on site and arrange for them to be checked as required by the legislation. Again, if required we can confirm to you that the necessary statutory obligations have been carried out.

We will contact you at the end of the advertising period to confirm whether or not there have been any applications to the High Court. The changes to the right of way will take effect as stated in the Notice. A third advert, for which your client will be charged, may be required if the Certification of Completion has not been issued when confirmation is advertised.

Once the order has taken effect you will need to ensure adequate signage on both the old and new paths to ensure that users are not inconvenienced. We will waymark the new route but as people are unlikely to use up-to-date maps it is your responsibility to place a permanent notice at both ends of the old and new paths to explain the changes. Such a notice should consist of a clear map showing the changes along with a very short written description with references to points on the path. We can supply such a notice on your behalf if you wish, but we will charge you for it (see Section 3 on Costs). Please ensure for the benefit of the public that the notice is kept in place and maintained for at least 5 years.

3. The Costs involved

The Local Authorities (Recovery of Cost of Public Path Orders) Regulations 1993, as amended by The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 allows the County Council to charge for the administrative costs incurred in the making of an extinguishment or diversion order where the applicant is the owner, occupier or lessee and in whose interest the order is intended to be made.

Where costs are for activities that can only be carried out by the council, the fees will not include VAT.

If you have not already received one, please ask us for a copy of our up to date Costs Sheet. We reserve the right to raise our costs if our input into the application has been greater than anticipated.

In some circumstances it may be possible for your client to apply for a refund: see the Department of the Environment Circular 3/1993: Recovery of Costs of Public Path and Rail Crossing Orders and the Amendment Regulations: Department of the Environment Circular 11/1996: Recovery of Costs for Public Path and Rail Crossing Orders.

Please note that an order will not be confirmed by the County Council unless all outstanding costs have been paid.

Finally, remember that if the new route is to run on land that is not owned by the applicant, that landowner may claim compensation. Applications for compensation need to be made to the County Council within 6 months of the coming into force of the order. Your client will have agreed under the section 119(5) agreement to pay any compensation for which the County Council is liable under the statutory compensation provisions. The County Council will have no involvement in any private financial agreements made between adjoining landowners.

Appendix 1: List of relevant legislation & Government guidance

Numerous statutes, statutory instruments and regulations apply to Public Path Orders. These can be found on the relevant websites as follows:

- Highways Act 1980
<http://www.legislation.gov.uk/ukpga/1980/66>
- Equality Act 2010
<http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Natural Environment and Rural Communities Act 2006
<http://www.legislation.gov.uk/ukpga/2006/16/contents>
- Countryside and Rights of Way Act 2000
<http://www.legislation.gov.uk/ukpga/2000/37/contents>
- National Parks and Access to the Countryside Act 1949
<http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/contents>
- Countryside Act 1968
<http://www.legislation.gov.uk/ukpga/1968/41/contents>

Regulations

- Public Path Order Regulations 1993
<http://www.legislation.gov.uk/uksi/1993/11/contents/made>
- Local Authorities (Recovery of Cost of Public Path Orders) Regulations 1993, as amended by The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1993 (SI 1993/407)
<http://www.legislation.gov.uk/uksi/1993/407/contents/made>

Defra Guidance

- Public Rights of Way Circular (1/09) (Version 2)
<https://www.gov.uk/government/publications/rights-of-way-circular-1-09>

Appendix 2: Details of other information available

This is a list of useful links to web pages and publications related to Public Path Orders. These include links to the County Council's web pages and the pages of the Planning Inspectorate who determine contested orders. Please note that we try to keep these links up to date but if you have any problems do contact us.

