

Application to Divert a Public Footpath or Bridleway

Highways Act 1980
Section 119



IMPORTANT

No Authority for the Diversion of a highway is conferred unless and until a public path diversion order has been made and notice of its confirmation has been published. Any preliminary obstruction of or interference with the highway concerned may not only be an offence but may make it impossible to proceed with the making of an order.

Section 119 of the Highways act 1980 says that where it appears that it is expedient that the path or way diverted in the interests of the landowner, lessee, or occupier of the land, or in the interests of the public the highway authority may make a public path diversion order. The effect of this order if confirmed will be to stop up an existing highway or part of a highway and to create a new public highway.

Blackburn with Darwen will consider a public path diversion order if:

- The new route will be substantially as convenient to the user,
- The applicant agrees to pay the councils costs for dealing with an application.

The Council must also consider the effect the diversion will have on the public's enjoyment of the path as a whole. And the effect the diversion will have on the land over which it runs.

Applicants should note that the council is under no obligation to make an order and reserve the right to refuse to make an order where it feels the criteria of the legislation are not met even where informal consultation suggests there are no public objections. If the council agrees to make an order, it cannot guarantee that the order will be confirmed, as anyone may object to the order. The council reserves the right to withdraw from proceedings at any point as it is unable to re-charge the costs of a public inquiry, unless by agreement.

1. Name and Address of Applicant:

Daytime Telephone Number:
Email:

2. Name and Address of Agent (if any) to whom correspondence should be addressed:

Daytime Telephone Number:
Email:

3. Reason for Application

It is the applicant's responsibility to satisfy the council that the application is justified.

a) Is the application in the interest of:

- Landowner
- Occupier
- Lessee
- General Public?

b) What effect will the diversion have on the convenience and enjoyment of the path by the public?

c) What effect will the diversion have on the Public's enjoyment of the Path as a whole?

A map of scale not less than 1:2500, clearly showing the existing paths to be altered as a bold solid line and paths to be created as a Bold Dashed line must accompany this application.

4. Particulars of way to be extinguished:

a) Footpath or Bridleway Number _____

b) Parish _____ c) Ward _____

d) Grid Reference at start of path _____

e) Grid Reference at end of section _____

f) Length in metres of section to be extinguished _____

g) Description of route to be extinguished.

Describe the existing position, width, direction, nature of surface, and any stiles, gates or bridges.

h) Is the existing route freely available to the public? If not why ?

i) Length in metres of section to be extinguished _____

j) Description of route to be created.

Describe the existing position, width, direction, nature of surface, and any stiles, gates or bridges.

5. Particulars of way to be created:

a) length in metres of section to be created _____

b) Description of route to be created.

Describe the existing position, width, direction, nature of surface and any stiles, gates or bridges.

c) Grid Reference at start of path _____

d) Grid Reference at end of section _____

e) what work(including the construction of stiles, gates and fences) will be necessary to put the proposed route into a fit condition for use by the public and how long this should take (a maximum of three months is usually allowed)

f) Are any bridges necessary?

Give full details including dimensions and type of construction, including current state of repair:

You may be required to enter into an agreement with Blackburn with Darwen Borough Council For you and your successors to maintain such bridges to the satisfaction of the council.

The new path will be signposted/ and or way marked to the extent deemed necessary by Blackburn with Darwen Borough Council.

6. Landowner Details

A map of scale not less than 1:2500, clearly showing all the property boundaries over which the route runs must be included with the application.

a) Do you own ALL the land over which the path(s) currently run and will run? YES / NO

If not a Letter of declaration indicating agreement with the application form each of the other landowners must be submitted with this application.

b) Please provide names and addresses of all other landowners, including which section of the path runs over their land. (This includes if the land in your ownership is jointly owned)

b) Is any of the land affected by the existing path occupied by tenants? YES / NO
If yes please provide names and addresses.

c) Names and Addresses of Statutory Undertakers in the area (whether or not their apparatus is likely to be affected)

Gas Board _____

Electricity board _____

Water Authority _____

Telecommunications. _____

Declaration

a) I/We understand that no authority for the Diversion of a highway is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.

b) I/We declare that the highway to be extinguished is in no way obstructed and that it is fully available to the public and will remain so until the order comes into operation.

