

VALE of GLAMORGAN



Application & Guidance Pack For Public Path Orders

Under the Highways Act 1980

Guide to the Procedure for Public Path Orders

These guidelines are to explain the procedure for Diversions and Extinguishments. They can be applied for by:

- Any owner, lessees or person using land crossed by the Right of Way (section 118 and 119 of the Highways Act 1980).
- Any owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses crossed by a Right of Way (section 118ZA and 119ZA of the Highways Act 1980)
- The proprietor of any school to allow special diversion and extinguishments to be made on Public Rights of Way where they cross school grounds (section 118C and 119C of the Highways Act 1980).
- Natural Resources Wales where Rights of Way run over sites of special scientific interest (Diversion applications only under section 119D of the Highways Act 1980).

When applying for a public path order it is important to consider the following:

Landownership

The very first thing to consider before applying for a public path order is that you, as the applicant own all the land over which the diverted route is to cross. If you do not, you must seek the landowners written consent before you can continue. The County Council will not be able to process your application without this.

The Legal Tests

Legislation requires that certain tests must be considered for public path orders. Different tests apply to diversion and extinguishment orders as outlined below.

a) The Legal Tests for Diversion Orders (Section 119)

Diversion Orders are used primarily to divert a route or part of a route, onto another line. These Orders can be made in the interests of the applicant (as stated above) and in the interests of the public.

Before making an order the Authority must be satisfied that it is necessary to divert the path in the interests of either the public or the applicant.

The authority must also be satisfied that the Diversion Order either –

- Does not alter any point of termination of the path where it is not on a highway; or
- Where the path terminates on a highway, it only moves the point of termination to another point on the same highway, or a highway connected to it, which is substantially as convenient to the public.

- The Council should also make sure that the route shown in the order as the alternative route is not an existing Public Right of Way.

The authority has the power to require the applicant to cover the costs of the order and the cost of making up the new path, as well as any compensation that may be payable.

When making a Diversion Order one must also consider:

- i) How it will affect the public use of the path and other nearby paths as a whole
- ii) How it will affect land served by the existing path;
- iii) How it will affect land it is diverted through;
- iv) Whether the diverted path is less convenient to the public;
- v) If the order is in the best interests of the person or persons named in it.
- vi) The affect the proposals will have on conservation needs and biodiversity (If this is unknown prior to consultation, then this will usually be dealt with through inclusion of the authority's Ecologist and/or NRW in the pre-order consultation round.)

b) The Legal Tests for Extinguishment Orders (Section 118)

Extinguishment Orders are used to extinguish (close) all, or part, of a Public Right of Way.

It must appear to the authority, before making an Order, that it is necessary to stop up the path or way on the grounds that it is not needed for public use. They must ignore any temporary circumstances preventing or diminishing the use of the path by the public.

Before confirming an order the authority or the Welsh Government (WG) must be satisfied that it is necessary to confirm the order having regard to the likely use that would be made of the path and to the effect which closure of the route would have on land served by it. The authority or the WG must ignore any temporary circumstances preventing the use of the path by the public.

Development

If you are applying for a public path order to allow development to take place over the line of the footpath this must be dealt with under the Town and Country Planning Act 1990. An exception to this is if the development has already been completed and has been illegally constructed over a path you will need to apply for a diversion under the Highways Act 1980 section 119.

Work Required on Affected Routes.

If you think that you want to erect a stile or gate or other furniture please indicate this on the plan attached to your application form as to erect them without them previously being recorded in the order could be classed as an obstruction.

Access for All is listed as a key principle in the Vale of Glamorgan's Rights of Way Improvement Plan and structures authorised in the order of gap, gate, stile. Authorisation for structures is given based on a least restrictive access approach where the starting point for new structures will be gaps if the land will not contain animals such as sheep, horses, pigs or cows or gates where stock proofing is required. The County Council will not agree to structures such as stiles on a new route unless it is not possible to install anything else on the land in question. Types of furniture and suitability can be discussed with a Rights of Way Officer.

