

SUMMARY OF THE PROCEDURE FOR THE **DIVERSION OF FOOTPATHS OR BRIDLEWAYS** IN HERTFORDSHIRE

If a diversion Order is to be made either

- a. to enable development to be carried out (*under the Town & Country Planning Act 1990*)
- b. in the interest of the landowner (*under the Highways Act 1980*)
- c. in the interest of the public (*under the Highways Act 1980*)

then the following is an outline of the procedures which should be followed once the decision to pursue an Order has been taken.

N.B. If an extinguishment is to be carried out, then this summary is still relevant, but please contact HCC ROW for more specific advice.

The total timescale, from the start of processing to the confirmation of an Order is likely to be at least 6 months and may be considerably longer. If agreement cannot be reached with the various parties or if there are objections to an Order it can take several years. There is no guarantee that an Order will be made or, if made, will be successful.

Audience

This note has been written for Local Authorities making Orders under their own powers (*Order Making Authority or OMA*), or for external solicitors or consultants acting as agents of a Local Authority.

You should also obtain :-

- **“A Guide to Procedures for Public Path Orders”** published by the Countryside Agency.
- HCC ROW **“Order Guidelines”**

Copies are available from HCC ROW.

Other useful references

- **Public Path Order Regulations 1993** SI 1993 No 11
- **Town and Country Planning (Public Path Orders) Regulations 1993** SI 1993 No 10
- **Rights of Way – A Guide to Law and Practice** John Riddall and John Trevelyan

PREPARATION

The proposed diversion or extinguishment and any associated creations should be discussed with officers from HCC ROW, and with the landowners affected.

Ownership

Proof of ownership will be needed from landowners involved (normally Land Registry details).

Costs

If the diversion is being carried out in the interest of a landowner, or for development, you will need to draw up an agreement regarding costs and any compensation which may be payable, or arrange for the landowner to pay up front.

Consultation

Consultation letters (or site notices for consultation) should explain fully and clearly what the proposals are (and the reasons for them) and include a clear draft plan showing the proposals. It may be appropriate at this stage to draft the Order and send a copy of that out for comments. It is a good idea to send a draft copy to HCC ROW and discuss this with them before sending it out (the HCC Order Guidelines should be followed). HCC ROW can provide a sample plan which you can follow.

Consultation letters should be sent to :-

- Hertfordshire County Council Rights of Way Unit (HCC ROW)
- District Council
- Parish Council,
- user group representatives (*see HCC's consultation list – available on request*)
- any landowners whose land may be affected
- any landowners whose land abuts any of the proposed changes.
- local residents (it may be sufficient to put up notices on site or on a local noticeboard or it may be more appropriate to drop letters through front doors, or perhaps both)
- any local residents associations
- statutory undertakers (*you will need their consent if the diverted or extinguished path has their apparatus on or underneath*)

Keep the local councillors (of your council) informed and copy your consultation to them as well.

Obviously if the District or County is carrying out the diversion they need not consult themselves (unless another department is involved, as landowner for example).

You need to set a deadline for comments – normally 6 weeks but not less than 4 weeks, make this clear in the letter and give the exact name & address of the person who comments should be sent to.

Decision

Please discuss the results of the consultation with officers from HCC Rights of Way Unit as we may be able to sort out any issues which arise.

It may be that the order is unlikely to succeed in the face of opposition and in this case the proposals can be abandoned. Letters should be sent to all the consultees advising them of this.

MAKING THE ORDER

You must have consulted the County Council before making the Order.

The Order should follow the HCC Order Guidelines as well as the relevant Regulations and a draft should be sent to HCC Rights of Way Unit for checking before it is sealed. This can help avoid simple errors and in extreme cases may avoid the necessity to withdraw and republish an Order.

In many cases, works will have to be carried out on the path by the landowner (*to bring the new path into a fit condition for use*). A clause can be included in the Order requiring that HCC (or the OMA) issue a certificate that works are complete before the Order takes effect (“comes into operation”).