- The County Council's general pages about Rights of Way.
www.hertfordshire.gov.uk/row
- The County Council's page about diversion, creation and extinguishment applications, including our Order Guidelines.
www.hertfordshire.gov.uk/services/envplan/countrysideaccess/row/apps/divert/
- The County Council's general Highways pages.
www.hertfordshire.gov.uk/envroads/roadstrans/highways/
(please note that details about who to consult will be given in the consultation list)
- The Planning Inspectorate (PINS) web page for Rights of Way. The section on "Guidance" includes Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders in England and Definitive Map Orders – Consistency Guidelines. This explains the process used by PINS to determine orders submitted to them because objections have been made. Details are also available under "Online Rights of Way Cases" of other orders that are currently being or have been determined by them. Reading these will give you an idea of how similar cases are dealt with by PINS.
<https://www.gov.uk/guidance/object-to-a-public-right-of-way-order>
- Natural England's A Guide to Definitive Map & Changes to Public Rights of Way and was revised in 2008. It provides non-statutory guidance and information about the process. It is available as a downloadable PDF only.
<https://www.gov.uk/government/publications/definitive-maps-of-public-rights-of-way-change-the-legal-records>
- Further information about rights of way can be found on the link to the rights of way pages on the Gov.uk website.
<https://www.gov.uk/right-of-way-open-access-land/public-rights-of-way>
- A book "Rights of Way – A Guide to Law & Practice (4th edition)" by John Riddall & John Trevelyan has been published by the Ramblers' Association and Open Spaces Society. It is a very useful reference book explaining what is required including relevant extracts of the legalisation as well as referring to case law. ISBN-13: 978-1-901184-99-0

Appendix 3: Specimen agreement under section 119(5) of the Highways Act 1980

(Please note the draft agreement will be sent to the applicant by the County Council. Please note that the specimen agreement may be subject to change)

DATED 20

The Owner [.....] (1)

and

HERTFORDSHIRE COUNTY COUNCIL (2)

AGREEMENT

made pursuant to section 119(5) of the Highways Act 1980

for the

Hertfordshire County Council

Title of order

Chief Legal Officer
Hertfordshire County Council
Legal Services
County Hall
HERTFORD
Herts SG13 8DE

This Agreement is made the _____ day of _____ 20____

BETWEEN

- (1) **The owner [.....] of [address].....** (“the Owner”)
- (2) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane Hertford Hertfordshire SG13 8DE (“the County Council”)

RECITALS

- 1.1 The Owner is the registered proprietor of the Land
- 1.2 The County Council is the surveying authority and the local highway authority for Hertfordshire
- 1.3 The Owner has made an application for a diversion order to divert **name path** under section 119 of the Highways Act 1980.

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings attributed to them:

Term	Definition
“the Certificate of Completion”	The certificate of completion to be issued by the Director on the satisfactory completion of the Works by the Owner
“the County Council”	Hertfordshire County Council and any successors to its statutory functions as local highway authority
“the Director”	The County Council’s Director of Environment & Infrastructure for the time being and his agents
“the Proposed Diverted Footpath/Bridleway/Restricted Byway ”	The route shown and labelled A to X on the Plan such route being more particularly described in Schedule 1 hereto
“the Proposed Diversion Order”	The proposed diversion order which once confirmed shall be known as the “Hertfordshire County Council Title of Order ”

Term	Definition
“the Land”	The land in the county of Hertfordshire which is registered at Land Registry under title number (Title Number) and which for the purposes of identification only is shown edged red on the Title Plan
“the Owner”	The owner [.....] and their successors in title
“the Plan”	The plan which forms part of the “title of order” and attached hereto
“the Title Plan”	The plan marked “the Title Plan” and attached hereto
“The Works”	The works required to bring the Proposed Diverted Footpath/Bridleway/Restricted Byway into a fit condition for use by the public as described in Schedule 2 and shown on the Works Plan
“The Works Plan”	The plan marked [insert drawing reference etc] and attached hereto

- 1.2 In this Agreement where the context so admits the singular number shall include the plural number and the masculine and neutral genders shall include the feminine gender and vice-versa
- 1.3 Where a party includes more than one person any obligations of that party shall be joint and several
- 1.4 This Agreement is governed by and interpreted in accordance with the law of England and Wales

