**Advice Notes for Applicants wanting to submit a Public Path Order Application**

***These notes have been compiled on the basis of current legislation which may change in the future***

**Public Path Orders**

Alteration to the legal alignment of a public footpath, bridleway or restricted byway (from now on referred to as a Public Right of Way (PRoW) can only be done via a legal order, known as a Public Path Order (PPO).

The decision as to whether a PRoW should be altered is primarily a public one. The process followed is designed to ensure that the public and key stakeholders are made aware of the proposed alteration and given the opportunity for their views to be taken into account before a final decision is made.

There are several pieces of legislation that can be applied when requesting an alteration to a PRoW. This guidance primarily concerns the process relating to a diversion made under Section 119 of the Highways Act 1980, which accounts for over 85% of all PPO applications submitted to the County Council. There are two grounds that must be met in order to apply for a diversion under Section 119. These are where the diversion appears to the Council that it is expedient to do so, and that it is in the interests of the public or in the interests of the landowner, lessee or occupier of the land.

Applicants wanting to make an alteration under any of the following legislation are asked to contact the Rights of Way Team before submitting their application:

* **Section 118A / 119A Highways Act 1980:** **Rail Crossing Extinguishment / Diversion Order –** A PRoW which crosses a rail line may be extinguished (section 118A) or diverted (section 119A) where it can be shown that it is expedient to do so in the interests of public safety but only if it is not possible to make the crossing safe.
* **Section 118B / 119B Highways Act 1980: Special Extinguishment / Diversion Order –** A PRoW way may be extinguished (section 118B) or diverted (section 119B) for reasons of school security (for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity) or, if it falls within a designated high crime area, for reasons of crime prevention.
* **Section 119D Highways Act 1980: SSSI Diversion Order –** A PRoW may be diverted in order to protect a Site of Special Scientific Interest.
* **Section 257 Town & Country Planning Act 1990: Public Path Order (extinguishment or diversion) –** A PRoW may be diverted or stopped up to enable development to take place. It is important to note that an Order cannot be made under this Act if the development has already been completed or is substantially complete. The County Council is only responsible for processing applications where it has granted planning permission. For all other path diversions that are associated with development, the relevant district or borough council should be contacted.

The process followed in making a PPO through any of the above pieces of legalisation are predominantly the same although there are some differences.

No matter which legislation is applied, the charging schedule for processing a PPO application remains the same and this can be found in Appendix 1.

Applicants wanting to make an alteration to a Byway Open to All Traffic (BOAT) are asked to contact the Highways’ Land Charges Team ([land.charges@staffordshire.gov.uk](mailto:land.charges@staffordshire.gov.uk) / 01785 276595).

**The County Council’s Responsibilities**

With limited resources to manage PRoW, the Council prioritises its statutory duties - to record and keep open the PRoW network - over its discretionary powers. Determining PPO applications is a power (not a stator duty) and therefore the Council exercises its discretion:

* To prioritise those PPO applications that it believes offer the greatest public benefit in advance of those which are solely in the interests of the landowner.
* Not to commence or [if already on-going] not to proceed with PPO applications where it believes that it will take a disproportionate amount of resource to process. For example, where there are objections, particularly at the informal consultation stage that cannot easily be resolved by the applicant, the Council or the Council’s representative.
* Not to commence a preliminary assessment until resources allow.

Staffordshire’s eight district councils and the Peak Park Authority also have a discretionary power to process PPO applications. The County Council will almost always be consulted on PPO applications submitted to a local planning authority. Where the County Council objects to a proposal, it is unlikely that the local planning authority will make the Order.

