



## Public path Orders-guidance notes for applicants

These notes are available in Welsh.

**These guidance notes are for applicants wishing to create, extinguish or divert public footpaths, bridleways or restricted byways. Alternative procedures must be used where a byway open to all traffic (BOAT) would be affected.**

### **THE CRITERIA TO BE MET.**

There are a number of legal and practical criteria to be met by proposals. Powys County Council reserves the right to refuse to carry out pre-Order consultation, where a proposal raises significant issues with respect to the criteria listed below and it is not possible to agree measures to resolve these issues with the applicant. Please note that whilst Powys County Council does accept applications for public path Orders, no guarantee can be made as to the success of any proposal.

#### **Legal Criteria:**

##### Diversion Orders under section 119 of the Highways Act 1980:

- The Council must be satisfied that it is expedient to divert the path
  - (a) In the interests of the public, OR
  - (b) In the interests of the landowner or occupier of the land affected.
- The termination of the path must not be altered, except to another point on the same highway, or to a point on a connected highway.
- The diversion route must be substantially as convenient to the public as the original route.
- The effect of the diversion on public enjoyment of the whole path must be considered.

##### Extinguishment Orders under section 118 of the Highways Act 1980:

- The Council must be satisfied that the path is not needed for public use.
- The Council must be satisfied before confirmation that it is expedient to extinguish the path having regard to:
  - (a) The extent to which the path is likely to be used, and
  - (b) The effect that its closure would have on the land served by it.

Please note that where a path has not been used because it is obstructed, this would not be grounds for extinguishing it.

##### Creation Orders under section 26 of the Highways Act 1980:

- The Council must be satisfied that a new path is needed for use.

Creation Orders are usually promoted by the Council itself, having identified a need for a new public path to be recorded in a particular location. However, they may also be made concurrently with a public path extinguishment Order, which will create a new path to be used as a replacement for the extinguished path. This may be necessary where the proposal does not meet the legal criteria for a diversion Order to be made.

### Creation agreements under section 25 of the Highways Act 1980:

This is a contract that is drawn up and signed by landowner and the Council and forms an agreement to create a public path in a particular location, where a need has been identified. They may be made alongside public path Orders, as part of a package of changes. Only the owner of the land who is “seised in fee simple” is legally able to dedicate a new path in this way.

### Diversion and extinguishment Orders under section 257 of the Town and Country Planning Act 1990.

- The Council must be satisfied that it is necessary to make an Order to enable permitted development to be carried out.
- A path may be stopped up subject to the provision of an alternative path; this does not have to begin or end on the original path.
- Before confirmation, the Council must be satisfied that:
  - a) The development works over the existing line of the path are not already substantially complete;
  - b) For an extinguishment Order, that diversion of the path is not possible;
  - c) For a diversion Order, that the proposed diversion route is the most suitable one.

### **Practical considerations:**

#### Path furniture:

This includes stiles, gates, steps, ditch/culvert crossings and bridges.

- The number of gates or stiles on a route will affect the ease with which the public are able to use it, so should be kept to the minimum.
- It is expected that allowance will be made on the diverted section of path for members of the public to cross walls, fences and hedges either through a gap or a gate (not a stile.) Suitable gates are available in self-closing designs.

#### Width of the path:

The minimum widths for a newly created section of path are as follows:

Footpath:	2 metres
Bridleway:	3 metres
Restricted byway:	3 metres

It is important to avoid the creation of a ‘corridor’ path that is bounded by hedges or walls on both sides. There may be practical issues with maintenance and overgrowth of corridor paths; in addition, members of the public may have concerns about the personal safety and security aspects of using such paths. Where short sections are unavoidable, consideration may need to be given to other measures to mitigate these problems; for example additional width may be required.

#### Length of the new path:

Consideration must be given to the length of the diverted section of a path, as compared to the section to be extinguished. Where a path is primarily being used for reasons of amenity e.g. as the shortest route to access facilities such as a school or the town centre, routes that would add significant extra length should be avoided.

#### Surfacing, terrain and gradient:

- A proposed new route should take advantage of existing features (e.g. tracks) that would result in the gentlest gradients for the path. The new route of the path should not be steeper than the existing route.

- Natural features should also be taken into consideration to provide a route with a suitable surface. In most cases, a natural surface e.g. grass will be acceptable, but particularly boggy and uneven areas should be avoided.
- In some circumstances, there may be a need to provide an artificial surface, but this would be highlighted to the applicant early in the consultation process.

