

Derbyshire County Council

**Diversion of a Public Right of Way under
Section 119 of the Highways Act 1980**

Guidance Notes for Applicants

IMPORTANT: Please read the guidance notes carefully before completing the application form as incorrect or incomplete information can cause delays. All applications must meet the required legal tests under Section 119 of the Highways Act 1980. Those applications which do not meet the necessary criteria will not be accepted. It should be noted that, whilst the Council has a power to process Diversion Orders, this is not a statutory duty. District/Borough Councils and the Peak District National Park Authority also have the power to make public path diversion orders.

No authority for the diversion of a footpath, bridleway or restricted byway is granted unless and until a Diversion Order has been confirmed and brought into effect. Any obstruction of the definitive path is an offence and may make it impossible to proceed with the Diversion Order.

We recommend that anyone thinking of diverting a public right of way first finds out the correct, legal line of the path (this may not be exactly how the path is used in practice) by contacting the Public Rights of Way Team. We also recommend that a site meeting is conducted before an application is submitted as this will save time determining whether the proposal meets the requirements of the legislation and those of Derbyshire County Council. Each public right of way is uniquely referenced by the name of the parish in which it is located, and a number. We will need this information to process an application. We can assist you by supplying this information, alternatively you could visit the mapping portal which can be accessed online via the Rights of Way page entitled Derbyshire Maps.

1. Legal Tests

1.1 Derbyshire County Council may make a Public Path Diversion Order under s119 Highways Act 1980 where it appears to the Council that in the interests of the owner, lessee or occupier of land crossed by the path, or in the interests of the public, it is expedient that the line of the path, or part of that line, should be diverted

- 1.2 A Public Path Diversion Order shall not alter a point of termination of the path if that point is not on a highway, or a highway connected with it, and which is substantially as convenient to the public.
- 1.3 A Public Path Diversion Order shall not be confirmed as an unopposed Order unless it is expedient to do so and further that the path will not be substantially less convenient to the public in consequence of the diversion having regard to the effect which:-
 - 1.3.1 the diversion would have on public enjoyment of the path as a whole,
 - 1.3.2 the coming into operation of the Order would have as respects other land served by the existing public right of way, and
 - 1.3.3 any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it,
- 1.4 Account needs to be taken of the provisions with regard to the payment of any compensation
- 1.5 Any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.
- 1.6 Consideration should be given to any material provision in Derbyshire County Council's Rights of Way Improvement Plan.
- 1.7 It should be noted that the Highways Act 1980 is not appropriate for diverting of public rights of way affected by new development unless this is substantially complete at the time of the application. For diversions to accommodate new developments please see the Guidance notes for orders made under the Town and Country Planning Act 1990.

2 Applications

- 2.1 Due to the large number of applications being processed, Derbyshire County Council will be operating a waiting list for new applications. Applications that are in the interests of public safety, user enjoyment of the route or which relate to new development will be given the highest priority.
- 2.2 Please ensure that you answer **all** questions correctly and fully in accordance with the instructions provided on the application form.
- 2.3 It cannot be stressed too strongly that it is for the applicant to make the case for the diversion, having regard to the statutory requirements under s119 Highways Act 1980. If Derbyshire County Council is not satisfied that the application meets these criteria then it will not process the application.
- 2.4 The following documentation must accompany your completed application form:
 - (a) A **clear map** at a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily

available. The scale and north point should be clearly shown as well as grid references. The map should also contain sufficient detail to show the existing line of the path or way, the proposed alternative, and any effect on those highways connect to it

Please note: Due to copyright restrictions Derbyshire County Council cannot accept plans that it has provided for information purposes. The applicant must obtain their own plan for submission with their application. Any applications received with a plan produced by Derbyshire County Council will not be processed and will be returned to the applicant.

- (b) If any person other than the applicant has an interest in either the land over which the existing path runs, or the land over which the alternative path runs, a letter of authority from that person confirming their agreement to the proposal must accompany the application.
- (c) If the land over which the diversion is proposed is held in joint names then the application form will need to be signed by **all** legal owners
- (d) If the applicant has proof of ownership of the land affected by the diversion then this should be provided with the application. If this is not provided or the documentation is considered to be too old to be relied upon, then the County Council will carry out a Land Registry search and obtain the necessary proof of title documents. This will be recharged to the applicant as part of the processing costs.
- (e) Applications on behalf of companies should be signed by a director with capacity to act on their behalf and the position of the signatory should be indicated. Should an agent be acting on behalf of the company then a letter from a director providing authority should accompany the application.
- (f) Applications completed by an agent must also be signed by the applicant.

3. Improving access

3.1 Derbyshire County Council is committed to improving access to the countryside for people of all abilities and therefore applicants are required to provide an alternative route which is as accessible or more accessible for use by the public.

3.2 Applicants must construct diverted routes to a standard acceptable to Derbyshire County Council and in some instances may be required to carry out suitable surfacing works such as tarmac or crushed stone, drainage or grading works to provide a route that is suitable for public use. Derbyshire County Council will only accept applications if the surface of the proposed alternative is the same as or better than the existing route.