2. STATUTORY AUTHORITY AND EFFECT

- 2.1 This Agreement is made pursuant to the powers contained in section 119(5) of the Highways Act 1980 and section 1 of the Localism Act 2011 and all other powers enabling the County Council thereunto

3. OWNER'S COVENANTS

- 3.1 The Owner hereby covenants with the County Council that it/s/he/they shall:

- 3.1.1 defray any compensation which may become payable by the County Council under section 28 of the Highways Act 1980 as applied by section 121(2) of that Act by virtue of the coming into effect of the Proposed Diversion Order;
- 3.1.2 carry out and complete the Works to the satisfaction of the Director as evidenced by the issue of the Certificate of Completion within x (x) days from the date the Proposed Diversion Order is confirmed;
- 3.1.3 carry out the Works in a good and professional manner and with proper materials
- 3.1.4 indemnify the County Council in respect of all actions claims demands expenses and proceedings arising within the period of 12 calendar months from the date of the Certificate of Completion out of or in connection with or incidental to the carrying out of the Works irrespective of whether such actions claims demands expenses and proceedings are brought or made within the period of 12 calendar months from the date of the Certificate of Completion or thereafter PROVIDED THAT the Owner shall not be liable to indemnify the County Council in respect of any liability solely arising from any negligence on the part of the County Council; and
- 3.1.5 in the event of the Owner failing to carry out and/or complete the Works within the period specified in clause 3.1.2 above defray any expenses which the County Council may incur in carrying out the Works to bring the new site of the Proposed Diverted **Footpath/Bridleway/Restricted Byway** into a fit condition for use by the public upon the coming into effect of the Proposed Diversion Order
- 3.2 The Owner hereby acknowledges and agrees that the Certificate of Completion shall not be issued earlier than x (x) days from the date of confirmation of the Proposed Diversion Order

4. MISCELLANEOUS PROVISIONS

- 4.1 In the event a written decision is made by the County Council or the Secretary of State not to make and/or confirm the Proposed Diversion Order AND no proceedings have been filed in the High Court within six (6) weeks of the date of notice of such decision (as applicable) then this Agreement shall immediately determine to the extent only that any provisions have not be complied with as at such date
- 4.2 Nothing in this Agreement shall be construed as imposing a contractual obligation upon the County Council as to the making and/or confirmation of the Proposed Diversion Order or as restricting the exercise by the County Council of any powers exercisable by it under any Act or authority
- 4.3 No waiver whether express or implied by the County Council of any breach or default in performing or observing any of the obligations contained herein shall

constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default

4.4 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto

SCHEDULE 1

Description of the Proposed Diverted **Footpath/Bridleway/Restricted Byway**

Describe route

Width: **x metres**
Limitations: **None**

SCHEDULE 2

Description of the Works

Describe works required; referring to the Works Plan if used. Include details of the materials to be used if required

IN WITNESS WHEREOF the Owner and the County Council have hereunto executed this instrument as a deed in the manner hereinafter appearing but not delivered until the date and year first above written

(Deed – has to be ‘executed’ – there are 3 options depending on type of party

- 1. Individual is signature + witness**
- 2. Company either common seal affixed in presence of director etc. or**
- 3. Company signature by two directors or one director and company secretary**

INSERT relevant execution clause for the Owner

**Signed as a deed by
(insert name of owner)
in the presence of**

Signature
.....

Signature of witness

.....

Name and address of witness
(IN BLOCK CAPITALS)

.....
.....

-----Or-----

The Common Seal of
insert company name
was hereunto affixed
in the presence of

Full name:.....
Signature:
Director/Company Secretary*

Full name:
Signature:
Director

-----Or-----

Executed as a deed by insert name of company
acting by [a director and its secretary]
[two directors]

Full name:.....
Signature:
Director/Company Secretary*

Full name:
Signature:
Director

The Common Seal of
HERTFORDSHIRE
COUNTY COUNCIL
was hereunto affixed
in the presence of

Full name:.....
Signature:
Chief Legal Officer/Assistant Chief Legal Officer*

Appendix 4: Specimen Diversion Order and Plan

This is an example of how an order and plan should be laid out. The order shows how the paths should be described, using grid references at all relevant points and referring to important permanent features to assist with the description of the route. The plan demonstrates how all paths shown must be labelled, along with all other major landmarks.

