

## Guidance Notes

### PUBLIC PATH ORDERS

#### **Application for Orders under ss. 26, 118 and 119 of the Highways Act 1980 To Create, Extinguish and Divert public footpaths, public bridleways and restricted byways; known collectively as 'Public Path Orders'**

#### **Public Path Orders under the Highways Act 1980**

Public footpaths, public bridleways and restricted byways are all forms of public highway known as public rights of way. Being public highways, there are legal safeguards and procedures which need to be followed before a public right of way may be created, diverted (permanently re-aligned) or extinguished (permanently stopped-up/closed/removed).

Public rights of way are recorded on a two-part document, the Definitive Map and Statement, maintained by the County Council. The inclusion of a public right of way in the Map and Statement is conclusive legal proof of the existence, status and position of the public right of way shown. This is important to bear in mind, as regardless of what route people may or may not be taking on the ground, for whatever reason, the legally enforceable route is that shown in the Map and Statement. It is the legally defined route which will be the subject of any diversion or extinguishment order if one is made.

Any one may apply to the County Council for a Public Path Order.

So as to make the process as transparent and user friendly as possible, we have provided a generic application form where it is unnecessary for the applicant to know the section of the Act for the order or orders they may want. The form instead simply requires the applicant to describe what it is they want to do, and supply the necessary supporting information. The County Council can then decide which section(s) of the Act may most appropriately be used to achieve the desired outcome.

#### **The Form**

The application form may be downloaded from the County Council web-site. It may be filled in and posted to the Council (to the address give at paragraph 20), or scanned and emailed. There is presently no facility for submitting a PPO application by means of an online form.

#### **Page 1**

The first page of the application form is where we gather the information we need about you, the applicant. You may select any or all of the means listed by which we may contact you. For each means listed, please add the necessary details. So, for instance, if you select email, then please write in your email address. If you don't want to be contacted by telephone then do not enter a telephone number. Sometimes applications are dealt with by solicitors or land agents on your behalf. If you want us to deal with such an agent rather than yourself then please put their contact details in paragraph 3; otherwise leave this section blank.

#### **Page 2**

If you know what it is you want in the terms listed at paragraph 4 then you may tick the appropriate box(es). If you're unsure, don't worry as you can describe in words what it is you want by referring to an attached plan. An attached plan showing the proposed changes is mandatory, but there is no set scale or notation you have to use. Just make the plan of a large enough scale (i.e. showing a small area with great detail) to show the proposal as clearly as possible.

In public rights of way management we work in terms of civil parishes. That is why it is helpful if you can list for us in paragraph 6 what parish(es) the paths to be affected by the proposed changes are

in. Don't worry if paragraph 7 in some way duplicates an answer you have already given in paragraph 4; there are circumstances where the information will duplicate and some where it won't.

### Page 3

All the public rights of way in Northamptonshire have unique references made up of a 2 letter prefix followed by a number. The letters refer to the parish and the number identifies the path within that parish. So, for example, paths in the parish of Milton Malsor have the prefix 'KX'; and the paths in the town of Rushden are prefixed 'UK'. Unfortunately the origins of these prefixes is lost in the mists of time having been set during the early 1950s when the first Definitive Map was being compiled, so there is no way of working out the prefix from the name of the parish.

Section 3 is concerned with identifying all owners of land potentially affected by the proposed changes. There are special rules applicable to paths on church land or Crown land, so we need to know if either of those applies. Then we just need the names and contact addresses of all the affected landowners and confirmation that they consent to the changes you are asking for. You will need to supply written and signed consent from all affected owners before we can process your application. A map showing the proposed changes signed and endorsed by the other owner(s) is an acceptable format for this requirement.

There may be some form of financial agreement between several owners who agree to share the costs associated with the application in some way. Such agreements are between the parties concerned. We do not need to, and indeed won't, become party to such arrangements. The applicant will be solely responsible to the County Council for defraying all legitimate fees and charges resulting from the application. Before making an application on a shared contribution basis therefore, the applicant is advised to satisfy themselves as to the nature of the contractual relationship with the co-contributors as the County Council will not split costs between several parties. The applicant will be solely and wholly liable for all costs incurred.

Please note that if any of the affected land is subject to a mortgage or other loan secured on it the responsibility to inform the mortgagee and, if necessary, obtain the mortgagee's consent to the proposal lies entirely with the owner of the land concerned. Neither the County Council nor KierWSP will accept any liability for any failure to do this if required by the terms of the loan concerned.

### Page 4

This page seeks to gather information relating to occupiers of the land, rather than the owners. So, tenant farmers, those with private rights of access, those with sporting rights, any utility company or similar with easements over any of the land affected, developers or minerals companies with options on the land etc. all need to be identified and give their consent in a manner similar to that for the affected landowners.

