



**Application for
Diversion or Stopping Up of a Public Right of Way
Town and Country Planning Act 1990**

Important

No authority for the diversion, stopping up, or extinguishment of a footpath or bridleway is conferred unless and until the diversion stopping up or extinguishment order has been confirmed and notice of its confirmation has been published. It is an offence to obstruct a Right of Way

1. Applicant Details:

Name.....

Address.....

Phone Number.....

Email.....

2. Name and address of all parties having an interest in the Application (Holders of Licences, and any company holding a mortgage should be included)

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3. Description of public right of way, (included Number and parish if known)

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A diversion or stopping up under T&CP act 1990 can **only** be sought where it is necessary in order to enable development to be carried out

- (a) in accordance with planning permission granted under part III, or
- (b) by a government department

4. Planning permission reference:.....

3. Why the development requires the right of way to be stopped up / diverted.

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Please enclose with this application:

- a. Copy of planning permission issued (where appropriate)
- b. Plan showing proposal (scale of 1/2500 or 1/1250 OS extract showing the existing line by a bold black line and any proposed route by a dashed line)

I/We hereby apply for this stopping up / Diversion under Town and Country Planning Act 1990.

I/We agree to meet the council's costs in the preparation and making of the order and subsequent procedures, and the costs of any necessary works as described in part III of the planning permission.

I/we apply for the administrative costs to be waived on the reasons specified on the attached sheet.

I/We understand that no authority for the diversion, stopping up, or extinguishment of a footpath or bridleway is conferred unless and until the diversion stopping up or extinguishment order has been confirmed and notice of its confirmation has been published.

I/We declare that the footpath(s)/ Bridleway(s) to be diverted/stopped up/ extinguished is in no way obstructed and that it is fully available for use and I/we undertake that it/they shall in no way be obstructed before the order comes into operation.

I/We confirm that all the land affected by the proposal is in the ownership of the applicant. (if not, the written consent of any owner(s), Occupier(s) and tenant(s) of the land must accompany this application form.)

I/We indemnify the Borough Council against any claim which may be made for compensation as provided by section 28 of the Highways Act 1980 as a consequence of this proposal coming into operation.

Signed

Date

On behalf of

Return Application to:

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

Diversion or Stopping Up of a Public Right of Way Town and Country Planning Act 1990



Introduction

For the Council to be able to make an Order to divert or stop up a Public Right of way, it needs to be satisfied that it is necessary to do so to enable a development to be carried out in accordance with a valid and extant planning permission. The Council will only consider an Order under the Town and Country Planning Act (Section 257 or as amended) if made prior to the development commencing. No works should be undertaken which would affect the Public Right of Way until the Order is approved. An Order made retrospectively to accommodate completed development (whether approved with planning permission or not) should be made under Section 199 of the Highways Act 1980 and the Council cannot consider otherwise.

In making the Order, the Council must also have regard to:

- the need for an alternative highway to be provided; and
- the disadvantage or loss likely to arise as a result of the stopping up or diversion to members of the public generally, or to persons whose properties adjoin or are near the existing highway, weighed against the advantages of the proposed stopping up or diversion.

If you are required to divert or extinguish a footpath following the granting of planning permission, you are advised to apply the Council using the accompanying application form.

Please note: a Footpath Order without public or other objection will take a minimum of 3 to 4 months to complete, and may take substantially longer if the Order is opposed.

Procedures for making an order

When an application to divert or stop up a Public Right of way is received, the Council will carry out the first round of informal consultations on proposals with the appropriate Parish/Town Council(s), the user groups (such as the Ramblers' Association, Open Spaces Society and British Horse Society), the local Councillor(s) and Lancashire County Council (Rights of Way section). Informal consultations are normally undertaken within 14 days of the application submission (subject to the correct details being provided) and each consultee is given 14 days to respond. This period is not statutory but it does not hold up the process as the Officers use this time as they normally would to prepare the details for the Planning & Highways Committee.