Templates of all Highways Act 1980 Orders can be found in Schedule 1 of the Public Path Orders Regulations 1993 (see Appendix 2).

PUBLIC PATH DIVERSION ORDER

HIGHWAYS ACT 1980

HERTFORDSHIRE COUNTY COUNCIL (BARKWAY 18) PUBLIC PATH DIVERSION ORDER 2013

This Order is made by Hertfordshire County Council (“the authority”) under section 119 of the Highways Act 1980 (“the 1980 Act”) because it appears to the authority that in the interests of the owners of the land crossed by the bridleway described in paragraph 1 of this Order and the public it is expedient that the line of the way should be diverted.

John Smith and Anne Smith have agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the path into a fit condition for use by the public.

North Hertfordshire District Council has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER:

1. The public right of way over the land situate at Barkway and shown by a bold continuous line on the plan contained in this Order (“the Order Plan”) and described in Part 1 of the Schedule to this Order shall be stopped up on the date of confirmation of this Order.

2. There shall on the date of confirmation of this Order be a public bridleway over the land situate at Barkway and described in Part 2 of the Schedule and shown by a bold broken line on the Order Plan.
3. Reference to limitations in part 3

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH

The full width of that part of Barkway BR18 running from the point at which it enters the curtilage of the property known as Keepers Cottage Royston Road Barkway at TL 3825 3640 (marked 'A' on the Order Plan) in a west north westerly direction for approximately 80 metres to its junction with Royston Road Barkway at TL 3817 3642 (marked 'B' on the Order Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH

A public bridleway commencing from the junction with Barkway BR18 at TL 3825 3640 (marked 'A' on the Order Plan) running within and parallel to the boundary of Keeper's Cottage in a north north easterly direction for approximately 40 metres to TL 3826 3643 (Marked 'C' on the Order Plan), then running in a generally westerly and then north westerly direction on the south side of the northern boundary of Keeper's Cottage for approximately 100 metres to a junction with Royston Road at TL 3817 3644 (marked 'F' on the Order Plan).

Width: **4 metres** between TL 3825 3640 (marked 'A' on the Order Plan) and TL 3819 3642 (marked 'D' on the Order Plan),
 3 metres between TL 3819 3642 (marked 'D' on the Order Plan) and TL 3818 3643 (marked 'E' on the Order Plan),
 4 metres between TL 3818 3643 (marked 'E' on the Order Plan) and TL 3817 3644 (marked 'F' on the Order Plan)

