

# **BRIEFING NOTE FOR HIGHWAYS COMMITTEE**

## **PUBLIC PATH DIVERSION ORDERS**

### **Section 119 Highways Act 1980**

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The following briefing note sets out the criteria and considerations for the diversion of a public footpath or bridleway.

Section 119 of the Highways Act 1980 gives a discretionary power to the Council to divert a public path. A "Diversion Order" has the effect of extinguishing a path or length of path and creating an alternative path simultaneously.

The Council may make an Order where it appears to the Council that it is expedient to do so:-

- (i) in the interests of the owner, lessee or occupier of the land crossed by the path; and/or
- (ii) in the interests of the public

A Diversion Order shall not alter a point of termination of a path except to another point on the same highway or one connected with it and which is substantially as convenient to the public.

The Council (or the Secretary of State if the Order is opposed) may not confirm a Diversion Order unless satisfied that above criteria are met and that the path or way will not be substantially less convenient to the public as a result of the diversion and that it is expedient to confirm the Order having regard to the effect which:-

- (i) the diversion would have on the public enjoyment of the path as a whole:
- (ii) the diversion would have on land served by the existing path, and
- (iii) the new path would have on land over which the right of way is to be created.

A path which is diverted from land owned by one person onto land owned by another person may give rise to claims for compensation and this can be taken into account when considering points (ii) and (iii) above.

When deciding whether to confirm a Diversion Order regard should also be had to any material provision of a rights of way improvement plan prepared by the highway authority which includes the land over which the order would create and extinguish a public right of way. The Rights of Way Improvement Plan for County Durham 2007-2011 refers to diversion orders and states that 'We consider all applications on a case by case basis bearing in mind the

legal tests that need to be applied..... In considering the types of applications described above, we will ensure that we properly balance the interests of owners/occupier/lessee of land with those of the path users as required by the relevant legislation.'

The Council may require an applicant (or joint applicants) to defray or make a contribution to:-

- (i) any compensation payable;
- (ii) any expense to the Council in facilitating the convenient exercise of any new path.

In making a Diversion Order the Council is required under Section 29 and 121(3) of the Act to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. The Council is also required, under the Countryside Act 1968 to have regard to the desirability of conserving the natural beauty and amenity of the countryside.

#### **NOTE**

Section 119 of the Highways Act 1980 creates a two part test with different criteria at the order making and confirmation stage. In *Hargrave v Stroud District Council (2002)* it was confirmed that when deciding whether to make an order the Council is entitled to take into account the tests to be applied at the confirmation stage as it would be nonsensical if the Council made an order where it was clear the proposed diversion would not meet the criteria for confirmation.