**The Applicants’ Responsibilities**

Applicants who submit a PPO application to divert a PRoW under Section 119 of the Highways Act 1980 are asked to:

* Submit an application form with all relevant sections completed in detail.
* Submit a plan showing the proposed diversion on a current 1:2500 scale Ordnance Survey base map and show where it connects to the existing route. A plan can be produced by the County Council for a fee. For further information, please contact shona.frost@staffordshire.gov.uk.
* Provide evidence that the proposal meets the legislative tests (see below).
* Provide evidence that the proposal contributes to the prioritising criteria (see below).
* Provide confirmation that the status of the existing PRoW is not in dispute, unless it is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981 but all relevant parties are in agreement to the diversion.
* Provide written agreement from all affected landowners.
* Provide evidence of land ownership crossed by existing and proposed routes.
* Provide a copy of the written agreement to the proposals from any other persons who have an interest in the land.
* Ensure (where possible) that the existing and the proposed routes are open, clear and safe to use so that they can be assessed by consultees.
* Agree, by means of completing and signing the application form, to pay all:
* Costs associated with making and confirming the PPO (e.g. administration, advertising, land searches, erecting site notices, etc.). If the applicant abandons his/her application partway through the process, if the Council decides not to proceed with the application as objections are not being withdrawn, or if the application is refused as it fails the legal tests, all costs incurred up to that point must be paid in full.
  + Costs associated with carrying out all works (if required) to implement the new route, bringing it into a fit condition for public use.
  + Compensation to anyone having an interest in the land (if necessary) as a consequence of the PPO coming into operation.
* Agree, by means of signing the application form, to:
  + Ensure that all affected landowners, owners and tenants are aware of (and are able to accommodate) any site visits by the Council, its representatives or consultees.
  + Respond to any additional information requests from the Council or its representatives in order to substantiate the application.

All PPO applications are checked for completeness on receipt. If it is incomplete, the application will be returned and further information requested. The level of information required to accompany a PPO application is significant and it cannot be stressed too strongly that it is for the applicant to make the case for the alteration. Please be aware that the application form is regarded as a legally binding contract.

**The PPO Application Process**

Once the Council is satisfied that the PPO application is complete, it will be assessed against prioritising criteria. Any PPO application which in the Council’s view resolves a significant public safety issue, will be given the highest priority. All other applications will be judged against the criteria below, which has been designed to ensure that those applications that deliver the greatest public benefit and maximise public resources, are prioritised in favour of those that are solely in the interests of the landowner. The prioritising criteria and associated scores are:

|  |  |
| --- | --- |
| **Prioritising Criteria**  (for diversion applications other than those which resolve a public safety issue) | **Score\*** |
| Overcomes a permanent (or long-standing) obstruction | 10 |
| Overcomes a significant and ongoing maintenance issue | 9 |
| Eliminates the need to process an existing Sec. 53 application on the route | 8 |
| Is a high priority path (as identified in the PRoW network hierarchy) | 6 |
| Improves access for all, especially those with mobility or visual impairments | 5 |
| Enhances user enjoyment | 4 |
| Enhances the PRoW network’s connectivity and directness | 3 |
| Legitimises a well-used desire line | 3 |

\* If there is no impact, the score is 0.

The application’s accumulated score will mean it is categorised as follows:

|  |  |  |
| --- | --- | --- |
| **Priority** | **Score** | **Est. Maximum Number of Months Before Determination (i.e. the making of the PPO)** |
| **High** | 26 < | 12 |
| **Low** | >25 | 20 |

The above timeframe is indicative; some PPO applications will take longer to determine due to the complexity of the proposal and/or the validity of the objections. Applications with the same score will be progressed in chronological order of receipt.

All PPO applications, no matter how minor the alteration being proposed, will have to satisfy the Council that the following legal tests have been met:

* The diverted route will be as equally or more convenient as the current route to the public.
* The diversion will not alter the point of termination of the path, if that point is not on a highway, if it is on a highway then the point of termination must be to another point on the same highway, or a connected highway (i.e. it does not create a ‘dead-end’).
* The effect of the diversion will not detrimentally impact on public enjoyment of the path.
* The effect of the diversion will not detrimentally impact on the rights of anyone with an interest in the land.