PART 3

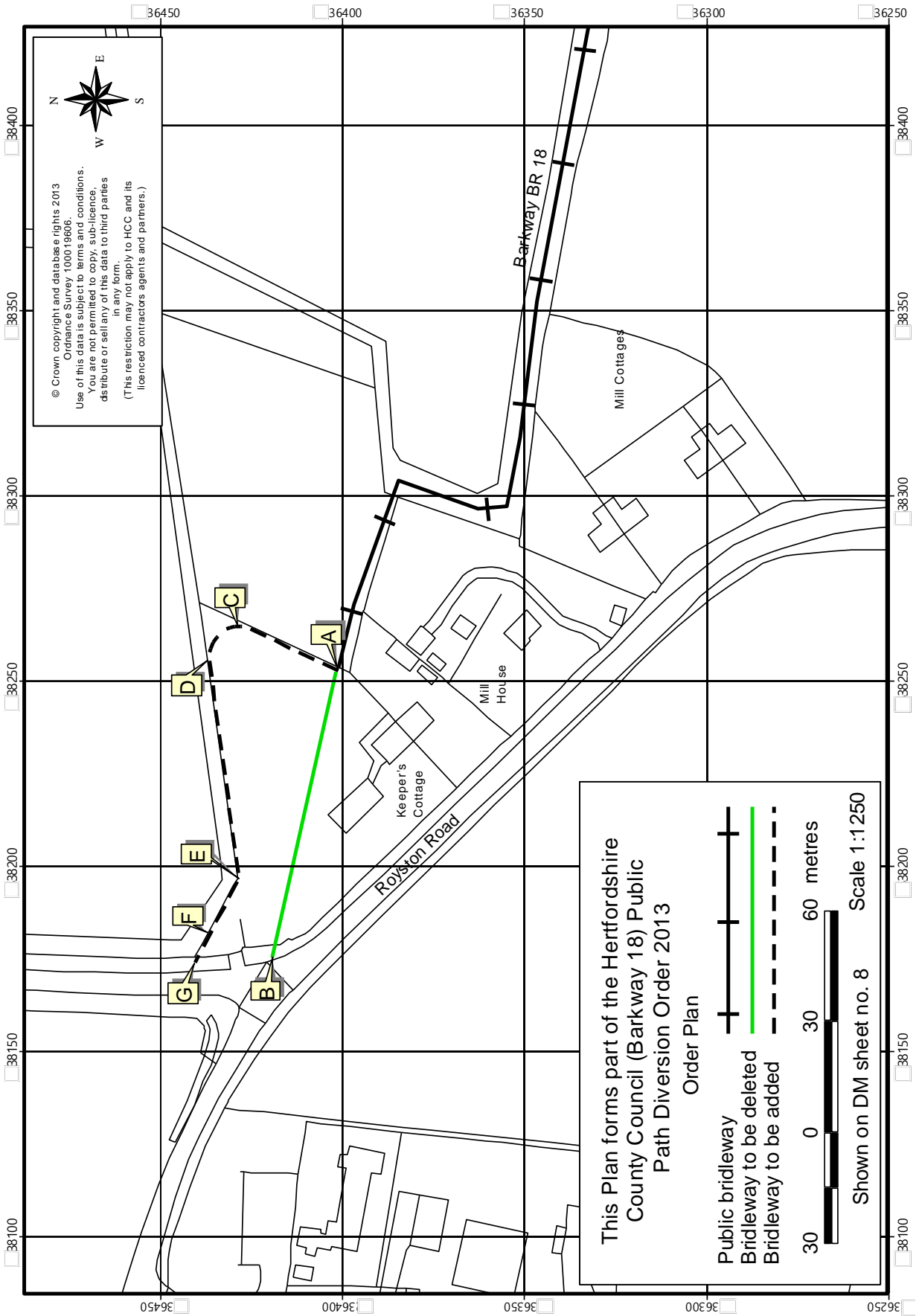
LIMITATIONS

None

IN WITNESS whereof the COMMON SEAL of HERTFORDSHIRE COUNTY
COUNCIL was hereunto affixed this day of 20**

The Common Seal of
HERTFORDSHIRE
COUNTY COUNCIL
was hereunto affixed
in the presence of:-

Chief Legal Officer



Appendix 5: Checklists for Consultation and Determination Reports

Checklist of items to be included with Consultation Report

Item to be included in Consultation Report	Included
1. This checklist, representing confirmation that you have read and understood these instructions	<i>(please initial)</i> _____
2. A comprehensive statement detailing the proposals and explaining how and why the changes will meet the legislative tests and the County Council's policies	
3. A plan showing the public path(s) affected and the proposed diversion(s)	
4. Evidence of title to all the land affected by the proposal	
5. Letters from any affected landowners, tenants or lessees	
6. A copy of your consultation letter(s) together with the list of addressees it was sent to. Clearly label the letter as "First Consultation", "Second Consultation" etc. as necessary and identify the addressees at each stage.	
7. A tabulated list of which consultees responded to the consultation giving a short précis of their comments and a tick box showing whether or not they agree to the proposals	
8. Copies of any consultation responses, identifying where the response is to the first or second consultation and cross referenced to the tabulated list, from: <ul style="list-style-type: none"> • district/borough and parish councils • statutory undertakers, indicating whether they have any wayleave rights; if they wish to receive further communications; and if they are likely to object • other consultees, including correspondence showing what you have done to resolve any objections 	
9. Copy of the site notices and the date it was placed on site, checked and removed. Identify "First Site Notice", "Second Site Notice" where more than one notice is used	
10. Copy of the draft order and plan used for consultation. Where more than one version used, identify which versions of the order and plan were used with which consultation letter.	
11. Copy of the relevant part of the Rights of Way Improvement Plan, or confirmation that there isn't any applicable provision	
12. Confirmation of payment to the County Council	