Applicants will be charged 100% of the reasonable costs of all new foot or bridleway bridges and their installation. Such structures will be supplied and erected by the County Council or its approved agent. Where a structure is built to a higher specification at the request of the authority then the County Council will bear any additional cost.

If applying for an extinguishment of a path, please also note the presence of any structures such as bridges. The County Council will arrange for them to be removed and used elsewhere on the network where appropriate.

Plan of the Diversion

When applying for a diversion the applicant will need to supply a plan illustrating the proposal when the application form is submitted. This plan should be at a scale of either 1:1250 or 1:2500 and it must be accurate. It is the applicant's responsibility to produce a plan that accurately illustrates the proposal as any alteration to the plan may result in extra costs for the applicant and delays in the process.

Widths for New Paths

The County Council requires a reasonable width to be made available that would be sufficient for two users to pass and be convenient for cutting machinery. In the case of a new footpath, this will typically be regarded as a minimum of 2 metres. In the case of a bridleway a minimum of 3 metres.

Diversion of Cross-Field Paths

Where possible a diverted path should be routed so as to avoid the need to plough it or otherwise disturb the surface.

Please note that the Highways Act prohibits the ploughing or other disturbance of a footpath or bridleway that follows the side or headland of a field or enclosure. Restricted Byways and Byways Open to All Traffic should never be ploughed.

You may be required to enter into an agreement to maintain the surface of any path diverted onto a field headland as well as complying with your legal obligations to cut back hedges and remove the trimmings to ensure that the path remains at its full width.

Fees

The council charges a fee for the administrative work involved in dealing with an application in accordance with the *Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended)*. This means you will have to pay the **actual costs involved including advertising costs**. The Council retains discretion to waive, or partially waive, costs where considered appropriate in the public interest.

You will be invoiced at three stages: (Payment is due 30 days from invoice date):

Stage 1. Pre-publication (non refundable charge)

Stage 2. Publication

Stage 3. Confirmation of order

The fee charged in each case is dependent on the complexity of the case and is directly related to the time spent on processing the application. The approximate scale of charges for an application under s.119 is as indicated on the Cost Schedule attached. Charges for additional costs are outlined in the Cost Schedule.

Time span

The average length of time taken to process an application to confirmation is in excess of nine months. However, if the matter is submitted to the Welsh Government and their Inspector calls a public inquiry or hearing, it may take much longer.

Please note that until a Public Path Order is confirmed then the existing route remains in existence and must be available for use.

If There Are Objections To The Order

Because of the initial consultation process, objections to Orders should be few and far between.

A formal objection has to be made in writing to the County Council within a 28 day period after notice of an order having been made is publicised. If objections are received then an officer will enter into dialogue with the objector. If the objections are maintained, the Council will send the order to the Welsh Government (WG) for determination after consulting with the applicants and objectors. WG will decide whether or not a public inquiry is deemed necessary or whether the written representation or hearing procedures can be invoked.

An independent Inspector appointed by the Welsh Government will give his/her decision to confirm, not confirm or modify the Order after the case has been considered.

Procedures Involved With a Public Path Order under the Highways Act

The procedure for dealing with the diversion or extinguishment of footpaths and bridleways is complex and can be time consuming. The basic stages are as follows:

