



## **SOMERSET COUNTY COUNCIL**

### **DIVERSION ORDER POLICY**

#### **SECTIONS 116 & 119 HIGHWAYS ACT 1980**

*This policy will be reviewed as necessary if and when the 'right to apply' regulations under the Countryside & Rights of Way Act 2000 commence.*

#### **1 INTRODUCTION**

- 1.1 In accordance with the provisions of Section 119 of the Highways Act 1980, any person may make application to the Highway Authority to divert a footpath, bridleway or restricted byway. Byways open to all traffic are dealt with by application to Magistrates' Court under Section 116 of the Highways Act 1980. The Highway Authority may also consider on occasions to apply to the Magistrates' Court for a diversion under Section 116.
- 1.2 It should be noted that this is a power of the Highway Authority and not a statutory duty. If the Authority refuses to make an order, the applicant may ask the Secretary of State for the Environment, Food & Rural Affairs to use his powers under Section 120 (3) of the Highways Act 1980 to make a diversion order.
- 1.3 Any attempt to change a right of way where it and adjoining paths cannot be easily used, or where the public right to use a path is being challenged by the owner/lessee/occupier is likely to result in objection being made to the proposal. Similarly, any proposal that does not demonstrate a positive benefit to the public or the owner/lessee/occupier may not succeed.
- 1.4 It is essential that any application is carefully thought out and discussed with the Area Rights of Way Officer and meets the legislative/application criteria prior to being submitted. It is essential to identify as far as possible the interests of the different user groups entitled to use the route as well as the requirements of the landowner/occupier. This will help to develop proposals that satisfy the legal tests to be applied and the needs of all the interested parties.
- 1.5 This Policy only refers to applications submitted under the Highways Act 1980 and does not refer to applications for an order to allow development to take place under the provisions of the Town & Country Planning Act 1990.

Guidance for applications to change the rights of way network as a result of the granting of planning permission needs to be obtained from the relevant Local Planning Authority. The Highway Authority will critically examine each planning application (where rights of way are affected) where it directly manages the rights of way network to ensure any new route is acceptable to the public.

## **2 GENERAL GUIDANCE**

- 2.1 An application will only be accepted if
- it complies with s119 Highways Act 1980,
  - it complies with the application criteria set out below,
  - it is submitted on the approved form with all relevant sections accurately completed and accompanied by a map of a suitable scale showing the proposed changes,
  - the applicant agrees to pay the relevant costs of the proposal, and
  - the applicant indemnifies the order-making authority against claims for compensation arising.
- 2.2 The County Council is the Highway Authority for Somerset and can make Diversion Orders under the Highways Act 1980. The County Council will only determine an application if it demonstrates a benefit to the public and/or the landowner, occupier or lessee, e.g.: better surface, better views, less stiles and gates, etc and meets the criteria below. A District Council also has the power to make orders under the Act. Orders processed by the District Councils that do not meet the criteria will be subject to objection by the County Council unless sufficient evidence can be produced to justify variance from the County Council's policy. The County and District Councils where appropriate are the Order Making Authority.
- 2.3 In cases where the County Council supports the application and makes an order, it may defend the order at any subsequent public inquiry, by hearing or written representations if objections have been made and not subsequently withdrawn.
- 2.4 No authority for the closure of a public right of way is conferred unless and until the diversion order has been confirmed and notice of its confirmation has been published. Any alternative route must also be satisfactorily constructed and the appropriate certificate issued before the old route is closed.
- 2.5 The County Council will recover the costs of making, advertising and confirming a diversion order. However, the County Council reserves the right to waive costs at its discretion.

- 2.6 The Highways Act 1980 provides that compensation may be payable in respect of depreciation of the value of an interest in land, or by damage by disturbance in the enjoyment of land as a result of the coming into operation of a diversion order made under the Act. Applicants are asked to sign the undertaking on the application form to indicate that they are prepared to defray any such compensation which may become payable. Claims for compensation are seldom made but could arise where for example a neighbour loses access to land as a result of an order or the alternative route passes over land not owned by the applicant.