- 3.3** Derbyshire County Council will not accept applications if the width of the proposed alternative route is less than that of the existing route, required minimum widths are:-
- (a) Unenclosed
2 metres for a footpath and 3 metres for a bridleway
 - (b) Fenced on both sides
2 metres for a footpath and 5 metres for a bridleway
 - (c) Hedge on one side
The centre of a footpath should be a minimum of 2 metres from the centre of the hedgerow and the centre of a bridleway should be a minimum of 3 metres from the centre of the hedgerow
 - (d) Hedges on both sides
As above on both sides
- 3.4** As part of its commitment to improve access Derbyshire County Council is striving towards a barrier free rights of way network. Gaps should be provided where possible, gates can only be installed on an alternative route in the interests of public safety or where they are necessary to control the movement of stock on agricultural or forestry land.
- 3.5** Should Derbyshire County Council feel that access can be improved along a section of the path unaffected by the diversion, such as drainage works or replacing stiles with gates, then the right is reserved to insist that these works are carried out in conjunction with the diversion.
- 3.6** The diverted route will be waymarked to the satisfaction of Derbyshire County Council. Should the diversion require the installation or relocation of a signpost then the costs of these works will be re-charged to the applicant as part of the application fees.

4 Procedures for making an Order

- 4.1** The making of Public Path Diversion Orders is governed by statutory procedures of the Highways Act and the waiting list and priority system adopted by Derbyshire. The **minimum** time likely to be taken to secure confirmation of an unopposed Order is in the region of twelve months from the date of receipt of a valid application. If objections are received to the proposal, then the period of time taken before a decision is made to confirm and certify the order will be considerably longer
- 4.2** Once a complete application has been received and accepted, the County Council will carry out an **informal consultation**. This involves contacting the local user groups, statutory consultees and any affected landowners. Notices will also be posted on site inviting comments from members of the public. At the end of the consultation period any comments received will be considered

and a decision will be taken as to whether the County Council consider it expedient to make the Order.

- 4.3 If the County Council does not consider it expedient to make the Order following the informal consultation then the application will be rejected.
- 4.4 If the County Council does consider it expedient to make the Order then the proposal will be reported to the Regulatory Licensing and Appeals Committee with a request for authority for the Director of Legal Services to make the Order.
- 4.5 Once an Order has been made there is a statutory requirement to consult all statutory consultees and affected landowners. The notice of the making of the Order will be advertised on site and in a local newspaper circulating in the area. There is then a statutory 28 day statutory consultation period from the date of the notice.
- 4.6 If no objections or representations are received to the making of the Order then the applicant will be contacted and advised that any works required on the diverted route should be carried out. Once these works are carried out to the satisfaction of Derbyshire County Council then the Order will be certified and confirmed and the Order will come into effect 28 days after the date of confirmation of the Order. Confirmation will be publicised in the same way as the making of the Order.
Please note that we do not advise that any works are carried out until you are contacted by a member of the Rights of Way team at the end of the objection period. Until this stage the Order cannot be confirmed as an unopposed Order and may not come into effect.
- 4.7 Should any objections be received to the making of the Order then the County Council will attempt to resolve these by way of negotiation between the parties.
- 4.8 Where the objections are not withdrawn the County Council will either decide not to continue with the application as it is not capable of confirming the Order or submit the Order to the Secretary of State for the Department of Environment Food and Rural Affairs for determination. An Inspector will be appointed to determine the Order by written representations, a local hearing, or a Public Inquiry.
- 4.9 If the Inspector decides to confirm the Order, then any works required by the Order will need to be carried out on the alternative route before the certificate can be issued to extinguish the existing path.
- 4.10 If the Inspector decides not to confirm the Order, then Derbyshire County Council cannot proceed any further and the path will not be legally diverted and **must** be available for use by the public.
- 4.11 Please note that 28 days after confirmation of the Order, the alternative route becomes the legal alignment and should be open and available for use but only certification that the

alternative route is suitable for public use extinguishes the rights over the existing path.

- 4.12** Derbyshire County Council does not normally confirm an Order until it is satisfied that the required works have been carried out. However, should the Order be confirmed by either the Secretary of State or the County Council and the required works have not been carried out satisfactorily then the public will have rights over the existing and alternative paths and both routes will need to be open and available for public use.

5 Costs

- 5.1** If the County Council decides to proceed with an application for a Diversion Order it will normally do so subject to the applicant agreeing to cover all reasonable costs incurred in processing the application and making the order including Land Registry Fees, advertising fees and any compensation which may be payable. Please note that there are statutory requirements to advertise the notice of the making of the Order and the notice of the confirmation of the Order and therefore two advertising fees will be incurred. Please note that these are not standard fees and will vary according to local advertising rates.
- 5.2** The County Council has the discretion to waive part or all of the costs (excluding any compensation) where this is considered to be appropriate. Any applicant wishing the County Council to exercise this discretion should state this in the application with clear grounds for the request to be considered.
- 5.3** The current charges for diversion applications are detailed in the County Council's list of Public Path Order Charges
- 5.4** Please note that applicants may still be liable for payment of costs already incurred if they subsequently withdraw an application.
- 5.5** The County Council may send interim invoices as the application is processed
- 5.6** The applicant will be liable for the cost of any works (including the installation, removal or re-positioning of any signposts or statutory undertakers' apparatus in, or under the highways to be diverted) necessary as a result of the order coming into effect

6 Return of Application Form and Enquiries

A copy of the application form with all necessary enclosures and any enquiries should be addressed to The Public Rights of Way Team, Environmental Services Department, Derbyshire County Council, Shand House, Dale Road South, Matlock, Derbyshire, DE4 3RY. Telephone 01629 533262 or email eteprow@derbyshire.gov.uk