Checklist of items to be included with Determination Report

Item to be included in case report	Included
1. This checklist	
2. a statement of your comments on any objections and their validity/relevance to the legal tests	
3. A statement of the grounds upon which the Order should be confirmed	

Appendix 6: Summary of County Council policies

Rights of Way Service Policies, Standards and Priorities for the Management of the Public Rights of Way Network in Hertfordshire

Policy 1: Evidential Modification Orders (MOD)

Modification order cases will normally be investigated in the order in which duly made applications are received, subject to the availability of suitably experienced officers, except in any of the following circumstances where a case may be investigated sooner:

- where it will satisfy one or more of the key principles
- where the physical existence of a claimed route is threatened by development
- where investigation of a case would involve substantially the same evidence and forms part of or joins the route currently under investigation or about to be investigated and will provide significant cost or efficiency savings
- where there is only user evidence available.

Policy 2: Public Path Orders (PPOs)

Public path order cases will normally be processed in the order in which applications fulfilling our requirements are received, subject to the availability of suitably experienced officers, except in any of the following circumstances where an order may be processed sooner:

- where an order would satisfy one or more of the key principles
- where an application has been made to the County Council in its capacity as planning authority, or for a school special extinguishment order
- where the processing of an order would save significant costs likely to be incurred in other rights of way functions
- where an order is appropriate following consultation paid for by the applicant.

Policy 3: Processing Dedications and Creation Agreements

Dedications and creation agreements will normally only be processed in any of the following circumstances:

- where a dedication or creation agreement will satisfy one or more of the key principles
- where a dedication or creation agreement is offered in lieu of a modification order investigation and it satisfies the evidence
- where the requirement to make a dedication or creation agreement forms part of an obligation in a section 106 agreement
- where it meets a high priority Rights of Way Improvement Plan (RoWIP) objective.

Policy 3a: Accepting Maintenance Liability on Dedications and Creation Agreements

Maintenance liability will normally only be accepted in the following circumstances:

- where little or no initial additional expenditure is required by the County Council to bring a route into a fit condition for use AND
- where a path has been dedicated or created free from limitations which would be onerous on the public's use and enjoyment of the path AND

- Where the addition of a path is of public benefit, e.g. where a landowner dedicates a route instead of the County Council incurring the expense of a modification order investigation.

Policy 4: Widths of New Routes

The County Council recommends that there shall be **minimum** legal widths of 2 metres for footpaths, 4 metres for bridleways and 5 metres for restricted byways which are created by public path orders or dedications and will usually require a wider width unless there are clear reasons for only providing the minimum.

Policy 4a: Orders Made By Other Authorities

The County Council will normally object to public path orders made by other authorities within Hertfordshire where:

- they create routes which are less than the minimum widths described in the previous policy
- they create routes which are subject to unnecessary limitations as described in the following policy.

Policy 5: Limitations on New Routes

The County Council does not normally support the inclusion of any structures as limitations on routes created by public path orders and dedications where those structures could otherwise be authorised (e.g. gates) or are an aid to passage (e.g. bridges).

Policy 6: Maintenance and Enforcement Priority for Action

The County Council will normally prioritise action on the public rights of way network in accordance with the three key principles. The following exceptional circumstances also apply:

- where practical work is required prior to a public path order coming into effect or in order to open up a newly recorded right of way
- where there is evidence that either the Definitive Map or the Definitive Statement is incorrect.