### **3 APPLICATION CRITERIA**

- 3.1 The new route will be agreed with the Area Rights of Way Maintenance Officer.
- 3.2 The existing route must be clear of obstructions prior to any application being submitted, and clear of obstructions until the order is confirmed and the new route is available for use (this requirement may be waived in circumstances when a route is obstructed by a significant or historic obstruction, eg: a building or expanse of water).
- 3.3 Written consent must be obtained from all landowners who will be affected by the alternative route and submitted with the application.
- 3.4 Where the new route is to be enclosed, a diversion order will, wherever it is possible, cite a width for a footpath of 2m (minimum) and for a bridleway of 4m. For unrestricted widths the alternative route minimum widths will be 2m for a footpath, 3m for a bridleway and 5m for a restricted byway except at locations of gates, bridges, etc. and where not physically possible.
- 3.5 Where the alternative route crosses boundaries, gaps are the preferred option. If a gap is not feasible then a gate will be considered. Any gates must be of an equal or less restrictive nature compared with the existing route. Whilst the need for stock control is recognised, stiles will not necessarily be considered as an option on the alternative route. Applicants are encouraged to consider the least restrictive option at all other boundary points on the remainder of the path (subject to the diversion proposal) on their/their neighbours' land.
- 3.6 Where the alternative route results in a new highway junction this must not be any further away from another off-road highway than the existing route (this requirement may be waived where the new highway is of a lower class and/or following consultation is shown to provide greater connectivity/safety for the public). It must also not result in a highway junction/crossing that is believed to be of greater danger to the public than the existing route.

- 3.7 The alternative route must not result in the need for a greater number of structures (e.g.: gates) than are present along the existing route. This requirement may be waived where i) the alternative route is considerably longer and the benefits gained outweigh the inconvenience of extra gates and ii) the additional gates are of a less restrictive nature than the existing route. Exceptions will be considered on a case-by-case basis.
- 3.8 The alternative route surface and drainage must be of an equal or superior standard and is not likely to incur considerably higher maintenance costs than the existing route. This requirement may be waived in exceptional circumstances where it is considered it will not be of detriment to users of the route.
- 3.9 Where the alternative route is felt to be best placed in an enclosed corridor, every consideration should be given as to how to reduce possible future vegetation clearance or drainage works prior to the consultation and order making process, e.g: hedge laying, drain clearance/improvement.
- 3.10 Where there is doubt that the criteria have been met, the Team Leader will have the final say as to whether an application is accepted or refused.
- 3.11 Where objections are received at the consultation phase of processing an application, and cannot be resolved, then a decision will be made by the Team Leader as to whether to proceed to the order making stage.
- 3.12 Where an application is refused in line with this policy and Highways Act 1980, the applicant will have the right to approach their District Council or the Secretary of State to consider the application.

#### **4 CHARGES**

- 4.1 In accordance with the Local Authorities (Recovery of Costs of Public Path Orders) Regulations 1993, local authorities are empowered to recover their administrative/advertising costs and expenses in respect of making Public Path Orders. Applicants will have to agree to pay the full costs incurred for the officer's time spent in processing an application. This may include the officer working outside normal working hours. The costs involved may include the following:-
- consulting with prescribed bodies and organisations,
  - preparing committee reports where necessary,
  - attending site meetings with regard to the application,
  - in the case where objections are received, meeting with and negotiating with the objectors and consulting with the applicant,
  - making and confirming the order,
  - travel expenses,
  - posting notices on site,

- ensuring that the necessary works (signposting, waymarking, surfacing, stiles and gates, etc) required to bring the proposed route into a usable condition by the public have been carried out prior to signing a certificate,
- photocopying,
- paying the advertising costs.

4.2 Applicants will be charged in two stages. The first payment will be for the consultations and making of the order and the second for dealing with any objections and confirmation of the order. Applicants will be charged if a diversion order is not confirmed or the applicant abandons the application. Where diversion orders are promoted by the Council and attract objections, the County Council will bear the costs involved in defending the order at any subsequent hearings, public inquiries and appeals.

4.3 The following are examples (not exhaustive) where the above costs charged to the applicant may be defrayed in part or in full where the application (figure in brackets is the % amount that would be defrayed):

- will address a known vulnerable road user accident location (50%),
- will fulfil a RoWIP proposal; either through diversion or diversion and creation – (percentage of cost defrayed dependent upon assessment of proposal)
- improves the safety and/or scenic value of a regionally/nationally promoted route (50-100%),
- resolves a definitive map anomaly including where development has taken place in error/by previous landowner (where the development is granted by a local planning authority then that authority will be asked to defray the costs) (50%),
- resolves natural obstructions, e.g: erosion/issues of public safety (100%, 50% where landowner stands to benefit),
- will enable access to an 'island site' of CroW Act 2000 Part I land (20%),
- will negate the need for the public to use the road network between two off-road highways (proportion of costs defrayed will depend on length and class of road avoided) (30% minimum), and
- will result in a proposed route with fewer structures along it's length (or none at all) than the existing route (does not apply where existing route is free of structures) (20%).

Where the Council instigates a diversion order, the relevant department will meet the costs of processing the application. Applications that fulfil more than one of the above will be defrayed for the sum of the percentages up to a maximum of 100%.

The Council reserves the right to amend the proportion of costs defrayed where it sees fit.