1. Informal discussions with the council's rights of way officers to discuss the feasibility of the proposal, application form, cost schedule.
2. Receipt of your final application including proof of land ownership and landowner consent where necessary.
3. Drawing up of consultation map and proposed order schedule.
4. Pre-order consultations with user groups and local councils.
5. Negotiations following any objections to the proposal at informal consultation stage.
6. Where considered necessary, there will be a site visit.
7. Drawing up of order map, schedule, legal notice and order.
8. Consideration of a report on the application by the Council determining whether or not to make the order
9. Preparation and publication of the order followed by 28 days' advertisement on site and in the press.
10. Negotiations on any formal objections to the order.
11. If the objections cannot be resolved the order will be submitted to the Welsh Government and they will appoint an inspector to determine the objections and decide whether the order should be confirmed. Depending on the circumstances, the inspector may reach his decision on the basis of an exchange of correspondence, or the case may be taken to a public hearing or inquiry.
12. If it is decided that the order should be confirmed, publication of a notice is made of the decision in the press and on site. At this stage you must provide the path to the required standard. (Please note that the Inspector may decide not to confirm the order.)
13. A site visit is carried out by council officers to ensure satisfactory provision of the new route.

Right Of Appeal

Where an application has been made under sections 118ZA and 119ZA and sections 118C and 119C the applicant may appeal to the Welsh Assembly Government if the County Council:

- Refuse to make an order on the application
- Refuse to confirm as an unopposed order an order made on the application, or
- Refuse to submit to the Welsh Government an order that is made on an application against which any

representation or objection has been made and not withdrawn.

Beware there are No Guarantees

The County Council can not guarantee that any application will proceed to the making of an order, nor can the County Council give assurances that all applications will be successful in the event of objection.

Applicants must be aware that they may incur cost without the Order eventually succeeding.

The Council will endeavour to resolve objections if at all possible and applicants will be able to withdraw their applications prior to objected Orders being sent to WAG for determination. In these circumstances the County Council will only recover costs up to the point that this event occurs.

EVERY EFFORT HAS BEEN MADE TO ENSURE THE ACCURACY OF THE INFORMATION GIVEN, HOWEVER, THIS GUIDE IS NOT INTENDED TO BE A DEFINITIVE STATEMENT OF LAW, NOR CAN ANY RESPONSIBILITY BE ACCEPTED FOR ERRORS OR OMISSIONS.

Public Path Order – Cost Schedule

Stage 1 Pre-publication		
Item	Details	Approximate Cost
1. Receipt of application	<ul style="list-style-type: none"> • Check application is made under the correct legislation • Check application form and undertaking to pay costs • Set up case file and enter onto the computer system • Send letter acknowledging receipt of application 	£45
2. Research into history and status of rights of way	<ul style="list-style-type: none"> • Check route on Definitive Map and statement • Check PROW file - are there any previous orders, issues which will affect the likelihood of the applications success • Confirm land ownership, send for Land Registry titles if not provided or if those provided are more than 3 months old. 	£190
3. Site Visit with applicant.	<ul style="list-style-type: none"> • Arrange to meet applicant on site • Pre site visit prepare map showing new / old routes • Site visit - check feasibility of route, note need for stiles/gates etc. • Send letter to applicant confirming any works agreed during site meeting. 	£150
4. Pre-order consultation	<ul style="list-style-type: none"> • Adapt statutory consult list to ensure correct Ward member, Community Councillors, adjacent landowners etc. are consulted. • Prepare consult schedule • Prepare consultation map • Prepare consultation letter, send out to consult list. 	£130
5. Analysis of pre-order consult responses	<ul style="list-style-type: none"> • Acknowledge receipt of any responses, correlate responses, address any queries raised. 	£70
6. Assessment of Legal Implications	<ul style="list-style-type: none"> • Consult Legal Officers 	£30
7. Preparation of Committee reports/ delegated powers report	<ul style="list-style-type: none"> • Detail background to application, proposal and legal tests. • Prepare draft Order map and schedule. Adapt pre order consultation map to provide draft order map • prepare draft schedule • prepare committee / delegated powers report • Following the Committee's / Director's decision 	£110

	Inform the applicant of the current position of their application.	
8. Draw up Order and arrange for sealing.	<ul style="list-style-type: none"> • Draft Order • Forward the Order, map and schedule to the Legal Section for sealing of the Order 	£60

