

**BRIEFING NOTE FOR HIGHWAYS COMMITTEE**

**EXTINGUISHMENT OF FOOTPATH AND BRIDLEWAYS –  
SECTION 118 HIGHWAYS ACT 1980**

The following briefing note sets out the criteria and considerations for the making of a Public Path Extinguishment Order.

Section 118 of the Highways Act 1980 provides a power for the Council to extinguish footpaths and bridleways.

The Council may only make a Public Path Extinguishment Order where it appears that:

It is expedient that the path or way should be stopped up on the ground that it is not needed for public use (Section 118(1)).

The Council (or the Secretary of State if the Order is opposed) shall not confirm a Public Path Extinguishment Order unless it is satisfied that:

It is expedient so to do having regard to:

- (i) The extent (if any) to which it appears that the path or way would, apart from the Order, be likely to be used by the public, and
- (ii) The effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation (Section 118(2)).

When considering either the making or the confirmation of a Public Path Extinguishment Order the Council (or the Secretary of State as the case may be) may have regard to the extent to which any Public Path Creation Order, Public Path Diversion Order or Rail Crossing Diversion Order being considered concurrently would provide an alternative path or way (Section 118(5)).

In addition, when considering the making or the confirmation of a Public Path Extinguishment Order, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded (Section 118(6)).

When considering whether or not to make a Public Path Extinguishment Order the Council must also have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna, and geological and physiographical features (Section 29 Highways Act 1980).

Finally, when considering whether to confirm an order the confirming authority should also have regard to any material provisions of any Rights of Way Improvement Plan.

## Notes

Section 118 of the Highways Act 1980 creates a two part test with different considerations at the order making and confirmation stage. The test of expediency changes from public “need” when making the order to “likely use” by the public when confirming the order.

The Committee must first consider whether the path is or is not needed for public use. It should take into account any representations with regard to the need for the path. It is possible for a path to be used but not needed, if for example, alternative routes are available and suitable for the purposes for which the existing path is used.

If the path is considered to be needed then an Extinguishment Order should not be made.

If the path is not thought to be needed for public use and the Committee feels it is expedient to make an Order, DoE Circular 2/1993 states it is important in making Extinguishment Orders that Authorities give due weight to the criteria to be considered in the confirmation of these orders. Therefore the Committee should also give some consideration to the tests to be applied on confirming an Order.

When considering likely use of the path, the Council may take into account any changes in the area which could affect use (e.g. the building of a new housing development, restoration of opencasting) and should also take into consideration the effect of the extinguishment on the land served by the path allowing that there are provisions for compensation for any persons loss of value in the land.

In considering both tests, if the path is obstructed, this fact should normally be disregarded, although a permanent obstruction could be a factor to be taken into account. Whether an obstruction is temporary will depend on its nature and whether it is likely to endure. Even a building which may seem to be permanent could be considered temporary if, as an unlawful obstruction, it is liable to be removed.