All PPO applications will also be subject to:

* An informal 30-day public consultation with relevant landowner(s), Parish/Town/District Council(s), County Councillor(s), and representatives of the main user groups (such as The Ramblers, Open Spaces Society, and The British Horse Society).
* A formal 28-day public consultation exercise.
* A final and full 6 week public confirmation consultation.

All PPO applications will be considered on their own merits by elected members via the Countryside and Rights of Way (CRoW) Panel. The CRoW Panel is a regulatory committee of County Councillors, which meets bi-monthly. If a PPO application is opposed and the objections are not withdrawn, the CRoW Panel has the discretion not to proceed with the application. Also, it may decide to refuse an application as it is not satisfied that the legal tests have been passed. In both situations, the applicant must pay all charges incurred up to that point.

**PPO Milestones**

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| --- | --- | --- |
| **Priority** | | **Actions** |
| **High** | **Low** |
| 1-5 workings days | | * Application checked for completeness. If the application is incomplete, it is returned to the applicant and further information requested. |
| 1 - 4 weeks | | * Application scored against the prioritising criteria. * Application is acknowledged and the applicant advised of the priority score (explaining the reasons) and asked if they wish to proceed. |
| 1 - 2 months | 1 - 4 months | * The Council inspects the path, investigates the extent of the highway boundary, land ownership, etc., in order to establish whether the legal tests have been met. If the Council has any concerns, it advises the applicant, which may include not proceeding with the application. |
| 3 - 5  months | 5 - 7  months | * The Council undertakes a **30-day informal** consultation with landowners and key stakeholders by writing letters and displaying site notices. * If there are no objections or all objections have been resolved, the application goes to the next stage. * If objections have been received, it is the applicant’s responsibility to negotiate a resolution with the objector/s. The Council can be employed at an hourly rate of £50 to undertake this role, but this is no guarantee of a successful outcome. If objections can’t be resolved (either by the applicant or the Council), the Council may choose to use its discretionary power and not proceed with the application. |
| 5 - 6 months | 8 - 11 months | * The Council prepares and presents a report to the CROW Panel, asking them to consider making an Order. * If the Panel decides to make the Order, the Council undertakes a **28-day formal public consultation** by advertising the Order and displaying site notices and maps. * If the Panel decides not to make the Order due to the objections the proposal received at the informal consultation stage, the applicant can write to the Secretary of State asking for a determination. |
| 7 - 8 months | 12 -15 months | * If no objections have been received, the Council (if necessary) instructs the applicant to carry out works needed to bring the new route into a fit condition for public use and/or compensate the landowners as a consequence of the Order coming into operation. Once any works have been satisfactorily carried out, the Order is confirmed before undergoing a final consultation exercise. * If objections have been received, the Council advises the applicant regarding their options:   + If objections have been received, it is the applicant’s responsibility to negotiate a resolution with the objector/s. The Council can be employed at an hourly rate of £50 to undertake this role, but this is no guarantee of a successful outcome. If objections can’t be resolved (either by the applicant or the Council), the Council may choose to use its discretionary power and not proceed with the application. * If the objections raise valid issues related to the grounds for making the Order, the Council may recommend amending the proposal via a new application (which may incur additional costs) or, in some cases, not proceeding with the Order. * If the objections are not withdrawn, an applicant (or the County Council) can choose to refer the matter to the Secretary of State for determination. |
| 9 - 12 months | 16 - 20 months | * The Council undertakes a **final and full 6 week confirmation consultation**. * Objections at this stage can only be made if a person aggrieved by the order wishes to question its validity, or that of any provision contained in it, on the ground that it is not within the powers of the Highways Act 1980 (as amended). For further information please contact [rightsofway@staffordshire.gov.uk](mailto:rightsofway@staffordshire.gov.uk) |

**Role of the Secretary of State**

The Council has no powers to confirm an Order which has received objections at the formal stage. In situations such as this, the matter would, with the CRoW Panel’s agreement, be referred to the Secretary of State. The Council is unable to provide any estimated timescale for making such a referral to the Secretary of State.

When an Order is referred to the Secretary of State for determination, the Council loses jurisdiction and timing over the process. The Secretary of State can decide to hold a public inquiry, a public hearing, or determine the matter via written representation. In almost all cases, the Council will seek determination via written representation as it has least impact on the Council’s limited resources. The Secretary of State’s decision is final and binding unless overturned by a Court within 42 days from the date of confirmation.

**Other Factors to Consider Prior to Submitting a PPO Application**

Prior to submitting an application, the following issues should be considered and where possible, reflected in the application.

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| **Condition/ Accessibility** | The condition of the proposed route should not be less convenient than the existing route. Stiles, gates and other barriers will usually only be authorised in accordance with statutory provisions, dependent upon the circumstances pertaining to the existing route. |
| **Directness** | The proposed route should not unreasonably lengthen the path other than where it is in the interests of an overall improvement to the local PRoW network. The proposed route should avoid introducing unnecessary “dog legs” or substantially increase walking distance. The proposed route should retain or improve a connection with another PRoW. |
| **Width** | The proposed route should aim to have a minimum width of 2m for a footpath, 3m for a bridleway, and not less than 4m for a restricted byway, dependent upon the historical width of the existing route and its location. |
| **Landscape** | The proposed route should not result in a lower quality or diversity of views for path users. |
| **Features of Interest** | Other than in exceptional circumstances, the proposed route should not remove paths from significant features of interest (natural or man-made), unless there are valid conservation reasons for doing so. |
| **Financial** | The proposed route should not result in significant additional maintenance costs being imposed on the Council. Applicants may be required to enter into a maintenance agreement with the Council. |
| **Safety** | The proposed route must not subject users to any potential dangers or hazards. It should not introduce conditions (e.g. darkness, narrowness, poor visibility, and hiding places) likely to encourage antisocial or criminal behaviour, nor should it create a perception that this may be the case. |
| **Needs of all users** | The proposed route should include features to improve access for impaired users. For example, gates rather than stiles, and ramps rather than steps. Authority for the erection of stiles/steps will be given only in exceptional circumstances. |

**Cost**

Should the Council decide to proceed with a diversion application, the law allows the Council to recover the costs which it incurs in making the Order irrespective of whether the Order is confirmed or not. The costs which can be recovered include:

* notifications to landowners, statutory undertakers, prescribed organisations, other local authorities and other persons;
* posting notices on site and elsewhere;
* an advertisement in one local newspaper for each of the stages of the order; namely making the order, confirming the order and coming in to force of the order (where the final stage is separately required). The newspaper must circulate widely and reliably in the area covering the order and under the requirement to obtain best value less conventional publications such as free sheets may satisfy the requirement;
* site inspections;
* research into the status and previous history of the way;
* negotiations with applicants and other interested parties before making the order;
* preparing reports for Committee; and
* preparing orders and notices.

A charging schedule is set out in Appendix 1 and is for guidance only. The costs are indicative and can vary depending on the number of paths the applicant wants to alter and the complexity of the proposal. Generally, applicants are advised that the total cost is in the region of £2,500 to £3,500 (if they employ the Council to liaise with objectors in order to seek a resolution). This depends on whether the Council (or its representatives) has been employed to liaise with objectors in an attempt to resolve any objections.

In some cases, the Council will contribute towards all or some of the costs associated with processing an application. This can be due to a variety of reasons including:

* Where the proposal has significant public benefit.
* Where the proposal regularises a long-standing anomaly.
* Where a route is obstructed but the current landowner is not responsible for the obstruction.
* Where there is financial hardship (to be evidenced in receipt of a means tested benefit) and the proposal adds significant public benefit to the PRoW network (e.g. the creation of a new route in addition to the diversion). Each case will be judged on its merits and the Council’s decision will be final.

As a general rule, invoices will be sent at the following stages:

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| --- | --- | --- | --- |
| **Invoice** | **High** | **Low** | **Main Activity** |
| 1 | 5 - 6 months | 8 - 11 months | Informal 30-day consultation and resolution of any objections  Presentation of proposal to CRoW Panel.  Formal 28-day consultation |
| 2 | 7 – 8 months | 12 - 15 months | On resolution of any objections to formal consultation |
| 3 | 9 – 12 months | 16 - 20 months | Full and final public consultation of the confirmed order |
| 4 |  | | Update the Definitive Map and Statement, and archive Order |

Adjacent paths can be considered at the same time and included in the same application.

Where the Council (or its representative) has been employed in an attempt to resolve any objections, payment must be paid in full before work can start on the next stage of processing the application.

Appendix 1 sets out the charging schedule for this.

**Refunds**

Applicants are not entitled to a refund other than under the conditions detailed below:

1. The authority fails to confirm an unopposed PPO application.
2. In the case of an opposed PPO application, the authority fails to submit the order for confirmation to the Secretary of State without the agreement of the person who requested the order.
3. Where the PPO cannot be confirmed because it has been invalidly made.

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

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| **Appendix 1 -** | **Elements of the administrative process for Public Path Orders and related costs to be recovered from applicants** |

* Please note these costs are estimates only.
* In order that applications are processed in a timely manner, the council reserves the right to employ a consultant to act on its behalf. In these cases, the estimated costs below will still apply.
* When the time spent on a particular stage of the process is likely to exceed the estimated time, the applicant will be informed and asked if they wish to proceed.
* Due to the increased complexity of Public Path Orders made under other sections of the Highways Act 1980 or under the Town and Country Planning Act 1990, these are likely to be charged at a higher rate of £50 per hour (plus VAT).

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| **Indicative timeline** | | **Main Activity** | **Chargeable Hours Rates (18/19)**  **excl. VAT** | | | **Est.**  **Cost** |
| Professional | Technical | Admin. /Non-Technical |
| High | Low | **£52** | **£33** | **£25** |  |
|  | | **Pre-Application Stage** |  |  |  |  |
| Provide advice and liaise with potential applicant |  | 4 |  | £132 |
| **Validate Application** |  |  |  |  |
| 1-5 workings days | | Check application and associated documents for completeness | 1 |  |  | £526 |
| 1 - 4 weeks | | Score application against prioritising criteria | 1 |  |  |
| Provide applicant with an indicative timeframe for determination and ask if they wish to proceed |  |  | 1 |
| 1 - 2 months | 1 - 4 months | Visit site and meet applicant in order to inspect and formalise the proposal; identify necessary works, extent of the highway boundary, land ownership, etc. | 7 | 1 |  |
| 3 – 5  months | 5 - 7  months | **Undertake Informal 30-day Consultation** |  |  |  |  |
| Prepare maps showing proposal |  | 2 |  | £373 |
| Prepare Notice  Prepare and send consultation letters (incl. proof of postage)  Acknowledge representations | 3 |  |  |
| Draft Certificate of Posting and Erect Notice and Map on site |  | 3 |  |
| Inform applicant of the consultation outcome, asking if and how they wish to proceed | 1 |  |  |
| **Objections to Informal Consultation\*** |  |  |  |  |
| Depending on how the applicant wishes to proceed, the Council can be employed to liaise with objector/s in order to seek a resolution1 . | X |  |  | TBC |
| 5 - 6 months | 8 - 11 months | **Decision Stage** |  |  |  |  |
| Prepare report for CRoW Panel2 | 3 |  |  | £208 |
| Present report to CRoW Panel | 1 |  |  |
| **Make the Order (undertake 28-day Formal Consultation)** |  |  |  |  |
| Update maps showing proposal |  | 1 |  | £475 |
| Prepare Order and Notice | 2 |  |  |
| Legal Services/Spatial Information Team to validate Order and description |  | 2 |  |
| Erect Notice on site |  | 2 |  |
| Arrange for the Notice to be advertised in a local newspaper |  |  | 1 |
| Cost of advert in a local newspaper | £500 - £620 | | | |
| Acknowledge representations | 2 |  |  |  |
| Inform applicant of the consultation’s outcome | 1 |  |  |
| Prepare and send first invoice |  |  | 1 |
| 7 - 8 months | 12 -15 months | **Objections to Formal Consultation\*** |  |  |  |  |
| Depending on how the applicant wishes to proceed, the Council can be employed to liaise with objector/s in order to seek a resolution1 . | X |  |  | TBC |
| Prepare and send second invoice (if necessary) |  |  | 1 | £25 |
| **Refer to the Secretary of State\*** |  |  |  |  |
| Opposed Orders have to be referred to the Secretary of State for determination. Unless there are extenuating circumstances, the Council will only agree to refer an Order if the applicant agrees to meet all the Council’s associated costs | To be advised2 | | |  |
| 9 - 12 months | 16 - 20 months | **Confirm the Order\* (undertake 6-week Consultation)** |  |  |  |  |
| Visit site and meet applicant in order to agree works identified in the Order |  | 4 |  | £470 |
| Check work and erect signs showing diverted route |  | 2 |  |
| Prepare Confirmation of the Order and Notices, and liaise with Legal Services to seal the Order | 1 |  |  |
| Erect Notice on site |  | 2 |  |
| Arrange for the confirmed Order to be advertised in a local newspaper |  |  | 1 |
| Cost of advert in a local newspaper | £500 - £620 | | | |
| Acknowledge representations | 1 |  |  |  |
| Inform applicant of the consultation’s outcome | 1 |  |  |
| Prepare and send third invoice (if necessary) |  |  | 1 |
| **Post-Confirmation Stage** |  |  |  |  |
| Update the Definitive Map and Statement |  | 2 |  | £166 |
| Arrange for the Order to be archived |  |  | 1 |
| Prepare and send final invoice |  |  | 1 |

