

**PUBLIC**

## **Derbyshire County Council**

### **Diversion or Stopping Up of a Public Right of Way under Section 257 of the Town and Country Planning Act 1990**

#### **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 257 of the Town and Country Planning Act 1990. Those applications which do not meet the necessary criteria will not be accepted. It should be noted that Derbyshire County Council can only make an order under this legislation if it granted the Planning Permission for the development. It will normally be the District/Borough Councils or Peak District National Park Authority that have granted the planning permission and if so an application must be submitted to the relevant council/ authority.

No authority for the stopping up or diversion of a footpath, bridleway or restricted byway is granted unless and until a Diversion/Extinguishment 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 an Order.

We recommend that anyone thinking of stopping-up or 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. 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 an Order under s257 Town and Country Planning Act 1990 to divert or stop up a right of way if it is

satisfied that it is necessary to do so in order to enable development to be carried out in accordance with the planning permission granted.

**1.2** It should be noted that the Town and Country Planning Act 1990 is not appropriate for the diversion or stopping-up of a public right of way where the existing path is affected by new development which is substantially complete at the time of the application. For diversions to accommodate new developments which are substantially complete please see the Guidance notes for Orders made under s119 Highways Act 1980.

## **2 Applications**

**2.1** Please ensure that you answer **all** questions correctly and fully in accordance with the instructions provided on the application form.

**2.2** It cannot be stressed too strongly that that it is for the applicant to make the case for the stopping-up or diversion, having regard to the statutory requirements under s257 Town and Country Planning Act 1990. If the Council is not satisfied that the application meets these criteria then it will not process the application.

**2.3** The Order may provide for the creation of an alternative path or the improvement of an existing one.

**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)** The Council does expect the applicant to have an interest in the land that would be affected by the Order. This is so that, if an Order is made and confirmed the applicant would have the necessary rights to carry out the works authorised or required by the Order

- (c) 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 and authority to access the land to carry out the works authorised or required by the Order must accompany the application.
- (d) If the land over which the stopping-up or diversion is proposed is held in joint names then the application form will need to be signed by all legal owners
- (e) If the applicant has proof of ownership of the land affected by the stopping-up or diversion then this should be provided with the application. If this is not provided or the documentation is considered to be 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.
- (f) 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.
- (g) 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 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 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 be installed on a diverted path 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, removal 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 Orders is governed by statutory procedures of the Town and Country Planning Act 1990 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 six months from the date of receipt of a valid application. If objections are received to the proposal, 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 proposals will 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 of the 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 are received to the making of the Order then the applicant will be contacted and advised that any works required on the diverted route be carried out. Once the works required in the Order are carried out to the satisfaction of Derbyshire County Council then the order will be confirmed and the Order will usually come into effect once it has been certified that the works detailed in the Order have been completed to a standard suitable for use by the public. 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, as 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 incapable of confirming the Order or submit the Order to the Secretary of State for the Department of Environment Food and Rural Affairs for determination. They will appoint an inspector who will determine the Order by written representations, a local hearing, or a Public Inquiry
- 4.9** If the Inspector determines to confirm the Order then any works required by the Order will need to be carried out before the certification can be issued and the Order can come into effect.
- 4.10** If the Inspector determines not to confirm the Order then Derbyshire County Council can not proceed any further.

## **5 Costs**

- 5.1** If the County Council decides to proceed with an application for a Public Path 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 and advertising fees. Please note that there are statutory requirements to advertise the notice of the making of the order, confirmation and certification of the order and therefore three advertising fees may 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 as advised above where this is considered to be appropriate. Any applicant wishing the County Council to exercise this discretion (for example where the diversion is in the interests of public safety) then this should be made clear in the application with clear grounds for the request for consideration.
- 5.3** The current charges for the diversion applications are detailed on the Public Path Order Charges
- 5.4** Please note that applicants may still be liable for payment of costs already incurred if they 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 removal or re-positioning of any sign posts or statutory undertakers' apparatus in, or under the highways to be diverted) necessary in consequence of the coming into operation of the Order; including reinstatement of the original path if temporarily diverted

## **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 [espro@derbyshire.gov.uk](mailto:espro@derbyshire.gov.uk)