

Guidance on applications to change the public rights of way network under sections 26, 118 and 119 of the Highways Act 1980



These guidance notes will provide you with information about the process of applying to make a permanent change to the public rights of way network. District Councils have powers to create new footpaths, bridleways and restricted byways and also to make changes to existing ones. The most common way of making a change is by making a legal order under the Highways Act 1980, known as a Public Path Order.

If you are applying to divert or extinguish a public right of way due to proposed development please contact us for further information and guidance as changes to enable development to take place are dealt with under separate legislation.

Your application for a change under the Highways Act 1980 will start a process during which we will look at the path(s) in question and determine whether the proposed changes conform to current legislation and guidance.

Please note that there is a charge for making a Public Path Order. Details of our charges are set down in our 'Guidance on Charges for Public Path Orders and Agreements'.

A Public Path Order can move a path, (a diversion), or it can close a path, (an extinguishment). A Public Path Order can also create a new path. We have to consider a number of different legal tests when deciding whether to make a Public Path Order. If a proposal does not meet these legal tests we cannot make an order. Before you apply for a Public Path Order please contact us so that we can advise you on your proposal and explain the law relating to Public Path Orders.

An application containing more than five paths will only be accepted if all the paths are on land in the same ownership and in the same area **or** the paths are interconnected in such a way that it is impossible to separate them **and** one person is able to represent all the landowners involved during the period of the application.

Different types of Public Path Order

Diversion Order

We can only make an order to divert a footpath, bridleway or restricted byway if:

- the order would be in the interests of the owner, lessee or occupier of the land crossed by the path, or in the interests of the public;
- the ends of the diversion connect to another highway and would be 'substantially as convenient' as a result of the diversion; and
- the path would not be 'substantially less convenient' to the public as a consequence of the diversion

We also have to consider the effect of the diversion on the enjoyment of users of the path and the effect that the diversion would have on other land served by the existing path and on land affected by the proposed new path, taking into account the provisions for compensation.

The following factors can be relevant when we are considering a diversion proposal although this is not an exhaustive list:

- any change in the length of the path (either significantly longer or shorter)
- any change in the termination point of the path, for example, to a point with poor visibility for traffic or further from a junction with another path
- any increased road walking where walkers may come into conflict with vehicles
- any change in access to facilities/ amenities along the path
- any change in the quality of the walk in respect of terrain, gradient, views, interesting features etc.
- any structures such as gates, steps or narrow bridges, which will be on the new route but which are not on the existing path

Extinguishment Order

We can only make an order to extinguish a footpath, bridleway or restricted byway if:

- we think the path is not needed for public use; and
- we think that the path is unlikely to be used by the public if it is not extinguished.

We also have to consider the effect that the closure of the path would have on the land served by the path, taking into account the provisions for compensation.

If a path is not used this does not necessarily mean it is not needed. We will disregard any temporary circumstances (such as obstructions) preventing or diminishing the use of the path.

Creation Order

We can only make an order to create a footpath, bridleway or restricted byway if:

- we think there is a need for the path; and
- we think the new path would add to the convenience or enjoyment of local residents or of a substantial section of the public

We also have to consider the effect that the new path would have on the land it would cross, taking into account the provisions for compensation.

Before we make a Public Path Order we must also have regard to the needs of agriculture, forestry and nature conservation and any material provision of Suffolk County Council's Rights of Way Improvement Plan.

How we deal with your application for a Public Path Order

You should note that the public path order process is complex and can be lengthy. The length of time it takes to determine an application will depend on the nature of any objections received when we consult on the proposal. A minimum time of around 12 months can be expected.

If we think there may be problems with your proposal we will explain what they are and suggest any changes you could make. If we think your proposal does not meet the legal tests we will not make an order.

The basic stages of the process are as follows:

- checking the details of the application
- site meeting to inspect the existing and the proposed path
- agreement of the applicant and any other parties with an interest in the land to the proposal plan and agreement of costs with the applicant
- consultations with local and national user groups such as the Ramblers' Association and the British Horse Society, the local town or parish council, the District Councillor, utility companies and Suffolk Wildlife Trust
- consultation with the County Council and preparation by the County Council of a Certificate of Works specifying any works necessary to bring the new route into a fit condition for use by the public
- decision on whether to make an order (there is no right of appeal if we decide not to make an order)

We will let you know when we have decided whether or not to make an order.

If we make the order we will serve notice on you. We will also advertise the order in a local newspaper and erect notices on the path. Anyone who wants to object or make representations must do so within 28 days from the date of the notice. If no-one objects we can confirm the order. If we receive objections and we cannot resolve them the order can only be confirmed by an Inspector appointed by the Secretary of State. The Inspector can determine the order on the basis of an exchange of correspondence (known as written representations), or by a local hearing or a public inquiry.

If, and when, the order is confirmed we will serve notice on you again and also advertise the confirmation of the order in a local newspaper and by erecting notices on the path.

When a new path comes into use by way of a creation order or a diversion order it has to be made available on a specified date. We will let you know the date when we write to tell you the order has been confirmed so that you can arrange for the works to be carried out in time. In the case of a diversion order the old path will not be legally closed until the County Council has certified that the works have been completed satisfactorily.

Is my application likely to succeed?

The Council carries out informal consultations on proposals with the appropriate Parish/Town Council(s), the user groups (such as the Ramblers' Association, Open Spaces Society and the British Horse Society), Suffolk Wildlife Trust, the local District Councillor(s) and Suffolk County Council. 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 wherever possible. If it is not possible for agreement to be reached during the consultation process, the decision on whether to make an Order may be taken by the Planning Committee. If the Council decides to make an Order to which a public objection is received the Council can only proceed with the Order by referring it to the Secretary of State for determination. An Inspector from the Planning Inspectorate will normally be appointed to make the decision. The Inspector can deal with the Order by holding a public local inquiry or by holding a hearing, or by an exchange of correspondence – the 'written representations'

procedure.

Structures on new routes

Stiles will not be approved on new routes because of the requirement to take into account the needs of people with restricted mobility. Gates should only be used to control stock (cattle or horses for example, but not household pets) and not simply to mark a boundary. If you think you will need a kissing gate or self-closing gate to control stock please tell us when you complete the application form. The County Council will advise on the suitability of such gates as part of the consultation process.

Important notes

- The existing path should remain open and available for public use and free from obstruction until such time as an order has been made, confirmed and has taken effect.
- Proof of ownership of land crossed by the existing path and to be crossed by the proposed path must be submitted with your application form.
- Written consent must be submitted from all owners, occupiers and lessees affected by the proposal.
- If there is a change in ownership of any of the land affected by the proposal or a change of occupier or lessee whilst we are considering your application you must inform us at the earliest possible stage. Failure to do so could affect the outcome of your application.
- If you are proposing a new route and it cannot be easily identified on the Ordnance Survey base map you may need to have its position professionally plotted.

Useful links and information

More information can be found at

www.suffolkpublicrightsofway.org.uk/home/making-changes-to-the-public-rights-of-way-network/

“A Guide to Definitive Maps and Changes to Public Rights of Way” is available on the Natural England website.

Contact us

For further information contact Ms Sharon Berry, Communities Officer (Public Rights of Way) Telephone 01449 724634 or email public.realm@baberghmidsuffolk.gov.uk