
Bath & North East Somerset Council

**Highways Maintenance and
Public Rights of Way**

Public Path Order Application Pack

Advice to applicants applying for
Extinguishment Orders or Diversion Orders
under sections 118 or 119 of the Highways Act 1980
and section 257 of the Town and Country Planning Act 1990

GUIDANCE FOR APPLICANTS

Bath and North East Somerset Council (“the Authority”) have discretionary powers under the Highways Act 1980 and the Town and Country Planning Act 1990 to divert or extinguish public rights of way by means of Public Path Orders (“PPO”). These Guidance Notes are intended to provide any prospective applicant for a PPO with a background to the process. A guide on how to complete the necessary application form is contained at Appendix 2 and the forms themselves are contained at Appendix 3.

Legislation and Policy

Any application for a PPO must meet the tests laid out in the relevant legislation. The legislation can be summarised as follows:

- i) A path can be *extinguished* under section 118 of the Highways Act 1980 only if it can be shown that it is no longer needed for public use.
- ii) A path can be *diverted* under section 119 of the Highways Act 1980 if it can be shown to be in the interests of the landowner, lessee, occupier or public.
- iii) A path can be *diverted or stopped up* under section 257 of the Town and Country Planning Act 1990 in order to *allow development* to take place.

The legislation contains other legal tests which must also be met and taken into consideration. The Authority will also consider any application in relation to its PPO Policy. The Policy identifies a number of additional criteria against which any application will be judged. These include:

- connectivity
- safety
- equalities impact
- status
- gaps & gates
- width
- gradients
- features of interest
- maintenance

Process

The process for dealing with PPOs can be complex and time consuming. It would be advisable to informally consult with the parish council, your neighbours and relevant user groups before you make an application. Whilst their opinions are not in any way conclusive, it may prove useful to gauge the likely support and opposition to the proposals.

The completed Application Forms (see Appendix 3) and accompanying paperwork should be submitted to the Authority. Applicants will then be informed when the Authority is in a position to process the Application; however, there is likely to be a significant delay before this point. As the Authority’s power to make PPOs is purely discretionary, it can withdraw from the process at any time if it becomes apparent, from responses received following consultation, that the proposals do not meet the statutory criteria, or will attract too much opposition. If the new route cannot be agreed through negotiation, or opposition is strong, the Authority may decide to abandon the Application. Even if the Authority continues to make and support an order, it cannot guarantee that it will be confirmed and therefore take effect. This is because if objections to it are received and not withdrawn, the responsibility of confirming it passes to the Secretary of State for the Department of Environment, Food and Rural Affairs who will consider the matter independently.

Applications are ordinarily dealt with in chronological order of receipt and the process of diverting rights of way is both lengthy and complex; a flowchart of the process can be found at Appendix 1 below. The Authority will carry out an informal consultation and decide whether an order should be made. If an order is made it will be advertised and any member of the public can formally object. If no objections are received, the Authority can confirm the Order and it will come into effect. If objections are received, the Authority will decide whether to abandon the Order or submit it for determination by the Secretary of State. If the Authority decides to pursue the latter course of action, an Inspector acting on behalf of the Secretary of State will hold a Public Inquiry or Hearing or consider the Order through Written Representations and decide whether the Order should be confirmed.

As a general estimation of timescales, the time period from the start of processing to the confirmation of an order is likely to be at least eight months and may be considerably longer. It should not be underestimated how long it can take to achieve consensus. If there are objections and agreement cannot be reached it can take several years.

Cost

The total administrative cost of successfully applying to divert a public right of way is £3,470. The first £715 is payable at the time of applying and if the Authority decides to make an order then the remaining £2,755 is payable at that time. As detailed above, this is a complex legal process and the fee reflects the costs incurred by the Authority which include newspaper notices, officer time, legal expenses and site visits.

Additionally, you will be responsible for any compensation which may become payable as a result of the Order and any costs incurred in bringing the new path into a suitable condition. Prior to a decision being made by the Authority, as to whether an order should be made, you will be required to enter into an agreement with the Authority regarding what works are necessary.