Policy 7: Maintenance of bridges and path surfaces

Where a public footpath or bridleway also carries private vehicular rights, the County Council may consider making a contribution towards the costs of maintenance of the surface or towards any structures, such as bridges. The actual sum will reflect the cost that the County Council would incur to repair the surface and may vary in accordance with the key principles. The contribution from the County Council will not normally exceed a **maximum** of 10% of the cost of any appropriate maintenance works.

Policy 8: New Ditches, Ponds and Channels etc.

Where a landowner creates a new ditch, pond or channel etc that crosses an existing right of way, a suitable bridge or structure must be provided, which can accommodate all legitimate users safely and without restriction. Structures may be supplied and erected by the County Council or approved agents, in which case landowners will normally be charged up to 100% of the reasonable costs of the installation. Where a structure is required by the County Council to be built to a higher specification, the County Council will bear the additional cost. Absence of any

structure can be construed as 'wilful obstruction' on behalf of the landowner. Exceptions may include instances where a path is recorded in the Definitive Map and Statement subsequent to the new feature being created.

Policy 9: Authorising Structures on Public Rights of Way

The County Council's policy is to keep the number of authorised structures erected on the public rights of way network to a minimum, consistent with the Equality Act 2010, public safety and good husbandry. In keeping with national guidance and British Standard 5709, the least restrictive option will normally be chosen in each case, which will also be stockproof where required.

Policy 10: Charging for New or Replacement Structures

- i. New structures - it is the landowner's responsibility to apply for authorisation to erect a new structure. The authorisation may allow the landowner to erect the structure to an approved specification. The landowner may allow the Council to erect the structure, provided the owner bears 100% of the costs incurred.
- ii. Existing structures in breach of authorisation (i.e. poor condition) - landowner pays 100% of all costs incurred.
- iii. Existing structures but authorisation is withdrawn/revised (i.e. in satisfactory condition & being maintained, but upgrade needed to achieve better access) - the County Council pays up to 100% of the costs incurred to achieve the upgrade.
- iv. Existing structures maintained in accordance with the authorisation - the County Council shall contribute not less than 25% of proven maintenance expenses reasonably incurred.

Policy 11: Agricultural Obstructions

The County Council will normally take direct action to remove crops or to reinstate paths where landowners have failed in the duties imposed on them by the Highways Act sections 134 and 137A. Action will only be instigated after the County Council has served the necessary notices. Consideration will be given to prosecuting repeat offenders and reclaiming all reasonable costs.

Policy 12: Legal and Court Action

The County Council may take legal action where there is a realistic prospect of a conviction and such action can be shown to be in the public interest and we cannot secure compliance by other reasonable means.

Policy 13: Permanent Traffic Regulation Orders

The County Council will follow the guidelines in Government Circular 1/09 and national guidance, normally by seeking to reduce damage and/or danger to an acceptable level before considering an order. Cases for order making may be considered for advice by Development Control Committee where:

- i. management measures have failed or can be shown to be inappropriate; and
- ii. there is sufficient evidence of damage or conflict to support an order under the Road Traffic Regulation Act 1984 section 1(1a – f).

When considering the making of a permanent traffic regulation order the County Council will give preference to those activities which cause the least disturbance to

other users and will consider proposals to ban or regulate certain classes of traffic when in the wider public interest.

Policy 14: Temporary Traffic Regulation Orders

When considering the making of an order, under the Road Traffic Regulation Act 1984 section 14 or the Town & Country Planning Act 1990 section 261, public safety will be given a high priority. Alternative routes will only be provided on existing public highways which are convenient and safe for the traffic being diverted onto them. Alternative routes within construction sites will only be endorsed where provisions regarding public safety, width, surfacing and fencing are secured, e.g. through a planning condition, section 106 agreement (Town and Country Planning Act 1990) or other form of written agreement.

Gating Orders Policy

The County Council's adopted policy on gating orders applies to both Herts Highways and the Rights of Way Service, along with our agents.