

## **SOMERSET COUNTY COUNCIL**

### **DIVERSION OR STOPPING UP OF PUBLIC RIGHTS OF WAY**

Highways Act 1980 – Sections 116, 117, 118 and 119 (as amended by the Countryside and Rights of Way Act 2000)

Town and Country Planning Act – Sections 257, 258, 259 and 261

- 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.
- The Somerset County Council Diversion Policy is available for viewing at <http://www.somerset.gov.uk/environment-and-planning/rights-of-way/apply-to-divert-a-public-right-of-way/> or at Somerset County Council, please contact 0300 123 2224 to make an appointment.
- Generally proposals will only be acceptable where they maintain existing links to connecting paths and offer at least a comparable alternative path or provide new links to other paths. Consideration should be given to whether there is an alternative to altering the public right of way.
- The Council does not generally support applications for extinguishment orders unless they are part of a wider package with compensating public benefit. The Council accept stand-alone applications for extinguishments only in exceptional circumstances.
- The Council has developed its procedure for dealing with Public Path Order applications in accordance with government guidance and best practice. Further guidance on the alteration of public paths is contained within the booklet 'NE112 – A guide to Definitive Maps and changes to public rights of way, available on the Natural England website <http://naturalengland.etraderstores.com/NaturalEnglandShop/product.aspx?ProductID=8f4433c1-0c14-488e-96b6-b7d67bacbfd4>
- It should be noted that this is a power of the Highway Authority and not a statutory duty.
- It is essential that any application is carefully thought out and discussed with the Area Rights of Way Officer and / or Rights of Way Diversion 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.

Any new path furniture should comply to British Standards where appropriate\*. The Area Rights of Way Warden will be able to advise you on this.

- An application will only be accepted if
  - it complies with s118/9 Highways Act 1980,
  - it complies with the application criteria set out below,

\*some exceptions may apply

- 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.
- 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.
- 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.
- The statutory procedure, which has to be followed for the making of diversion or stopping-up orders, involves advertising the proposal in a local newspaper to enable persons to object if they so wish, and again when the Order is confirmed.
- Authorities are empowered to charge applicants the actual costs of making and advertising orders, including the costs of consultation prior to making an order. These costs, together with the advertising costs, usually amount to between £1,500 and £2,000 (although the final total could be higher in some cases). Applicants are asked to sign the undertaking on the application form agreeing to pay in full the Council's reasonable costs and expenses incurred.
- 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. 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.
- Section 28 of the Highways Act 1980, as applied by Section 121 (2) of the Act, 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 an Order which the Council may decide to make under that Act. Applicants are asked to sign the undertaking on the application form to indicate that they will be prepared to defray any such compensation which may become payable if it proves necessary to arrange the extinguishment or diversion by means of an Order under the Highways Act 1980. (Claims for compensation are seldom made but could arise where for example a neighbour loses access to land as a result of the Order).
- No authority for the closure of a public right of way is conferred unless and until the

Order has been confirmed and notice of its confirmation has been published, (or under Section 116 of the Highways Act 1980, without a final certificate issued by the Magistrates except in special circumstances). Any alternative route must also be satisfactorily constructed and the appropriate certificate issued before the old route is closed. Prior obstruction of or interference with a public right of way is an offence and it may make it impossible to proceed with the application.

- 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.
- Where a right of way is diverted to a field boundary or headland, the diverted route must not be ploughed at all, as under the Highways Act 1980, Section 134 (2) footpaths and bridleways which follow the headland or sides of a field or enclosure are not given the right to be ploughed.
- Proposals to stop-up or divert public rights of way tend to arouse local feeling; the statutory procedure for an Order may take some time to complete, especially if objections to an Order are not subsequently withdrawn, this is because the proposal has then got to be referred to the Secretary of State for him to determine, possibly after a public inquiry has been held. Considerable work is involved and applicants are asked to realise that matters of this sort, whilst dealt with as expeditiously as possible, may take some time. The County Council reserves the right to abandon any Order and refund any charges as appropriate.
- To reiterate, the diversion process (Section 119 Highways Act 1980) is subject to public consultation. Somerset County Council can make diversion orders, but if there are objections we cannot confirm the orders. It is the confirmation of the order that brings the diversion into effect and therefore **there is no guarantee that the application will be successful**. However, the Planning Inspectorate has the power to confirm orders to which there are objections if there is a case to be made.