Additional Considerations

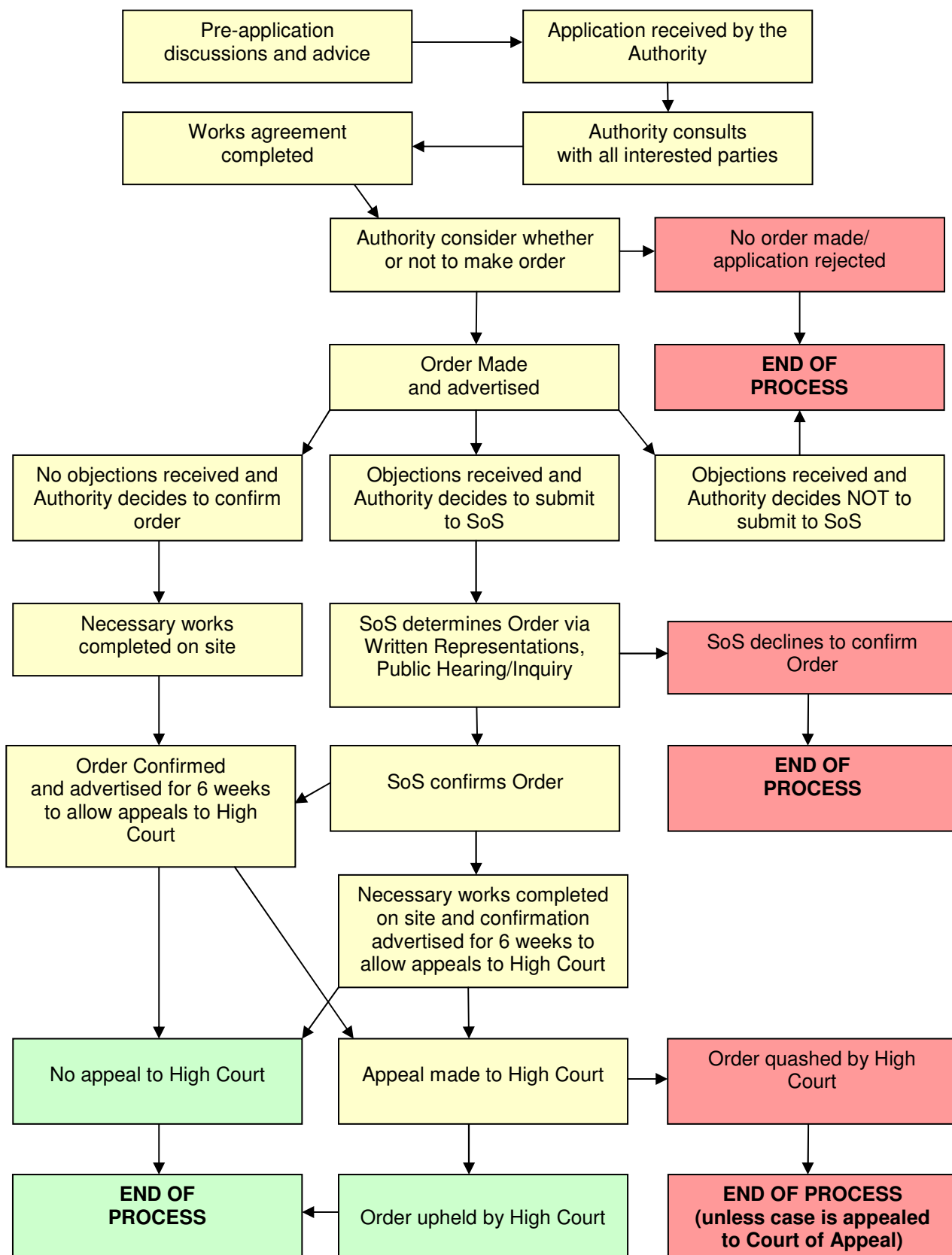
It should be noted that no authority for the extinguishment or diversion of a highway is conferred unless and until a Public Path Extinguishment or Diversion Order has been made, confirmed and come into effect. Any preliminary obstruction of, or interference with, the highway concerned may not only be an offence, but may make it impossible to proceed with the making of an order.

If other landowners are affected by the proposals you should obtain written confirmation that they have no objections to the proposals including any requirements relating to the provision of gaps or gates in any boundaries.

For further information on PPOs can be found in Natural England's '*Guide to definitive maps and changes to public rights of way - 2008 Revision*'.

