

Bassetlaw District Council

Footpath Diversion Orders

Notes & Guidance

Introduction

Following the amendment of Section 257 by the Growth and Infrastructure Act 2013, an order may be made in anticipation of planning permission. However, an order made in advance of planning permission cannot be confirmed by either the authority or the Secretary of State until that permission has been granted.

Although footpath matters are usually dealt with by the Local Highways Authority (typically the County Council), District Councils have been granted powers under Section 257 of the Town and Country Planning Act 1990 (“the Act”) to make Orders for the diversion or extinguishment of footpaths, bridleways or restricted byways.

The Council can only make an Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted. This will not be the case if the development has already been carried out. The Council must also have regard to:

- the need for an alternative highway to be provided; and
- the disadvantage or loss likely to arise to members of the public generally, or to persons whose properties adjoin or are near the existing highway, as a result of the stopping up or diversion weighted against the advantages of the proposed stopping up or diversion.

If you wish to divert or extinguish a footpath following the granting of planning permission, you should apply to the Council using the accompanying application form. A footpath or bridleway can be diverted under the Act only if the development has full planning permission.

Please note: a Footpath Order will take at least 3-4 months to complete and may take substantially longer if the Order is opposed.

If the Council’s officers determine that the above powers do not apply, the Council will not be able to make an Order. It may still be possible to divert or extinguish a footpath by applying to Nottinghamshire County Council as the Local Highways Authority.

Procedures for making an Order

First Stage

The application form, which can be downloaded or completed and submitted online from our website, should be submitted with the following:

- An extract from the Ordnance Survey map showing the existing route and proposed alterations to the footpath/bridleway (Scale 1:1250 or 1:2500);
- A copy of the ‘full’ planning permission decision; and

- An initial payment of £1160 (see Costs below).

If you are not the owner of the land, you will need to send the written consent of the landowner. If you are the owner of the land, proof of legal title will need to be submitted.

On receipt of the application and first stage payment, the Council will examine the proposal, prepare a draft Notice and Order and undertake initial consultations with the relevant consultees (a list is available on our website) including, where appropriate, local residents. The initial consultation will be advertised in the local press and site notices will be erected notifying of the consultation.

Both the Ramblers' Association and the Open Spaces Society have a policy of objecting to Public Path Orders unless a clear public benefit can be shown. It is often the case that initial proposals are amended at consultation stage. Suggestions made by the consultees can help achieve a successful outcome. The Council is keen to encourage applicants and consultees to reach agreement on proposals where possible.

Second Stage

When agreement has been reached, the Order is sealed by the Council Solicitor or, if agreement cannot be reached, the matter is referred to the Secretary of State as an opposed Order.

Third Stage

Notices advertising details of the Order are posted at each end of the affected section of the Path. Similar notices are published in at least one local newspaper. The notice informs the public that they can inspect the Order at the Council's offices, or by paying for a copy of the Order to be sent to them, and states that objections can be made to the Order within 28 days.

After the 28 days objection period the Council will seek to negotiate withdrawal of objections within a two-month period.

Unopposed Orders

If at the end of the 28 day objection period no objections have been received, the Council will confirm the Order. Notices are again posted on the Path and in the press to this effect and the applicant will be informed that the Order has been confirmed.

If at the end of the 28 day objection period no objections have been received the Council will write and advise that you are to complete the works in respect of the proposed footpath as detailed in the Order (the course of the existing footpath should not be obstructed). Once the proposed footpath works are complete you should notify us to enable inspection to ensure that the footpath has been constructed to a satisfactory standard and that the diversion is in place.

A final payment of £1160 is required before the Order is confirmed and certified that the diversion is in place. Notices are again posted on the path and in the press to this effect and the relevant consultees are notified.

At this stage, if any person believes that the legal requirements have not been complied with they may apply to the High Court within six weeks, under Section 287 of the Town and Country Planning Act 1990, to quash the Order. If no application has been made to the High Court by the end of this period, the Order is considered valid and may not be further challenged.

The Council will then, on completion of the necessary works by the applicant, certify the work as satisfactory and the Order will come into operation. If no works were required, the Order will come into operation at the end of the six-week period.

Opposed Orders

If objections are received to a draft Order within the specified time limit, and are not withdrawn within two months after the expiration of the objection period, the Council must refer the Order to the Secretary of State for the Environment. The Secretary of State will decide the matter either by holding a Public Inquiry or by appointing a person to hear the representations of the objectors.

The Secretary of State then decides on the basis of the reports submitted to him/her at the Inquiry, or by hearing representations, whether to confirm the Order with or without modification.

The applicant is informed of any objections. Any action the Council may wish to take to resolve objections at this stage is not chargeable to the applicant. If objections are not withdrawn, or are considered by the Secretary of State to be irrelevant, payment of costs by the objector can be sought at the Inquiry, with this being decided by the Secretary of State.

Public Inquiries can take several months to arrange and complete and it can take up to a year or more before an Order can be decided. It is, therefore, considered time well spent to try to resolve any problems at an early stage of the design of the development with a view to avoiding the need for a later Inquiry.

Costs for Public Path Orders

The Council usually requires all applicants for Public Path Orders for the diversion and extinguishment of public rights of way to reimburse to the Council the whole of the charges involved. The charges for Orders made under the Act comprise:

Standard Costs

Site Works

Applicants are required either to prepare any new route to the Highway Authority's required standard and/or to meet the costs of having the works done. This may include installing way marking, signposts, bridges, ground-works etc.

Administration and Advertising

Bassetlaw District Council makes a standard charge of £1500 to cover administrative costs, legal advice, site visits, postage and printing plus £500 to cover the advertising per application. A total cost of £2000. The administration charge will only be increased if an applicant initiates changes that expand or substantially vary the application.

Public Notices of the making, confirmation and certification of Public Path Orders made under the Town & Country Planning Act 1990 have to be published in a local newspaper. It should be noted that as the charge is dependent upon the amount and type of Advertisements and Notices required to be published, it can vary considerably for different Orders. Also, depending on the exact location of the footpath concerned, it may be necessary to advertise each notice in more than one newspaper. This can substantially increase the above estimate.

Payment will be required as follows:

- Initial fee of £1160 paid with the application to divert the footpath;
- Final payment of £1160 paid before the Order is confirmed and certified that the Order is in place.

Additional Costs

These fees may be applied in some instances:

- £500 is paid before submission to the Secretary of State if objections are received and the Order is submitted to the Secretary of State for a decision;
- £200 for each additional path is paid where it is included in the same Order.

Refunds

The Council will only refund an administration charge where:

- it fails to confirm an unopposed Order;
- having received representations or objections which have been made and not withdrawn, the Council fails to submit the Order to the Secretary of State for confirmation, without the agreement of the person requesting the Order; or
- the Public Path Order is not confirmed by the Council or on submission to the Secretary of State, by him, on the ground that it was invalidly made.

It is up to the applicant to make an application for refund of charges.

N.B. The £1160 initial fee is retained if the application is withdrawn/rejected following informal consultation and first advertisement.

Waivers

The Secretary of State expects authorities to use their power to recover costs. Applicants should expect to bear the cost of making an Order.

Authorities have discretion not to charge, however, or to charge only part of the cost. They will only do this in very exceptional circumstances, such as financial hardship or potential benefit to Rights of Way users. The Council will judge each case on its merits in the light of local circumstances, in the absence of any standard definition of hardship or rules to determine the benefits to Rights of Way users.