Applicant invoiced at this stage
Public Path Order- Cost Schedule – continued

STAGE 2. Publication of Order		
Stage	Details	Approximate Cost
9. Letters to consultees.	<ul style="list-style-type: none"> • Send out copy of the Order and associated documents with covering letter to all on statutory consultation list. 	£85
10. Advertise the making of the Order	<ul style="list-style-type: none"> • Draw up site notice and press notice • Arrange for notice to appear in the press • Arrange for notice to appear on the Vale's web site • Site visit - post site notices. 	£1030
11. Site visit	<ul style="list-style-type: none"> • Check site notices are in place at mid point of the consultation 	£85
12. Close of consultation period	<ul style="list-style-type: none"> • Correlate responses to the advertising of the making of the Order decide whether the Order can be confirmed by the Authority or that the case should be referred to the Planning Inspector for decision. 	£30

Applicant invoiced at this stage.

Public Path Order- Cost Schedule – continued

Stage 3. Confirmation of Order		
Stage	Details	Approximate Cost
13 Confirm the Order	<ul style="list-style-type: none"> Forward the Order, map and schedule to the Legal Section for confirmation. 	£30
14. Letters to consultees	<ul style="list-style-type: none"> Send out copy of the Order and associated documents with covering letter to all on statutory consultation list. 	£85
15 Advertise the confirmation of the Order	<ul style="list-style-type: none"> Draw up site notice and press notice Arrange for notice to appear in the press Arrange for notice to appear on the Vale's web site Site visit - post site notices. 	£1030
16. Contact the applicant	<ul style="list-style-type: none"> Ask applicant to ensure all prior agreed practical works are completed 	£15
17. Site visit	<ul style="list-style-type: none"> Check site notices are in place 	£85
18. Certify the works and complete the order.	<ul style="list-style-type: none"> Contact landowner and ask for site meeting Site visit to check all practical works have been completed Draw up Completion Certificate Send copy of Order and Completion Certificate to Ordnance Survey Send copy of Completion Certificate to applicant and all owners/occupiers 	£155

If an objection is received to the making of the Order the case will be forwarded to The Welsh Government's Planning Inspectorate for decision. No costs will be charged in relation to this process. Should The Planning Inspectorate confirm the Order the Authority will pick up the process at point 14 and will charge from this point forward.

Applicant invoiced at this stage

Public Path Order- Cost Schedule – continued

Additional Charges		
Item	Details	Cost
Letters/phone calls	Additional letters which are not cover by the above.	£30.00 per letter
Site visits	Additional to above, as required	£75 cost dependant on location
Site Visit by Rights of Way Sub-Committee	Additional to the above as required.	£200
<p>1. The average cost for an unopposed order is in the region of £3400</p> <p>2. The average costs for an opposed order is in the region of £3750 (including site visit by Sub-Committee).</p>		

Please note

The cost of any practical works undertaken by the Authority on behalf of the applicant will be recharged to the applicant in full and will be outside of the Cost Schedule.



**Public Rights of Way
Vale of Glamorgan County Council
Docks Office
Barry Docks
Barry
CF63 4RT**

HIGHWAYS ACT PUBLIC PATH ORDER(S) Undertaking to Pay Costs Form

I undertake to pay the costs incurred in processing the Public Path Order for:

Public Right(s) of Way No(s).

Parish of

I understand that the cost will be the actual costs incurred by the Council to process the application as specified in the Cost Schedule and Procedural Guide for Making Public Path Orders. I understand that I will be required to pay these costs in three instalments.

I understand and agree to pay the costs of carrying out the necessary work to provide the new route to the satisfaction of the Council. Where it has been agreed that the authority or its agents should carry out any works and supply any furniture (including bridges) on behalf of this application, I understand that I will be invoiced 100% for the actual costs of the furniture and installation (unless agreed otherwise in writing with Vale of Glamorgan County Council). I will be separately invoiced when any necessary works are completed.