APPENDIX 1

FLOWCHART OF THE PUBLIC PATH ORDER PROCESS



APPENDIX 2

HOW TO COMPLETE THE APPLICATION FORM

- Section 1 Complete name and contact details of applicant. It should be noted that application will be included in the Authority's statutory register and applicant's names and postal addresses will therefore be publically available. Signatures, telephone numbers and email addresses will be redacted and will not be publicly available.
- Section 2 Complete name and contact details of agent, if applicable
- Section 3
- (a) Complete with path numbers as shown on map enclosed with application form.
 - (b) Complete names of all parishes affected by the proposals.
 - (c) Use scale-rule or measure on site. Use 'approximate' for length measurements.
 - (d) Width recorded in Definitive Statement or measured on site.
 - (e) e.g. *"the section of public footpath BA28/12 running from the High Street (grid reference ST 5725 6467) south to a junction with public bridleway BA28/32 (grid reference ST 5728 6482)"*
 - (f) Confirm that the 'legal' line (i.e. the route currently recorded on the Definitive Map and Statement) is not blocked, and can be currently used by the public. Obstruction or interference with the highway may make it impossible to proceed with the making of an order.
- Section 4 Please complete, with reasons for the diversion or extinguishment, i.e. it is in the interests of land owner/unnecessary for public use/necessary to allow for development etc. It must also be stated why a diversion is in the interests of the person stated, why the path is not needed by the public or why the path needs to be diverted or stopped up to allow for development, as appropriate.
- In accordance with paragraph 7 of the Public Path Order Policy, the Authority does not generally support applications for extinguishment orders unless they are part of a wider package with compensating public benefit.
- Section 5 Only complete this section if the application is being made under Section 257 of the Town and Country Planning Act 1990 to allow development to take place.
- Section 6 It is important to note that the new path should not be substantially less convenient to the public or negatively affect the public's enjoyment of the network.
- Complete with details of the proposed alternative route.
- (a) Use scale-rule or measure on site. Use 'approximate' for length measurements.
 - (b) The MINIMUM level width for a footpath is 2 metres, for a bridleway is 3 metres and for a restricted byway is 5 metres. In some circumstances, such as if the path is to be fenced on either side, then a greater width may be required. The width will form part of the legal description of the path on the Definitive Statement.

- (c) Description of surface type i.e. arable, grass, tarmacked etc.
- (d) e.g. *"a new section of public footpath running from the High Street southeast to a junction with public bridleway BA28/32"*
- (e) Describe any gates, bridges, steps, furniture or resurfacing works etc. that will be necessary to make the path useable by the public.

Section 7 In addition to the legislative tests the Authority will assess any application for a PPO against the criteria of connectivity, equalities impact, gaps & gates, gradient, maintenance, safety, status, width and features of interest. Fuller explanations of these criteria are contained in paragraph 13 of the Public Path Order Policy which is available on the Authority's website and applicants should state what impact the application would have on each criteria. It should be stressed that the Authority will seek to take a balanced view of the assessment against all the criteria as a whole.

Section 8 Complete ownership details

- (a) Confirm whether you are the owner/occupier/lessee of the land over which the legal line of the path runs, or whether other reasons apply for diverting or extinguishing the path
- (b) Confirm whether you are the owner/occupier/lessee of the land over which the alternative path is proposed to run
- (c) Confirm details of other persons with an interest in the land over which the existing or proposed path runs e.g. tenants, individuals holding sporting rights etc.
- (d) If other persons do have an interest in the land affected, the box should be ticked and a copy of their written consent to the proposals should be attached to the completed application form.

- Section 9
- (a) Please use a current Ordnance Survey base map of a scale not less than 1:2500. The Authority can provide such a plan, but a small charge may be made. Please mark:
 - the section of existing path to be extinguished
 - the route of the proposed new path
 - (b) If the application is being made as a result of a planned development then please provide a GIS shape file (.shp) georeferenced to British National Grid containing the proposed development showing the existing and proposed paths.
 - (c) If the application is being made as a result of a planned development then please provide a simplified Block Plan of the development which also shows the proposed and existing paths. This will be sent out by the Authority as part of the consultation so that consultees can understand how the proposed diversion relates to the proposed development.
 - (d)(e) The cheque for £715 should be made payable to Bath and North East Somerset Council and enclosed with the Application. The total administrative cost will be £3,470.
 - (f) See 8(d) above.

PLEASE SIGN AND DATE THE FORM AND SEND TO THE ADDRESS SHOWN TOGETHER WITH THE REQUIRED DOCUMENTS

APPENDIX 3

APPLICATION FORM FOR DIVERSION OR EXTINGUISHMENT OF PUBLIC FOOTPATH / BRIDLEWAY / RESTRICTED BYWAY

**SECTIONS 118 AND 119 OF THE HIGHWAYS ACT 1980
SECTION 257 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

IMPORTANT

No authority for the extinguishment or diversion of a highway is conferred unless and until a Public Path Extinguishment or Diversion Order has been made, confirmed and come into effect. 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.

1. NAME AND ADDRESS OF APPLICANT

Name: _____

Postal Address: _____

Email address: _____ Telephone No: _____

2. NAME AND ADDRESS OF AGENT(S)

Name: _____

Postal Address: _____

Email Address: _____ Telephone No: _____

3. PARTICULARS OF RIGHT OF WAY TO BE EXTINGUISHED/DIVERTED*

a) Footpath / Bridleway /Restricted Byway* No. _____

b) Parish of _____

c) Length in metres of section to be extinguished/diverted _____

d) Width in metres of section to be extinguished/diverted _____

e) Description of length to be extinguished/diverted by reference to terminal points on plan to accompany this application

- (f) Is the existing route freely available to the public? If NOT, please give reasons:

4. **REASONS FOR THE EXTINGUISHMENT/DIVERSION* OF THE PATH**

Please Note:

- i) A path can be extinguished under **Section 118 of the Highways Act 1980** only if it can be shown that it is no longer needed for public use; or
- ii) A path can be diverted under **Section 119 of the Highways Act 1980** in the interests of the landowner/occupier/lessee, or of the public, or
- iii) A path can be diverted or stopped up under **Section 257 of the Town and Country Planning Act 1990** in order to allow development to take place.