Links to other paths in the rights of way network and land with public access:

When a path is to be extinguished or diverted, consideration must be given to the effect of the proposal on the links to other paths in the public rights of way network, local cycle routes and to other land with public access e.g. Open Access mapped land.

Other features of public interest:

Other features that will affect the public's enjoyment of a path include particularly attractive views and sites with significant historic or other interest. Proposals should avoid taking a path away from such features, unless there is a specific requirement to do so e.g. for reasons of conservation or safety.

Safety:

The safety of members of the public using a proposed new path must be assessed.

- One factor that will need to be considered for many paths is the point at which the right of way meets the county roads. The visibility of pedestrians to vehicles and the availability of road verges or pavements need to be taken into account.
- Proposals should not significantly increase the distance that must be walked along public roads, for reasons of both safety and enjoyment.

Long term maintenance of the path:

The long term maintenance of any proposed new route must be considered before any public path Orders or creation agreements are made.

- Where a proposal would add significantly to the Council's maintenance liabilities when compared with the existing network, the landowners (and successors in title) may be required to enter into a legal maintenance agreement with the Council, for specified parts of the new route. This may include, for example, bridges or watercourse crossings; it may also include surface maintenance, where a route carries both private motor vehicular rights and a public right of way.

Other considerations:

The Council must consider local and national transport initiatives and priorities identified in the Rights of Way Improvement Plan, when assessing a public path Order proposal.

**THE PROCEDURES TO BE FOLLOWED:**

The procedures below are for public path diversion and creation Orders. Extinguishment Orders follow the same procedure; however, unless a new path is being provided by a concurrent creation agreement or Order, there will be no need to carry out works on a new route and certify that it is ready for use.

1. Following an initial enquiry or the receipt of an application form, the Rights of Way officer will make a site visit to discuss the proposal in detail with the applicant.
2. If the proposal is likely to meet the legal and practical criteria, informal consultation will be carried out with path user groups, the Community Council, local County Council member, Council Planning and Highways staff and utility companies, who are given 28 days to respond.

3. If there are no objections at this stage and the affected landowners, local Councillor and Community Council are in agreement, officers have delegated powers to proceed to making the Order.
4. Any problems that arise from consultation will be discussed with the applicant, objector and any other affected parties. The aim is to reach a compromise that is acceptable to all parties. If there are unresolved objections, the proposal will be referred to the Council's Rights of Way Committee, who will decide whether to proceed and make an Order.
5. If approval is given, the Council's Legal Services will draw up and advertise an Order, by means of notices in the local paper and on site. The public have 28 days in which to lodge a formal written objection or representation.
6. If formal objections to the Order cannot be resolved and are not withdrawn, the Order cannot be confirmed by the Council. For the Order to proceed, it would need to be referred to the Welsh Assembly. A Planning Inspector would be appointed to decide the issue, via written representations, a hearing or at a public inquiry.
7. If no objections are received to an Order, or a Planning Inspector decides that an opposed Order should be confirmed, the new route of a diverted or created path must be made ready for use. The works specified in the Order must be carried out; these will be inspected to certify that they are completed to the Council's satisfaction.
8. The Order can then be confirmed by another set of notices in the local paper and on site. There is a 6 week period when an application can be made to the High Court, to contest the Order; this can only be on procedural grounds.
9. The route becomes legally diverted, extinguished or created following confirmation, after a period of time that is specified in the Order.

Creation agreements need to be made and advertised, but there is no statutory consultation process and no provision for formal objections to be made. Once the agreement has been signed, a notice declaring this must be put in the local paper. The Community Council and other interested parties should receive notification too.

**Note for those wishing to divert or extinguish a path for development purposes:**

Because of the procedures outlined above, the minimum timescale within which a diversion or extinguishment proposal could be processed to completion is 6 months. This timescale can be increased indefinitely by any objections or other issues that arise. In addition, although informal consultation can be carried out before planning permission is granted, a public path Order cannot be made until after planning consent has been given. This will result in unavoidable delays to the start of development works affecting the existing route of the path. Applicants must allow for this in planning their timetable for development.