Is the path obstructed, why and by what?

c) I/We apply for the Diversion of the highway as described above. I hereby agree to put the new route(s) into a fit condition, as approved by Blackburn with Darwen Borough Council, for use by the public within () days of request by the Council to do so

d) I/we acknowledge that under the provisions of **Section 119(5) of the Highways Act 1980** the Council will put the path(s) into a fit condition if I have not already done so and recover the costs of doing so from me.

e) I/We undertake, with Blackburn with Darwen Borough Council, to meet in full the requirements of any statutory undertaker in respect of any apparatus, which may be over, in or under the right of way in respect of which I am making this application.

f) I/We hereby agree that if a Diversion Order is made, I/We will pay any Compensation which may arise in consequence of the coming into operation of the Order

g) I/We declare that to the best of my/our knowledge and belief all the particulars given are true and accurate

h) I/We undertake to pay ALL the Council's legal and administrative costs of making and advertising the Order

i) I/We understand the Council may defer confirmation or, in the case of opposed Orders, referral to the Secretary of State, until payment is made.

Signed**Name (printed)****Date**

On completion, this form should be returned, together with

Plan showing Landownership and a plan showing the line of the route to be extinguished and the line of the route to be created

To:

Public Rights of Way
The Bungalow, Davyfield Road
Blackburn
BB1 2LX

Diversion of a Public Footpath or Bridleway

Highways Act 1980 Section 119



Guidance Notes

- A Public Footpath or Public Bridleway can only be diverted by a Legal Process. No Authority for the Diversion is conferred unless and until a public path diversion order has been made and notice of its confirmation has been published. Any preliminary obstruction of or interference with the highway concerned may not only be an offence but may make it impossible to proceed with the making of an order.
- Following the receipt of an application any queries about the application form will be checked, and following written confirmation of the desire to proceed we will carry out the necessary consultations, advertisements and report to the Blackburn with Darwen Borough Council, Planning & Highways Committee within 6 months.
- If the Committee agrees to the Diversion we would expect it to come into effect within 8 months of that decision, providing works have been completed to our satisfaction and that there have been no subsequent objections or legal challenges.
- If there is a delay in the process you will be kept informed of the reasons why.
- Please be aware that consultations can lead to the need for further negotiation and The council reserves the right to withdraw from proceedings at any point as it is unable to re-charge the costs of a public inquiry, unless by agreement.

1. GENERAL

These notes are intended to provide a brief outline of the procedures that must be followed to divert a public footpath or bridleway in accordance with *Section 119 of the Highways Act 1980*. If you require more details about any aspect of the procedures, or would like more information, you should contact:

Public Rights of Way Officer

Tel: 01254-585114

Email: Public.RightofWay@BLACKBURN.GOV.UK

2. BEFORE THE APPLICATION

Before making an application to divert a public path you should consider the following:

- For a Public Path Diversion Order to be made it must be shown that, in the interests of the owner, lessee or occupier of land crossed by the path, or of the public, it is

expedient that the line of the path should be diverted. To satisfy this test you will need to give reasons and explanations why the diversion would, for instance, be in your interest, or in the interest of the public.

- Blackburn with Darwen Borough Council can only confirm an Order if it is satisfied that the path will not be substantially less convenient as a result of the diversion and regard must be paid to the effect of the diversion on public enjoyment of the path or way as a whole. To satisfy this test you will need to demonstrate that the route and condition of the proposed diversion takes full account of the reasonable needs of path users. You will need to outline your proposals with regard to such matters as, width, surface, gradients, fencing/hedges alongside route, gates, stiles, steps, handrails, length; views from the path and any other factors which could influence the public's enjoyment of the route (see section 5 for fuller details).
- The diverted route must be on land owned by the applicant, or on land for which the applicant has obtained the written consent to the proposed diversion of the owner, if the land is in Leasehold the Freeholder will need to give consent.
- Blackburn with Darwen Borough Council, do not have to make the order, and if it agrees to make a diversion Order this is only the start of the formal procedures. The Order must be publicised and any person or organisation has a right to make representations about, or object to, the proposed diversion.
- A minimum of 8 months is required to process a diversion Order. This could be substantially longer if replies to the publication of the Order result in a requirement to carry out further negotiation or a modification of the proposal.
- The costs of providing an alternative route to the satisfaction of Blackburn with Darwen Borough Council, the Highway Authority, must be borne by the applicant. In addition the administration, legal and advertising costs involved in making the order must be met by the applicant.
- The costs of the advertisements are dependent on the charges made by the local paper. The minimum cost of the adverts is likely to be £600 but may be substantially higher. Once an Order has been made, the administration charge and the costs of the advertisements are payable by the applicant, whether the Order is confirmed or not. The cost is approximately £3000-£4000 but the maximum cost cannot be guaranteed.
- If there are objections that are not withdrawn, then confirmation of the Order will be dependent upon an independent Inspector considering the objections and making a decision whether or not to confirm the Order. In certain cases, the independent Inspector will consider objections by holding a local public inquiry this will increase the cost of the order and the council may chose not to abandon the order if objections are received.

