

GUIDANCE NOTES FOR APPLICANTS FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATHS AND BRIDLEWAYS

Please read these notes carefully before completing the appropriate application form as incorrect or incomplete information can cause delays. An existing path must not be extinguished on the ground until the legal process is concluded.

1. Statutory Powers

- 1.1 There are a number of statutes that empower local authorities to make Orders for the extinguishment of public footpaths and bridleways. In practice most orders are made either under the Highways Act 1980 or the Town and Country Planning Act 1990. These notes, therefore, confine themselves to applications under those two main provisions.
- 1.2 The first thing you will have to decide is which of the statutory provisions is appropriate to your circumstances. The following paragraphs briefly describe the circumstances in which each statute operates, but should you require any further information or advice please contact the Engineering Division on 01246 217394.

Highways Act 1980 – Section 118

- 1.3 Section 118 of the Highways Act 1980 empowers a local authority to make an Order extinguishing a path where it appears to them expedient to do so on the grounds that the path **is not needed for public use**. The authority must take into account the extent to which the path is likely to be used by the public and will disregard any temporary circumstances preventing or diminishing the public's use of the path. These powers may also be used in those situations where an application is being made to extinguish part of the width of a path.
- 1.4 It should be noted that the Highways Act is not appropriate for the extinguishment of paths affected by new development unless that development is substantially complete by the time an application is made.

Town and Country Planning Act 1990 – Section 257

- 1.5 Section 257 of the Town and Country Planning Act 1990 empowers local planning authorities to make an Order stopping up a public footpath or bridleway to enable development to be carried out for which planning permission has been granted by them (or by the Secretary of State on appeal).
- 1.6 Applicants should only use this form if North East Derbyshire District Council has granted them planning permission.
- 1.7 It should be noted that the powers to extinguish a path without a replacement being provided are only used sparingly. Applicants will normally be expected to make every effort to accommodate a suitable alternative path as close to the existing route as possible.
- 1.8 The Council cannot make an Order under Section 257 until **after** planning permission has been granted, nor can it normally consider an application on the strength of an outline planning permission only. Outline permission is unlikely to contain sufficient detail to satisfy the Council that the extinguishment is **necessary to enable the development to be carried out**.
- 1.9 The Council expects the applicant to have a legal interest in the land that would be affected by the Order. This is so that, if an Order is brought into effect, the applicant would have the necessary rights enabling them to undertake any works authorised or required by the Order.

2 Period for Processing an Application

- 2.1 The processing of an application under both of the above Acts is governed by statutory procedures that provide for the publication of the proposals, receipt and consideration of objections, etc.
- 2.2 The **minimum** time likely to be taken to secure the confirmation of an unopposed Order is in the region of 6 months from the date of receiving all the necessary information. However, if objections to the proposal are received, the period before a decision is taken on the Order will be considerably longer.

3. **Objections**

- 3.1 On receipt of an application the authority will normally carry out an initial consultation exercise to gauge the public's reaction to the proposal. If any objections are received by the Council they may be copied to the applicant, who may wish to negotiate with the objectors with a view to trying to overcome their concerns.
- 3.2 The next stage in the process involves the making and formal advertising of an Order both on site and in a local newspaper. A period of at least 28 days is normally allowed for any written objections or representations to be made.
- 3.3 If there are no outstanding objections to the making of an Order, it has to be **confirmed** and advertised again before it takes effect legally.
- 3.4 Where there are outstanding objections that cannot be resolved the Council may consider it appropriate to submit the Order to the Secretary of State for confirmation. The Secretary of State will normally decide to hold a local inquiry into the matter or deal with the matter by written representations.

4 **Costs**

- 4.1 If the Council decides to proceed with an application for an Extinguishment it will normally do so subject to the applicant agreeing to cover the Council's costs incurred in processing the application, making the Order, consulting relevant bodies and publishing the statutory notices.
- 4.2 At the present time these costs comprise £ 1000 (for administration) plus all advertising costs. These charges are subject to continuous review and may be increased. You will be notified of any increase in charges.
- 4.3 Applicants should normally expect to bear the cost of promoting an Order. The Council has the discretion to waive part or all of the charges where this is considered appropriate. Any applicant wishing the Council to consider waiving all or part of the costs (for example where proposals are of benefit to rights of way users) should make this clear in their application and state the grounds for such request.
- 4.4 An Order is advertised when it is first made by the Council and again when it is confirmed.
- 4.5 Applicants may still be liable for the payment of costs if they withdraw an application.

5 Applications

- 5.1 Please ensure that you answer **all** questions correctly and fully in accordance with the instructions given on the form.
- 5.2 It cannot be stressed too strongly that it is for the applicant to make the case for the extinguishment of a path, having regard to the statutory grounds under which the application is made. If the Council is not satisfied as to these matters, it will not be able to proceed with the application.
- 5.3 The following documentation **must** accompany your completed application form:
- (a) A **clear map** at a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily available. The scale and north point should be clearly shown as well as grid references. The map should also contain sufficient detail to show the effect, not just on the path or way to be extinguished, but also on those highways connected to it.
 - (b) If any person other than the applicant has an interest in the land over which the existing path runs, a **letter** from that person indicating their agreement with the application.

6 Return of Application Form

- 6.1 One completed copy of the application form, together with all necessary enclosures, should be returned to:

Engineering Division
North East Derbyshire District Council
District Council Offices, 2013 Mill Lane
Wingerworth
Chesterfield
Derbyshire
S42 6NG