Section four asks you to think about what structures you want to see on the path once it is created or diverted; not applicable in the case of extinguishments. By structures we mean stiles, gates, staggered barriers, bridges etc.

It is important to note that the default position is that any structure on a public right of way is an illegal obstruction unless lawfully authorised by the highway authority. Structures such as stiles and gates will only be authorised where they are needed to "control the ingress or egress of animals". In line with a wider duty on all public authorities to make access to their services as inclusive as possible, Northamptonshire County Council subscribes to the principle known as 'the least restrictive option'. What that means is that ideally there should be no physical impediments to the ease of use of public rights of way. Therefore a gap will always be the first option, followed by a gate with a stile only being authorised in exceptional circumstances.

### Page 5

This page gives you the opportunity to list what ground works you intend to carry out before any new paths are opened to the public. This is important as user group consultees will want to know this information when giving their responses. If the applicant doesn't give enough clarity to the proposed works this can delay the processing of an application whilst consultees seek further detail. Such

groups will often object to an order if they are not satisfied with the plan for the works to be undertaken to make the new route fit for public use.

All newly created or diverted public rights of way must be given a legal width. The County Council has a policy to guide the designation of widths for new or newly diverted paths and this can be found on the Council's web-site. The general rule is that the wider the path offered the more likely it is that user groups will look favourably on the proposed changes. It is important for future management of the path and for resolving any future disputes, that as well as designating a legal width for a new path it is possible to say where that width is to be measured from. So, for example, a public footpath which is to be diverted to follow an existing farm track is likely to be given a width equal to the farm track; say 3 metres, for instance. This is because it would be impossible otherwise to determine whereabouts on the existing track the public had a right to be and where they didn't. As a public footpath is a form of highway, it is not subject to occupiers' liability in the same way as other land. In general the Council are liable for injury or damage sustained on a highway (there are exceptions where the landowner has caused the conditions which led to the injury or damage) so it is beneficial for both the owner/occupier and the public to be able to identify clearly where the right of way is and know when they are on the legal route.

It is helpful to know if you plan to erect a fence adjacent to one or both sides of the new or newly diverted paths, although it is not mandatory to disclose such an intention. If your intentions are made clear, however, it allows a suitable width for the new path to be negotiated and makes it less likely that there will be formal objections once an order is made.

## Page 6

Paragraph 16 of the form provides an opportunity for you to describe in your own words in what ways it would be in your interest as owner or occupier for the proposed path(s) to be diverted. As the Highways Act allows the Council to make such orders in the interest of owners, occupier or lessees or of the public it is not necessary for you to attempt to describe the changes you are seeking as being in the public interest. The public's interests are safeguarded by means of the other criteria which must be taken into account regarding the relative convenience of the old and new routes and the effect the diversion would have on public enjoyment of the path as a whole. Bear in mind, for example, that proposed changes which you may consider to be in the public interest may not actually be so. For example, an application to divert a public bridleway away from a busy working farmyard may be said to be in the interests of the horse riders as it would make their use of the path safer. This is a typical and widely held misconception. At law, the response to this would be that if you are conducting any sort of potentially dangerous operations in the vicinity of a public right of way you must do so with utmost care to the users of the highway. It would be in the interests of the public using the way for you to cease your operations entirely or to be sure that you are carrying them out in a safe manner having due regard to the users of the highway. Therefore such applications should be described in terms of how they would benefit you; for example, by allowing you to carry out your legitimate business operations free from the fear of causing injury to path users. If a diversion order is made and receives objections resulting in a public hearing or inquiry, one of the things which the inspector will need to be convinced of before (s)he confirms the order is that the proposal is in fact in the interests of the person identified in the order and that the extent of that interest is proportionate to the extent of the loss of convenience to the public resulting from the diversion. This statement, therefore, may be an important factor in the eventual success or otherwise of your application.

Similarly, if you are seeking the extinguishment of any public rights then this section gives you the opportunity to describe in your own words why you believe the existing public right(s) of way is no longer needed for public use.

## Page 7

Section 5 covers the fees and charges and in what circumstances they will become payable. A document giving the actual fee currently applicable can be downloaded from the County Council's web-site. An application which is not processed in the financial year in which it is made will only be liable for the level of charges in force at the time the application was lodged with the Council.

Section 6 gives an indication of the ways in which any personal data contained in the application will be used by the Council and associated organisations.

**Page 8**

Section 7 contains the declaration which the applicant must agree to and sign before the application is processed. Please be aware that if you cross out any of these statements so as not to accept and be bound by them this is likely to lead to your application not being processed.

**Page 9**

This page is for the use of the County Council and should be left blank.