Both the Ramblers' Association and the Open Spaces Society have a policy of objecting to Public Path Orders unless a clear public benefit can be shown. It is often the case that initial proposals are amended at the consultation stage, and suggestions made by the consultees can help achieve a successful outcome. The Council is keen to encourage applicants and consultees to reach agreement on proposals where possible.

If it is not possible for agreement to be reached during the consultation process, the decision on Whether to make an Order is made by the Council's Officers.

In view of the Ramblers' Association and Open Spaces Society's policy concerning public benefit for Orders, it is difficult for applications for stopping up orders to succeed unopposed, unless they are accompanied by other applications for diversions or creations that bring public benefit.

If the Planning & Highways Committee decide that an Order is made, notices advertising details of the Order are posted at both ends of the affected section of the Path. Similar notices are published in at least one local newspaper. The notice informs the public that they can inspect the Order at the Council's offices or by paying for a copy of the Order to be sent to them, and states that objections can be made to the Order within 28 days.

Unopposed Orders

If at the end of the 28 day objection period no objections have been received, the Council will confirm the Order. Notices are again posted on the Path and in the press to this effect, and the applicant will be informed that the Order has been confirmed.

At this stage, members of the public may not object to the contents directly, but may apply to the High Court within six weeks to quash the Order if they believe the legal requirements of the Act have not been complied with. If no application has been made to the High Court by the end of this period, the Order is considered valid and may not be further challenged.

The Council will then, on completion of the necessary works by the applicant, certify the work as satisfactory and the Order will come into operation. If no works were required, the Order will come into operation at the end of the six week period.

Opposed Orders

If objections are received to a draft Order within the specified time limit and are not withdrawn within two months after the expiration of the objection period, the Council must refer the Order to the Secretary of State for the Environment. The Secretary of State will decide the matter either by holding a Public Inquiry or by appointing a person to hear the representations of the objectors. The Secretary of State then decides on the basis of the reports submitted to him at the Inquiry or by hearing representations whether to confirm the Order with or without modification. The applicant is informed of any objections. Any action the Council may wish to take to resolve objections at this stage is not chargeable to the applicant. If objections are not withdrawn, or are considered by the Secretary of State to be irrelevant, payment of costs by the objector can be sought at the Inquiry, with this being decided by the Secretary of State.

Public Inquiries can take several months to arrange and complete, and it can take up to a year or more before an Order can be decided. It is therefore considered “time well spent” to try to resolve any problems at an early stage of the design of the development with a view to avoiding the need for a later inquiry.

Charges for Public Path Orders

Charges

The Council usually requires all applicants for Public Path Orders for the diversion and extinguishment of public rights of way to reimburse to the Council the whole of the charges involved.

The charges for Orders made under the Act comprise of Administration Charge, Advertising Costs, Cost of the Works. Whilst each case is different and therefore incurs different fees, the figures below provides an indication of the potential costs:

- Advertising x 2 (Making the order and confirming the order) - £1,000 - £2,500.
- Officer time (Normally 5 days of work without any objections from third parties) - £260 per day.
- Officer time (with objections from third parties) – To be advised at the time of objection as this is subject to the nature of the objection and the requirements for an Inquiry.

Refunds

The Council will only refund an administration charge where:

- it fails to confirm an unopposed Order;
- having received representations or objections which have been made and not withdrawn, the Council fails to submit the Order to the Secretary of State for confirmation, without the agreement of the person requesting the Order; or
- the Public Path Order is not confirmed by the Council or on submission to the Secretary of State, by him, on the ground that it was invalidly made.

It is the responsibility of to the applicant to make an application for refund of charges.

Waivers

The Secretary of State expects authorities to use their power to recover costs, and applicants should expect to bear the cost of making an Order. However, authorities have discretion not to charge, or to charge only part of the cost. They will only do this in very exceptional circumstances, such as financial hardship or potential benefit to Rights of Way users. The Council will judge each case on its merits in the light of local circumstances, in the absence of any standard definition of hardship or rules to determine the benefits to Rights of Way users.

