



**CONSULTATION ON AMENDMENTS TO THE**  
**RIGHTS OF WAY DIVERSION POLICY**

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## **1. Summary of Key Issues and Recommendation**

1.1. The County Council has powers under the Highways Act (HA) 1980 and the Town & Country Planning Act (TCPA) 1990 to make and confirm orders to stop up or divert public rights of way. The statutory tests are slightly different under the respective Acts. Orders made under the latter Act must be related to a planning consent. Diversion orders made under the TCPA are therefore made by the council who granted the consent (i.e. the Local Planning Authority (LPA)).

1.2. A HA diversion policy (appendix 1) has been in existence since 2007 at the County Council, and the working practice has been to apply the general principles of it to County Council TCPA order making as well as how the Council responds to TCPA draft order consultations from the District Councils. There is no policy in existence for TCPA diversions at the County Council nor at any of the District Councils.

1.3. As part of the Local Government Reorganisation there has been agreement from relevant officers at the 5 Councils that the powers to amend the network under HA and TCPA would be best administered by the County Council's current Rights of Way Service.

1.4. In readiness for vesting day, one of the required actions is to have an updated diversion policy that is reflective of the unitary Council's powers along with accompanying guidance notes and application form. This is crucial to ensure that there is a clear policy and process available to any prospective applicant.

1.5. It is recommended that the Regulation Committee give their support for the proposed changes which will be the subject of a decision made by the Lead Member for the Environment & Climate Change.

## **2. Background**

2.1. The production of the first Rights of Way Improvement Plan (RoWIP) in 2006 identified a need for a clear approach to diversions. At the time there were a couple of District Councils who were processing HA diversions in addition to all of them processing relevant TCPA diversions in their LPA capacity. With no policy or guidelines in place there were inconsistencies in the application of the statutory powers.

2.2. The production of the current Diversion Policy and Guidance Notes (appendix 4) was one of the first RoWIP Actions to be implemented. While not entirely inclusive of all powers to stop up or divert, the policy has proven to be effective for the last 15

years and has enabled a high degree of consistency when accepting, processing and responding to applications/ proposals to stop up or divert public rights of way.

2.3. The following paragraphs summarise the main changes to the policy and why. The documents can be found at appendices 2 (tracked changes) and 3 ('clean' copy).

2.4. The title of the document is amended to Public Path Order Policy to ensure the title is more accurate as to what it relates to. Whilst rarely used, some orders do include stopping up of paths, not just diverting them. In that respect Public Path Order is the accepted term that covers stopping up and diversion orders. The sections of Acts has also been expanded to cover all the sections the new unitary Council will have powers for.

2.5. There was a degree of confusion/ repetition between the content of the policy document and the guidance document. Therefore a number of changes have been made to streamline both documents and reduce any repetition.

2.6. Additional paragraphs have been included in relation to TCPA order making powers. These echo and support in policy terms what is included in DEFRA Rights of Way Circular 1/09 (Guidance for Local Authorities).

2.7. There have been occasions where a diverted route has subsequently been enclosed, which has resulted in maintenance and usability issues. Additional text recognises that these issues should be addressed when considering a proposal to corridor a path or place it on the headland of a field.

2.8. Policy around highway junctions has been modified so as not to be overly constraining and provide greater flexibility.

2.9. An additional paragraph relating to shared bridges clarifies the Council's position and the potential need for a legal agreement to clarify maintenance responsibility.

2.10. Additional text is included in relation to development related orders to highlight that the interface of any diverted path with newly constructed roads will be the subject of development management processes such as safety audit, technical approval and supervision.

2.11. Policy regarding compliance with the criteria, and proposals that are opposed at draft stage are amended to better reflect the current governance situation and be compliant with any future constitution.

2.12. A new section has been introduced to provide clarity on the priority order for applications. The resource position for processing diversions for the new Somerset

Council is not clear yet. There is already a small backlog of applications. With the Service potentially overseeing all Public Path Order applications for the Council it would be appropriate to have clarity for officers and applicants as to the order of processing.

2.13. The section that defrays a percentage of the costs of an order has been reviewed and amended in light of certain cases over the last 15 years. There are a number of situations whereby landowners inherit a situation that ostensibly has been through no fault of their own and in some cases could be argued to be the fault of one of the Councils (historic or current) in their capacity as LPA, Housing Authority, landowner, or Surveying Authority. Rarely are two situations alike with each one having its own nuances, thus the amendment affords greater flexibility to apply judgement as to the percentage defrayment that should be applied in each case. It is felt that the defrayment in relation to fewer structures is unnecessary and is already controlled by other parts of the policy.

### **3. Consultation**

3.1. The Somerset Local Access Forum were consulted on amending the Diversion Policy on 13 October 2022. They were supportive of the changes being proposed. One of the members commented that the policy on avoiding shared (with private vehicular use) bridges should be more assertive. While this would be desirable, there are certain scenarios where diverting onto an existing private vehicular structure is the only pragmatic way forward. There was also comment that weight restrictions should be considered on bridges that are the subject of a diverted route as modern agricultural machinery often exceeds the load that historic structures were designed to take. Whilst a very valid point, the feasibility of placing such restrictions would need to be considered and reviewed on a case by case basis and thus probably best not to include it within the policy. It could be an aspect that would be addressed through the maintenance (legal) agreement to which the policy refers.

3.2 The District Councils have also been consulted on the policy and to date have either been in agreement or not made any comment.

### **4. Conclusion**

4.1. Given the new Somerset Council will assume all public path order making powers and in time these will all be processed by the one Service area, it is prudent that the current policy is updated to be reflective of that circumstance in readiness for vesting day.

4.2. The review of the policy also affords the opportunity to make some minor adjustments in light of the past 15 years' experience of applying the policy to a number of applications.

4.3. The Committee are asked for their views on the proposed amendments. The decision as to whether or not to adopt any amendments to the current policy will be made by the Lead Member for the Environment & Climate Change.

## **5. Recommendation**

5.1. It is recommended that the Regulation Committee provide their support for the proposed changes to the Diversion Policy.

### **List of Appendices**

1. Rights of Way Diversion Policy 2007
2. Public Path Order Policy 2022 (tracked changes)
3. Public Path Order Policy 2022 ('clean' copy)
4. Diversion Application Guidance Notes (2019)
5. Diversion Application Guidance Notes (tracked changes)
6. Diversion Application Guidance Notes ('clean' copy)