I also understand that I must pay any compensation that may arise as a consequence of the diversion/creation/extinguishment of a path onto or affecting land not in the control of the applicant.

Name (please
print):

Signed:

Address:
(for invoicing)

Date:



HIGHWAYS ACT 1980, SECTION 119
**APPLICATION FOR AN ORDER TO
PERMANENTLY DIVERT PART OR ALL OF
A PUBLIC RIGHT OF WAY**

The following questions should be answered as fully as possible and the form returned to the Public Rights of Way Officer, Vale of Glamorgan County Council, Docks Office, Barry Docks, Barry, CF63 4RT.

You must also send:

1. Two copies of a plan not less than 1:2500, showing the Public Right of Way concerned and with the line of the diversion clearly marked, along with landownership details.
2. Any relevant landowners/owner/occupiers agreements to the proposal.
3. A signed "Undertaking to Pay Costs Form".

SECTION A: GENERAL

Name & address of applicant

- a) Name
- b) Address

- c) Contact Telephone number

Name & address of agent (only complete if applicable)

- a) Name
- b) Address

- c) Telephone number
- d) Profession

Name & address of the owner(s) of the land on both sides of the Public Right of Way to be diverted.

- a) Name
- b) Address

If you the applicant do not own the land on which part, or all, of the new route is to run, has the consent of the landowner(s) been obtained in writing YES / NO (If yes please attach).

- a) Name
- b) Address

Have you obtained the written consent of any Lessee or Tenant or Occupier
YES/NO (IF YES please attach consent)

Name of Lessee, Occupier or Tenant:

Address:

SECTION B: PUBLIC RIGHT (S) OF WAY TO BE DIVERTED

Name of Parish or Parishes in which the path is located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).
..... from OS Grid Reference (where there is only one path involved) to OS Grid Reference.....

General description of path(s)

Status: The path(s) affected are footpath/bridleway (delete the term that does not apply)

Please give the name of the local newspaper(s) circulated in the area.

SECTION C: REASON FOR DIVERSION

Section 119 of the Highways Act 1980, as amended by Schedule 16 para.5 of the Wildlife and Countryside Act 1981, permits diversions of public footpaths and bridleways on the grounds that it is expedient in the interests of (i) the owner, lessee or occupier and/or (ii) the public. Please indicate whether this application serve the interests of (i) and/or (ii) and give specific reasons why:

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

SECTION D: DECLARATION

(Please read carefully, amend as necessary and then sign).

1. (Delete this particular statement if it does not apply) I/We own the land edged red on the attached plan which I/We have signed and dated.
2. I/We have read and understood the guidance notes attached to this application. I/We agree to comply with the following conditions in respect of this application:
 - a. The proposed alternative route must be constructed to the satisfaction of the Vale of Glamorgan County Council as the Highway Authority.
 - b. The siting and type of any new, bridges, stiles, gates or fencing must be agreed with the County Council prior to erection and maintained at the applicants own expense in the future (unless specifically agreed otherwise in writing with the County Council).
 - c. Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the County Council.
 - d. The alternative route(s) will be signposted and waymarked to the satisfaction of the County Council.
3. If the Council agrees to make the order for the diversion of the path(s) I/We will carry out such work on the diverted route of the path as may be specified by the County Council, at our own expense, to bring the route into a fit condition for public use at such time as the diversion order can be confirmed.
4. I/We understand that no authority for the diversion of a Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
5. I/We declare the Right(s) of Way to be diverted shall in no way be obstructed before the Order comes into operation other than where an appropriate legal provision (such as temporary closure) has been sought and enacted .
6. I/We undertake that any new path or way to be provided will be ready for use before the Order comes into operation.
7. The Order when made may state the period of time required for the implementation of the diversion(s) *(by what date will you make the new routes available?)*
The period of time required is _____ weeks

8. I/We declare that to the best of my/our knowledge and belief all the particulars given are true and accurate and I hereby apply for the diversion of the route(s) I have detailed above.

