

# SOMERSET COUNCIL

## PUBLIC PATH ORDER POLICY

### SECTIONS 116, 117, 118, 118A, 118B, 119, 119A & 119B HIGHWAYS ACT 1980 AND SECTION 257, 258, 259 & 261 TOWN AND COUNTRY PLANNING ACT 1990

*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

### GENERAL

#### 1.1 An application must:

- comply with the relevant Act,
- comply with the application criteria set out below,
- be submitted on the approved form with all relevant sections accurately completed and accompanied by a map of a suitable scale showing the proposed changes,
- confirm the applicant agrees to pay the relevant costs of the proposal, and
- confirm the applicant indemnifies the order-making authority against claims for compensation arising.

#### 1.2

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.

#### 1.3

The Highways Act 1980 (HA 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.

## 2 APPLICATION CRITERIA

- 2.1 Written consent must be obtained from all owners of land crossed by the alternative route, who can be reasonably identified, and submitted with the application.
- 2.2 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, e.g.: a building or expanse of water).
- 2.3 The granting of planning permission does not allow developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under Section 257 of the Town and Country Planning Act 1990 (TCPA 1990) for the diversion or stopping up of a route, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. The requirement on local authorities to keep a public right of way open for public use will preclude a developer from using the existing way as a vehicular access to the site unless there are existing additional private rights.
- 2.4 Any proposed alternative alignment of paths under Section 257 of the TCPA1990 that is necessary as part of the construction of a new housing development, should avoid the use of estate roads wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. Where alternative routes need to follow estate roads/ footways, these should comply with the design standards set out in the government and local guidance documents.
- 2.5 Minimum widths for alternative routes 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.
- 2.6 Where the alternative route is likely to become an enclosed corridor or headland route, 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.: increased width, hedge laying, drain clearance/improvement. This requirement may be waived in exceptional circumstances.
- 2.7 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. This should also be considered where any bridges are required, including access onto these structures i.e., providing a slope instead of steps. 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. Note: limitations cannot be included in Section 257 TCPA 1990 orders and therefore a separate gate authorisation application may be required).

- 2.8 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 or ii) the additional gates are of a less restrictive nature than the existing route. Exceptions will be considered on a case-by-case basis.
- 2.9 Where possible, diverting over bridges with private rights should be avoided. If a diverted route must go over a bridge with private vehicular rights, then the Council will only be responsible for maintaining the bridge to a standard suitable for the lawful public use and the landowner should retain some responsibility. In some circumstances an agreement setting out this responsibility may be required. Where new bridges are to be installed (whether there was an existing structure or not) consent to undertake such work under Section 23 of the Land Drainage Act 1991 is required. All bridges should be constructed and installed to the Council's standard design and quality or designed to meet current Highways, Rights of Way and accessibility standards.
- 2.10 The alternative route must not result in a highway junction/crossing that is believed to be of greater danger to the public than the existing route.

Where the alternative route results in the crossing of a new estate road, safety for public use and appropriate construction should be checked through the technical approval process as part of any legal agreement for the construction of the road. Road crossings should have dropped kerbs and tactile paving.

- 2.11 The alternative route surface and drainage must be of an equal or superior standard and 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. Where alternative routes follow surfaced paths for applications to enable development, the construction process should be managed through a Section 38 or Section 278 legal agreement, with any possible future maintenance requirements being secured through a s106 legal agreement.

2.12 Where there is doubt that the criteria have been met, the decision maker as per the Council's constitution will have the final say as to whether an application is accepted or refused.

2.13 Where objections are received at the consultation phase of processing an application, and cannot be resolved, then a decision will be made by the relevant officer/ committee as to whether an order should be made or not.

### **3 APPLICATION PRIORITISATION**

3.1 Applications will be prioritised in the following order:

1. Rail crossing diversion and extinguishment applications – under Section 119a and Section 118a HA1980, and any other applications where they may address issues of endangerment to life or harm.
2. Applications to divert and stop up rights of way to enable development, made under Section 257 TCPA 1990. Where planning permission may be granted or a planning application has been made. (Note: an order made under Section 257 TCPA 1990 cannot be confirmed until planning permission is granted).
3. All other Public Path Order applications, including those made under Section 118 and Section 119 HA 1980. Priority will be given to those that resolve significant obstructions or S130 notices; those that resolve issues causing significant inconvenience and those that are linked to the modification order process. Those applications which have regular, useable alternative routes will be of a lower priority

### **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,

- drawing up specifications and plans of the works where required,
- survey and inspection costs,
- ensuring that the necessary works (signposting, waymarking, surfacing, stiles and gates, etc.) required to bring the proposed route into a fit condition for use 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 its own 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 percentage 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 by previous landowner (50-100%),
- 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

4.4 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%.

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