- The existing route of the public right of way to be diverted must remain freely available for public use whilst the diversion process is underway. It can only be legally closed if, and when, the diversion Order has been confirmed.
- Bear in mind that the formal diversion procedure will have the effect of publicising the existence of the public right of way, but will not guarantee that the right of way will be diverted.

3.0 KEY STAGES IN THE DIVERSION PROCEDURES

1. Receipt of completed application form and plan from applicant by rights of way officer.
2. Site visit by rights of way officer to view proposal and discussion with applicant to clarify any points on the application.
3. Written confirmation from Applicant to continue with application
4. Letters sent to consultees for their observations and comments.
5. Receipt of consultee replies.
6. Consideration of replies - possible discussions and amendment of proposal.
7. When satisfactory responses to the consultations are received a report is prepared for submission to the Planning & Highways Committee.
8. Planning & Highways Committee considers and decides on proposal.
9. If the proposal is accepted, then a public path diversion order is made.
10. If the proposal is rejected, then applicant is informed and no further action is taken.
11. Notice of the making of the Order posted on site and in a local newspaper and notifications are sent to statutory consultees.
12. Minimum period of 28 days is allowed for representations or objections to be made.
13. If no objections or representations are received order can be confirmed by Blackburn with Darwen Council as unopposed
14. Notice of confirmation to be posted on site, in local newspaper and sent to statutory consultees. A minimum of 6 weeks is given for objections to be made.
15. Applicant advised to complete any works required to provide the diversion route.
16. Diversion route inspected by PROW Officer and if satisfactory a '*Certificate of Coming into Use*' is issued.
17. The new route waymarked and signed as necessary.
18. Invoice for the advertising and administration charges sent to the applicant.

IF OBJECTIONS TO THE ORDER ARE RECEIVED

1. Objections are considered by PROW Officer and discussed with applicant.
2. If objections are considered to be minor or insignificant then an attempt is made to persuade the objectors to withdraw the objections.
3. If objections are considered to raise valid points then the PROW Officer may recommend amendment of the proposal, or the order to be abandoned.
4. If objections are not withdrawn then the Order must be referred to the Secretary of State.
5. The decision is taken by an independent Inspector by means of, written representations, a local hearing, or a public inquiry. The decision of the Inspector is final and binding.

4. A BRIEF OUTLINE OF THE CRITERIA AGAINST WHICH A PROPOSAL WILL BE ASSESSED

Decisions on processing applications for diversions will take account of the following factors affecting the public's enjoyment of the path.

Criterion 1 – Condition (including surface, gradient furniture and boundaries)	The condition of the proposed new route should be substantially as convenient as the original route.
Criterion 2 – Directness	The proposed new route should not unreasonably lengthen the path other than where it is in the interests of an overall improvement to the local network. The proposed new route should not introduce "dog legs" into the path or be overly circuitous.
Criterion 3 – Width	The proposed new route should have a minimum width of 2m for a footpath and 3m for a bridleway.
Criterion 4 – Landscape Character	The proposed new route should not result in lower quality or diversity of views for the path user.
Criterion 5 – Features of Interest	Other than in exceptional circumstances, the proposed new route should not remove paths from significant features of interest, natural or manmade.
Criterion 6 – Status	There will be no downgrading of the existing rights other than where it is in the interests of an overall improvement to the local network.
Criterion 7 – Financial	The proposed new route should not result in significant additional maintenance costs to the taxpayer.

Criterion 8 – Safety

The proposed new route should not subject users to any potential dangers or hazards. It should not introduce conditions (e.g. darkness, narrowness, poor visibility, and hiding places) likely to encourage antisocial or criminal behaviour against users, nor should it create a perception that this may be the case.

Criterion 9 –
Needs of the mobility
impaired user

Wherever possible proposed new routes should include features to improve access for the mobility impaired user. E.g.
- gaps and accessible gates rather than stiles & ramps rather than steps.

5. WHAT TO DO NEXT

If you wish to discuss any of the above matters, or would like more information please call the

Public Rights of Way Officer

01254-585114

email: Public.RightofWay@BLACKBURN.GOV.UK