Signed:

Date:



HIGHWAYS ACT 1980 – SECTION 118
**APPLICATION FOR AN ORDER TO
PERMANENTLY EXTINGUISH ALL, OR PART, OF A
PUBLIC RIGHT OF WAY**

The following questions should be answered as fully as possible and the form returned to:
Public Rights of Way Officer, Vale of Glamorgan County Council, Docks Office, Barry Docks,
Barry, CF63 4RT.

You must also send:

1. Two copies of a plan showing the Public Right of Way concerned and with the line of the extinguishment clearly marked. You should also indicate on one of the plans landownership details.
2. Any relevant landowners/owners/occupiers agreement to the proposal
3. A signed "Undertaking to Pay Costs Form"

SECTION A: GENERAL

Name & address of applicant

- a) Name
- b) Address
- c) Telephone/mobile number

Name & address of agent (only complete if applicable)

- a) Name
- b) Address
- c) Telephone/mobile number
- d) Profession

Are you the sole landowner of the entire length of path to be closed? YES / NO

If "No" has the consent of the landowner(s) been obtained in writing? YES / NO If YES please attach.

Give the name & address of the owner(s) of the land over which the Public Right(s) of Way to be extinguished passes over.

- a) Name
- b) Address

Have you obtained the written consent of any Lessee or Tenant or Occupier to the extinguishment proposal? YES / NO If yes please attach consent.

- a) Name of Tenant, Lessee or Occupier
- b) Address

Name & address of the owner(s) of the land on both sides of the Public Right of Way to be extinguished.

- a) Name
- b) Address

SECTION B: PUBLIC RIGHT(S) OF WAY TO BE EXTINGUISHED

Name of the Parish or Parishes in which the path is located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).

(Where there is only one path involved) From OS Grid Reference..... to OS Grid Reference.....

General Description of path(s)

Status: The path(s) affected are footpath/bridleway *(delete the term that does not apply)*

Please give the name of the local newspaper(s) circulated in the area.

SECTION C: NEW LENGTHS OF PUBLIC RIGHTS OF WAY TO BE DEDICATED

Is there to be a new route dedicated to replace the extinguished route/s YES / NO

If the applicant does not own or control the land to be dedicated, has the consent of the landowner(s) been obtained? YES / NO

- a) Name
- b) Address

SECTION D: REASON

Section 118 of the Highways Act 1980 permits footpaths and bridleways to be extinguished where it can be shown that the path is not needed for public use.

Please indicate the reason for requesting this Extinguishment:

What is the likely use of the path and what effect will the closure of the path have on the land served by it?

SECTION E: DECLARATION

I/We own the land edged red on the attached plan which I/we have signed and dated. We have read and understood the guidance notes attached to this application and agree to comply with the following conditions in respect of this application:

1. Where extinguishment is undertaken concurrently with creation of an alternative route:
 - a. Any proposed dedicated route/s must be at least equal in construction to the length of the route it is replacing.
 - b. The proposed alternative route must be constructed to the satisfaction of the Vale of Glamorgan County Council as the Highway Authority.
 - c. The siting and type of any necessary gates, fencing or other furniture on the route to be dedicated must be agreed with the County Council prior to erection.
 - d. Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the County Council.
 - e. The alternative route to be signposted and way marked to the satisfaction of the County Council.
2. I/We understand that no authority for the extinguishment of a Public Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
3. I/We declare the Public Right(s) of Way to be extinguished is/are in no way obstructed and that it/they are fully available to the public and I/We undertake that it/they shall in no way be obstructed before the Order comes into operation.
4. I/We are aware that if an order is made and confirmed the County Council will make arrangements, where necessary, to remove any foot or bridleway bridges on the route that has been closed.
4. I/We declare that to the best of my/our knowledge and belief all the particulars given are true and accurate.

Signed:

Date:

