

SOMERSET COUNCIL

DIVERSION OR STOPPING UP OF PUBLIC RIGHTS OF WAY

Highways Act 1980 – Sections 116, 117, 118, 118A, 119, 119A & 119B
Town and Country Planning Act – Sections 257, 258, 259 and 261

- The Somerset Council is the Local Highway and Local Planning Authority for Somerset and therefore the Order Making Authority. The Council can make Orders to extinguish or divert footpath, bridleways or restricted byways under the following provisions will only determine an application if it demonstrates the following:
 - Section 118 HA1980 – where a right of way should be stopped up on the grounds that it is not needed for public use.
 - Section 119 HA1980 - where it is expedient to divert a right of way in the interests of the landowner or public.
 - Section 118a / S119a HA1980 – where it is expedient to stop up / divert a right of way in the interests of public safety when using the right of way which crosses a railway (other than by tunnel or bridge) and there is no reasonably practicable way to make the crossing safer.
 - Section 118b / S119b HA1980 – where it is expedient to stop up / divert a right of way for the purposes of preventing or reducing crime, where the right of way is facilitating the issue for adjoining or adjacent land (including schools). Police evidence / incident numbers will be required.
 - Section 257 TCPA1990 – where it is necessary to stop up / divert a right of way to allow development to be carried out. An application of this type should only be submitted if the diversion or stopping up of the path is necessary as a result of the proposed development physically affecting the current route of the path. An order may provide for the creation of an alternative highway for use as a replacement for the one authorized by the order to be stopped up or diverted, or for the improvement of an existing highway for such use. Therefore, if it is only desirable to move a path due to nearby development that would not actually have the effect of obstructing the path, then you should make an application under the Highways Act 1980 instead.

- 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.

- An application must:
 - comply with the relevant Act,
 - comply with the application criteria set out in the Council's Public Path Order Policy
 - 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.

- The Somerset Council Public Path Order Policy is available for viewing on our website or 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 these are powers of the Highway Authority and Local Planning Authority and not statutory duties. The granting of planning permission for development of land over which there is a public right of way does not in itself constitute authority for interference with the right of way or for its closure or diversion. If the Authority refuses to make an order, the applicant may ask the Secretary of State to use his powers under the respective acts to make a diversion or stopping up order.
- 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.
- 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 (some exceptions may apply). Advice should be sought from the Area Rights of Way Warden.
- Minimum widths for alternative route 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 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.

- 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.
- Where there is doubt that the criteria have been met, the decisionmaker as per the Council's constitution 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 relevant officer/ committee as to whether to proceed to the order making stage.
- The statutory procedure, which must 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, advertising and confirming 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. However, the Council reserves the right to waive costs at its discretion. The applicant will be responsible for the costs relating to the physical works associated with any order
- 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.
- 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 Council reserves the right to abandon any Order and refund any charges as appropriate.

- To reiterate, the diversion process is subject to public consultation. Somerset 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.