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| 1. | Applicants can assist with liaising with objectors in order to minimise costs. However, the Council has a duty to consider all representations. The Council liaising with objectors is no guarantee of a successful outcome. |
| 2. | If objections cannot be resolved and contrary to the wishes of applicants/objectors, the CRoW Panel may choose to use its discretionary power and not proceed with the application or overturn its decision, rather than the Council entering a process with the Secretary of State. |

**Appendix 2 - The Legislation**

* **Public Path Creation Order – section 26 Highways Act 1980**: A new right of way may be created where it appears to the Council that there is a need for it.
* **Public Path Extinguishment Order – section 118 Highways Act 1980**: A right of way may be extinguished where it is not needed for public use. Please be aware that the Council does not generally support applications for extinguishments unless they are part of a wider package with compensating public benefit. The Council will accept stand-alone applications for extinguishments only in exceptional circumstances.
* **Public Path Diversion Order – section 119 Highways Act 1980**: A right of way may be diverted where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where: i) the diverted route will be as equally or more convenient as the current route to the public; and ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway. The effect the diversion would have on public enjoyment of the path as a whole must also be taken into account before a decision is made.
* **Rail Crossing Extinguishment / Diversion Order – section 118A / 119A Highways Act 1980**: A right of way which crosses a railway may be extinguished (section 118A) or diverted (section 119A) where it can be shown that it is expedient to do so in the interests of public safety, but only if it is not possible to make the crossing safe.
* **Special Extinguishment / Diversion Order – section 118B / 119B Highways Act 1980**: A right of way may be extinguished (section 118B) or diverted (section 119B) for reasons of school security (for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity) or, if it falls within a designated high crime area, for reasons of crime prevention.
* **SSSI Diversion Order – section 119D Highways Act 1980**: A right of way may be diverted in order to protect a Site of Special Scientific Interest.
* **Public Path Order (extinguishment or diversion) – section 257 Town & Country Planning Act 1990**: A path may be diverted or stopped up if it is necessary to enable development to take place. It is important to note that an Order cannot be made under this Act if the development has already been completed or is substantially complete.

**Appendix 3 - Contact Information**

**Mr. Paul Rochfort**

**Principal Rights of Way Officer**

**Staffordshire County Council**

**2 Staffordshire Place**

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**Stafford**

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