## **COSTS:**

There is provision for the Council to recover the costs that it incurs in processing applications for public path Orders. Powys County Council has a charging policy for public path Orders, which details the circumstances under which applicants would be asked to make a contribution to these costs. The costs below are only payable if a public path Order is actually made and advertised. If an Order is made and opposed, all parties (including the Council) must meet their own costs in preparing and presenting their case for written representations, a hearing or public inquiry. Unless they are eligible for the fees to be waived, applicants will be required to meet the following costs:

1. **An administration fee of £1542:** This is payable for each public path Order made. If a path needs to be effectively diverted by means of concurrent creation and extinguishment Orders, the administration fee for a single Order will be payable. The administration fee contributes towards the Council's time and other expenses in:
  - Making an initial site visit;
  - Researching the status and history of path and assessment of legal implications;
  - Preparing the covering letter, plan and description of the proposal for consultation;
  - Negotiation with consultees and the applicant to resolve queries and issues during consultation;
  - Reviewing the final responses to consultation;
  - Preparing the final Order Plan and instructions to Legal Services;
  - Drafting the Order and public notices of Making and serving notice on statutory consultees;
  - Making a site visit to put up site notices of Making;
  - Liaising with landowners and others to arrange for works on new route of path to be carried out (including provision of specifications for furniture etc);
  - Making a site visit to inspect and certify works on diverted or created route;
  - Drafting the Order and public notices of Confirmation and serving notice on statutory consultees;
  - Making a site visit to put up site notices of Confirmation.
2. **Actual advertising costs, as at the time of advertising:** These will vary between applications depending on the complexity of the Order and the publication that must be used. As a guide, for an Order that is both made and confirmed, these are likely to be in the region of £300-£800.
3. **Cost of works to make a new route ready for use:** Where a diversion is for the purpose of permitted development, the applicant will be expected to meet the cost of all works that are needed. In other circumstances, the proportion of the costs to be made by the applicant will be assessed for each proposal; consideration will be given to the Council's maintenance liabilities on the existing route of the path, amongst other factors.
4. **Compensation claimed as a result of a successful diversion or creation Order:** There is provision for affected landowners, occupiers and lessees to claim compensation from the Council, where a new path is created by a diversion or creation Order. Where an Order is made in the interests of the applicant, they will be required to meet the cost of any compensation that is claimed.
5. **Maintenance or other additional legal agreements associated with a public path Order:** Where a maintenance agreement or other additional legal agreement is needed, as a result of a public path Order proposal that is considered to be primarily in the interest of the applicant, the Council's Legal Services department will recharge the applicant for their time and any other expenses incurred in setting up the agreement.

## **Extract from public path Order charging policy:**

For the purposes of this policy, and where a charge is to be applied, the policy will apply to applications for diversion, extinguishment or where a combination of creation and extinguishment orders are used in combination.

### **1. A charge should be made where:**

- 1.1. A path passes through or near the immediate surroundings of a property, and a diversion is clearly of substantial benefit to the property owner in terms of increasing the value of that property with no obvious gain in convenience to users.
- 1.2. The proposed extinguishment of a path is acceptable to the Committee.
- 1.3. Orders affect paths that currently pass across land used for agriculture or forestry, e.g. diversion of a cross-field path around a field edge or path over-planted by woodland plantation. Exceptions would be in 2.3 and 2.6 below.
- 1.4. An order either allows for some form of development to take place or where a path is to be diverted as a result of development.

### **2. A charge should not be made where:**

- 2.1. A path passes through an existing working farmyard or permanent stock handling area, and where the path would be diverted away from it.
- 2.2. The land holder allows a Definitive Map anomaly to be amended for the benefit of both land holder and public.
- 2.3. An Order takes a path out of land that has a naturally difficult surface condition which renders the path unusable for most of the year; or where the path is in danger of being lost to erosion by a river, landslip, etc; or where the new route substantially decreases long term maintenance liability without it being substantially less convenient to the public.
- 2.4. A path is being diverted for reasons of safety, not including any of the cases below.
- 2.5. A new path is being created or dedicated.
- 2.6. A path has been over-planted by forest or woodland and where clearing the Definitive line would not allow the re-instatement of an acceptable surface condition or gradient, or where an alternative route is considered significantly more commodious.
- 2.7. A path order is substantially in the interests of the community at large, except for applications made under the Countryside and Rights of Way Act allowing for diversion or extinguishment of public paths affecting School property.
- 2.8. A path order allows development to take place, where that development would be substantially in the interests of the community at large, e.g. village sports or recreation area.