Two copies of the Order should be sealed.

PUBLICATION

Notice of the Order needs to be served, giving 4 weeks (**check the regulations for the Act you are using as this differs according to which Act you are using*) for objections. HCC Rights of Way team can give you guidance in the wording of the notices and would normally check them before publication.

Notice must be served as follows:-

- Published in a local paper (one which can be bought rather than a free one).
- Notices, accompanied by a plan should be erected at either end of the paths affected
- Notices should be sent to all the people you consulted (see "PREPARATION" above) with a covering letter
- A copy of the Order must be sent to each District/Borough/County affected. These must be placed on deposit and the notice displayed on the Council noticeboard
- A copy of the notice must be displayed on the Parish Council noticeboard or at their office

It is always helpful to prepare a brief explanatory note explaining in plain English what is going on, and the reasons for it. This can be put up on site with the notice and can also form the text of the covering letter to accompany the notice when sent to consultees.

DETERMINATION

If there are no Objections to the Order

The Order may be confirmed by the OMA [unless there are amendments which the OMA would like to make (e.g. to correct a bad grid reference) in which case the order must be submitted to the Planning Inspectorate with a request to confirm with modifications].

If there are Objections or Representations to the Order

An objection or representation is any letter received within the objection period. It is up to the Planning Inspectorate to decide whether or not it is valid.

Please discuss the objections with HCC ROW and let us have copies for our file.

It is still possible at this stage for the Order to be abandoned. If you decide to do this, letters should be sent to all the consultees advising them of the decision.

If you decide to proceed with the Order you should write to all the objectors and try to find out whether they may be prepared to withdraw those Objections.

If all Objections are withdrawn then you may confirm the Order as if there had been no Objections.

If there are still outstanding objections then the matter is referred to the Planning Inspectorate (acting on behalf of the Secretary of State) for determination. An Inspector will be appointed and will deal with it either by

- Written Representations,
- a Public Hearing or
- a Public Inquiry.

It can take several months to set up a Hearing or Inquiry and it may be several more before a Decision is issued. Written Representations may also take several months.

The Inspector may choose to either

- **confirm the Order as it was made**
- **confirm the Order with Modifications** e.g. changes to the width of a path
In this case the order may need to be re-advertised and may be open to further objections.
- **“Not Confirm” the Order**
In this case the Order has failed. A new application would have to be made to the OMA. An OMA is unlikely to make a new order unless there were substantial changes.

WORKS

If works have to be carried out, arrange for an inspection (normally with HCC ROW as Highway Authority) to ensure that

- the new path is set out on the correct line
- any practical works specified in the Order have been completed.

Make sure that if a certificate is needed, it is signed and a copy sent to HCC (or signed by HCC and a copy sent to you). A sample certificate can be found in the Order Guidelines.

CONFIRMATION

If the Order is **Confirmed** by you (as OMA)

You will need to affix a sticker to both copies of the original Order, or to write on them to the effect that→

The sticker should be signed by the same person who signed the Order in the first place.

The foregoing Order is hereby confirmed

Signed

Dated

If the Order is **Confirmed** by an Inspector (but does not need re-advertising)

The Planning Inspectorate will return one copy of the confirmed Order to you (with modifications marked in red if the Order has been modified) and keep the second copy of the Order themselves.

In either of the above cases

The confirmation must be advertised in exactly the same way as the Order (saving only the wording of the notice). See “PUBLICATION” above.

A period of six weeks is allowed for application to be made to the High Court for judicial review.

If the Order is **Not Confirmed** by an Inspector

You must write to everyone who was given notice of the Order telling them that the Order is not confirmed, (but you do not have to place notices on site or in a newspaper).

TELLING PEOPLE

You should notify HCC and send a copy of the confirmed Order to HCC ROW.

You will also need to write to the Ordnance Survey, telling them of the change and enclosing a copy of the Order. Please copy your letter to HCC ROW for our files.