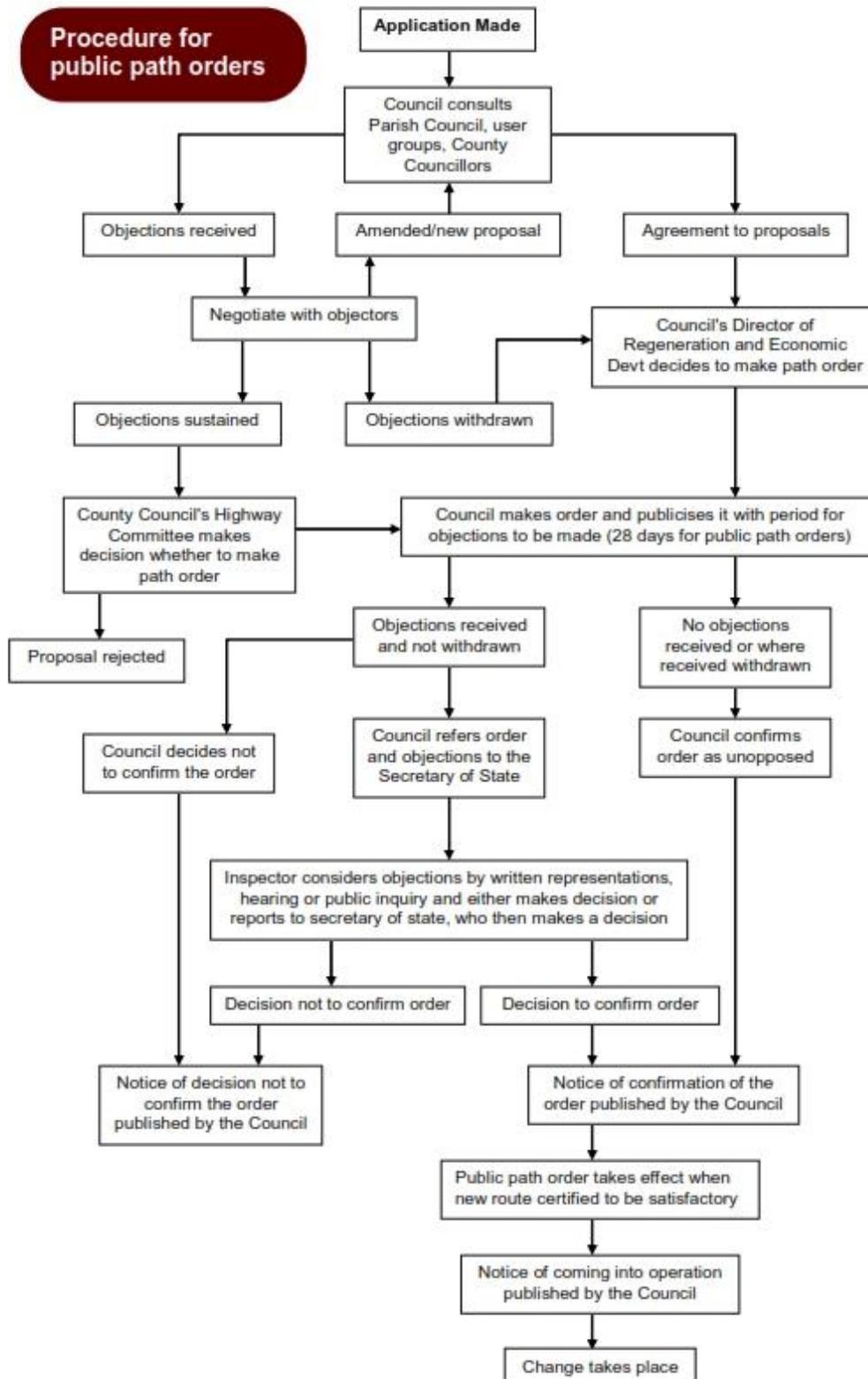


PUBLIC RIGHTS OF WAY PATH ORDER INFORMATION

Procedure for public path orders



CONCURRENT PATH ORDERS ie WHEN DOING A MIX OF CREATION AND/OR DIVERSION AND/OR EXTINGUISHMENT

Note that when considering a creation or diversion order, made in association with an extinguishment order the extent to which the proposed path/s would provide an alternative to that proposed for extinguishment may be taken in to consideration in determining whether or not to confirm the extinguishment order. Account should be taken of the convenience of the alternative path compared to that which is to be extinguished and if this is significantly less than that enjoyed by users of the existing path. Full consideration should be given to the matters set out in all the relevant sections of the Highways Act 1980 (described below).

CREATION OF FOOTPATHS AND BRIDLEWAYS – SECTION 26 OF THE HIGHWAYS ACT 1980

Section 26 of the Highways Act 1980 provides a power for the Council to create footpaths or bridleways.

The Council may make an Order where it is considered a need for the path but having regard to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area and the extent the creation would have on the rights of those with a legal interest in the land (eg ownership).

Consideration must also be given to the interests of forestry and agriculture, and the effect, if any, the creation of the path will have on these activities. However, authorities may decide that any effects may be compensated for.

The Highways Act provides for the payment by the order making authority of [compensation](#). In some cases authorities have been able to agree with the landowner a sum for compensation before an order is confirmed. However, this is not always possible. If a dispute arises as to compensation, it is determined by the Lands Tribunal after the order has been confirmed.

EXTINGUISHMENT OF FOOTPATH AND BRIDLEWAYS – SECTION 118 HIGHWAYS ACT 1980

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)).

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).

DIVERSION OF FOOTPATH AND BRIDLEWAYS – SECTION 119 HIGHWAYS ACT 1980

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.

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.