If an **extinguishment application**, please give details of an alternative route, or the reasons why an alternative route is not considered necessary.

5. **PLANNING APPLICATION DETAILS**

This section is only to be completed if a path is to be extinguished or diverted under 4 (iii) above, please give details of Planning Permission.

- a) Application number _____
- b) Date permission granted _____
- c) If permission not yet granted, date application submitted _____
- d) Nature of development _____
- e) Date development expected to begin _____

6. PARTICULARS OF NEW PATH TO BE PROVIDED (*if applicable*)

- a) Length in metres _____
- b) Width in metres _____
- c) Surface _____
- d) Description of length to be provided by reference to terminal points on plan to accompany this application

- e) What works do you propose to undertake to bring the new path into a condition fit for use by the public?

7. RELEVANT CONSIDERATIONS

In what way would the proposals affect the following factors, as set out in the PPO Policy:

- a) **Connectivity** _____
- b) **Equalities Impact** _____
- c) **Gaps & Gates** _____
- d) **Gradients** _____
- e) **Maintenance** _____
- f) **Safety** _____
- g) **Status** _____
- h) **Width** _____
- i) **Features of Interest** _____

8. PARTICULARS OF OWNERSHIP

- a) Applicant's interest (*owner/occupier/lessee*) in the land over which the existing path referred to in this application passes.

- b) Applicant's interest in the land over which the new path is to be provided

- c) Do any other persons have an interest in the land over which existing or proposed paths pass? If so, give names and addresses of persons and nature of interest

- d) If other persons have an interest in the land affected, please tick to confirm that a copy of their written permission for the proposals to go ahead is enclosed. ☐

9. ACCOMPANYING DOCUMENTS AND CONSENT

Please tick boxes as appropriate

- a) A plan based on a current Ordnance Survey base map showing section of path to be extinguished and new path to be provided is attached. ☐
- b) A GIS shape file (.shp) georeferenced to British National Grid (development-related applications only) ☐
- c) A4-sized Block Plan showing the proposed development and the existing and proposed paths (development-related applications only) ☐
- d) A cheque for £715 is enclosed. ☐
- e) It is understood that if the Authority decides to make an order then the remaining £2,755 will be payable at that time ☐
- f) Consent is granted for the applicant's name and postal address to be made publically available. ☐

DECLARATION

I/We understand that no authority for the extinguishment of a public right of way is conferred unless and until any order made has been confirmed and come into effect and notice of this has been published.

I/We declare that the public right of way to be stopped up is not obstructed and that it is fully available to the public. (Subject to Article 3(f) above).

I/We hereby agree that if a diversion/extinguishment order is made I/We will defray any compensation which becomes payable under section 121 of the Highways Act 1980 in consequence of the coming into operation of the Order and any expenses which are incurred in bringing the new site of the path into a fit condition for use by the public.

I/We agree to pay a further £2,755 if the Authority decides to make an order.

I/We apply for the extinguishment/diversions of the highway described above.

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

Signed Date

Name

Signed Date

Name

On completion, this form, should be returned, together with the plan, cheque and copies of any consents if appropriate, to:

Public Rights of Way, Bath & North East Somerset Council, Lewis House, Manvers Street, Bath, BA1 1JG.

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APPENDIX 4

GLOSSARY

<i>Applicant</i>	The person applying to divert or extinguish a public right of way
<i>Authority</i>	Bath and North East Somerset Council, in its capacity as the local highway authority
<i>Definitive Map and Statement</i>	The legal record of rights of way within Bath and North East Somerset
<i>Limitation</i>	Something which lawfully limits the public's enjoyment of a right of way e.g. a gate or a bollard
<i>Planning Inspectorate</i>	An executive agency with the responsibility for determining opposed orders on behalf of the Secretary of State
<i>Public Path Order</i>	A type of legal order to create, divert or extinguish a public right of way
<i>Public right of way</i>	A way over which the public have a right to pass and repass; the way can be a footpath, bridleway, restricted byway or byway open to all traffic.
<i>Secretary of State</i>	The Secretary of State for Environment, Food and Rural Affairs, who has the power to determine opposed orders

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