



**Broxtowe
Borough
COUNCIL**

Broxtowe Borough Council

Footpath Diversion Orders

Notes & Guidance to Applicants

Introduction

Although footpath matters are usually dealt with by the Local Highways Authority (typically the County Council), District Councils have been granted powers under Section 257 of the Town and Country Planning Act 1990 (“the Act”) to make Orders for the diversion, extinguishment or stopping-up of footpaths, bridleways or restricted byways.

Broxtowe Borough Council (“the Council”) can only make an Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted. This will not be the case if the development has already been carried out. The Council must also have regard to:

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

If you wish to divert or extinguish a footpath following the granting of planning permission, you should apply to the Council using the accompanying application form. A footpath or bridleway can be diverted under the Act only if the development has full planning permission. Applications can be considered once outline planning permission has been obtained, however a footpath diversion will not be confirmed until full planning permission has been obtained.

Please note: a Footpath Order will take at least 6-12 months to complete and may take substantially longer if the Order is opposed.

If the Council’s officers determine that the above powers do not apply, the Council will not be able to make an Order. It may still be possible to divert or extinguish a footpath by applying to Nottinghamshire County Council as the Local Highways Authority.

Procedures for making an Order

With the exception of seeking the views of the Local Member/s, the applicant will be responsible for carrying out work up to the order making stage. This involves:

- Carrying out the pre-order consultations;
- Establishing an acceptable proposal (if a proposal cannot be agreed upon) regarding an application and
- Ensuring full written agreement with other affected landowners.

Broxtowe Borough Council will usually only accept an application which has received broad agreement at pre-order consultation stage. However, there may be circumstances where an application may receive objections at pre-order stage, which the Council considers irrelevant or insufficient when set against the benefits of making an Order and where it considers that an Order is capable of being confirmed. In these instances the Council will consider accepting the application and making an Order.

First Stage – Pre Order Making

The application form, which can be downloaded or completed and submitted online from our website, should be submitted with the following:

- An extract from the Ordnance Survey map showing the existing route and proposed alterations to the footpath/bridleway (Scale 1:1250 or 1:2500);
- A copy of the 'full' planning permission decision; and
- A cheque for the initial payment of £2,300 made payable to Broxtowe Borough Council (see Costs below);
- If you are not the owner of the land, you will need to send the written consent of the landowner. If you are the owner of the land, proof of legal title will need to be submitted.
- Prior to your application being considered you will be required to carry out an initial pre-order consultation with the relevant consultees (a list is available on our website), including where appropriate local residents and businesses.

As part of the pre-order consultation you are required to write to the relevant consultees enclosing a copy of the map indicating an accurate depiction of the proposals and inviting consultees to make comments/observations relating to the proposed diversion/stopping up. The letter should contain a general invitation to the consultees to make an unaccompanied site inspection of the proposed route if they so wish.

Once responses have been received from the consultees you will have up to two months in order to consider any replies, have possible discussions and amendment of proposal by the applicant. The applicant may wish to invite relevant consultees to a site meeting in order to reach a consensus

An application may not be accepted if there are outstanding objections to the pre-order consultation stage. All comments made by user groups and statutory undertakers must be considered in detail.

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 consultation stage. 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.

Second Stage – Order Making

On receipt of the application, initial payment and a satisfactory pre-order consultation, the Council will examine the proposal in detail and prepare a draft Notice and Order.

Any comments/objections received by the applicant during the pre-order consultation will also be reviewed at this stage.

A site visit will be made by the Planning Officer to ensure the application and plans accurately reflect what is on the ground and consideration is given to the future maintenance burden.

The Council will at this stage consult with local Members and any comments will be taken on board in preparing a report for submission to the Council's Planning Committee.

If the proposal is accepted by Committee, the Public Path Order is made and sealed. If, however the proposal is rejected at Committee, the applicant will be informed and no further action will be taken.

Third Stage

Notices advertising details of the Order are posted at each end 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 any objections to the Order can be made within 28 days.

After the 28-day objection period the Council will seek to negotiate withdrawal of objections within a two-month period.

Unopposed Orders

If at the end of the 28-day objection period no objections have been received, the Council will write and advise that you are to complete the works in respect of the proposed footpath as detailed in the Order (the course of the existing footpath should not be obstructed). Once the proposed footpath works are complete you should notify us to enable inspection to ensure that the footpath has been constructed to a satisfactory standard and that the diversion is in place.

A final payment of £1000 is required before the Order is confirmed and certified that the diversion is in place. Notices are again posted on the path and in the press to this effect and the relevant consultees are notified.

Where possible the order will be confirmed and certified at the same time this will reduce the cost of advertising as only one advertisement will be required as opposed to two separate advertisements – one for confirmation and one for certification of the Order.

It should be noted that wherever possible the confirmation and certification will be combined on one advert, however, if necessary certification may need a separate advert and the applicant will be charged.

Minimum period of 42 days allowed for procedural challenge to the courts.

Case closed, definitive map and statement amended to show changes, Ordnance Survey informed.

At this stage, if any person believes that the legal requirements have not been complied with they may apply to the High Court within six weeks, under Section 287 of the Town and Country Planning Act 1990, to quash the Order. 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/her 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.

Costs for Public Path Orders

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 :

Standard Costs

Site Works

Applicants are required either to prepare any new route to the Highway Authority's required standard and/or to meet the costs of having the works done. This may include installing way marking, signposts, bridges, ground-works etc.

Administration and Advertising

Broxtowe Borough Council makes a standard charge of £1,800 to cover administrative costs, legal advice, site visits, postage and printing plus approximately £500 plus VAT to cover the advertising per application. A total cost of £2,300. The administration charge will only be increased if an applicant initiates changes that expand or substantially vary the application.

Public Notices of the making, confirmation and certification of Public Path Orders made under the Town & Country Planning Act 1990 have to be published in a local newspaper. It should be noted that as the charge is dependent upon the amount and type of Advertisements and Notices required to be published, it can vary considerably for different Orders. Also, depending on the exact location of the footpath concerned, it may be necessary to advertise each notice in more than one newspaper. This can substantially increase the above estimate.

Payment will be required as follows:

- Initial fee of £2,300 paid with the application to divert the footpath (to cover administration and advertising costs);
- Final payment of £1,000 paid before the Order is confirmed and certified that the Order is in place (to cover advertising costs).

Additional Costs

These fees may be applied in some instances:

- £500 is paid before submission to the Secretary of State if objections are received and the Order is submitted to the Secretary of State for a decision;
- £200 for each additional path is paid where it is included in the same Order.

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 up to the applicant to make an application for refund of charges.

N.B. The £2,300 initial fee is retained if the application is withdrawn/rejected following informal consultation and first advertisement.

Waivers

The Secretary of State expects authorities to use their power to recover costs. Applicants should expect to bear the cost of making an Order.

Authorities have discretion not to charge, however, 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.