

NOTES FOR APPLICANTS

PUBLIC PATH EXTINGUISHMENT ORDERS

These notes are intended to advise you of matters that should be considered before you make an application for an Extinguishment Order. The extinguishment order process is a public one, and therefore the procedures which have to be followed are designed to ensure that the public are given the opportunity to comment on a proposal during the informal consultation stage and again when an Order is advertised.

As a general rule Extinguishment Orders tend to be controversial and ultimately unsuccessful, therefore it is essential that all alternative possibilities are explored before applying to extinguish a path.

The Legal Tests

Extinguishment Orders are made under Highways Act 1980 Section 118, and Orders must satisfy the relevant legal tests under the Act, as follows:

- Before making an extinguishment order, it must appear to the authority that it is expedient to stop up (extinguish) the path or way on the ground that it is not needed for public use.
- Before confirming an extinguishment order the authority or the Secretary of State must be satisfied that, it is expedient to confirm it having regard to the extent to which the path or way is likely to be used and the effect which closure would have on land served by it, taking into account the provisions for compensation.
- Both in making and confirming an extinguishment order, the authority and the Secretary of State must disregard any temporary circumstances (such as obstructions) preventing or diminishing the use of the path or way by the public.

The applicant will be responsible for proving that the path or way is not needed for public use, and generally speaking a path cannot be extinguished simply because it is not well-used. An applicant will need to show that the path is not needed, for example because there is a better alternative route nearby, or because the path serves no useful purpose or leads to a dead-end which is not a destination in itself e.g. a viewpoint. An application will not succeed if the path is obstructed, as this will make it difficult to prove whether or not the path is needed. If the path is currently obstructed we would advise that it is opened up and left for a period of time (eg at least a year) to see if the public use it.

How much will an extinguishment order cost?

The cost of an extinguishment order is the same as a diversion order, as the structure of the processes are the same. The charges are subject to regular review and may increase annually.

Stages of an extinguishment order

Briefly, the various stages are:

1. Initial advice, and site visit between the applicant and the Definitive Map Officer
2. Submission and registration of the application
3. Initial consultations with statutory consultees and other interested parties
4. Initial liaison with applicant and objectors if the proposal is opposed*
5. Making of a extinguishment order, and arranging advertisement of the Order
6. Liaison/negotiations with applicant and objectors if the Order is opposed*
7. Confirmation by the authority of an unopposed Order,
8. Arranging advertisement of Orders confirmed by either the authority or the Secretary of State
9. Removal of extinguished path from the Definitive Map and closure of path on the ground.

* - at all stages where there are objections the authority may decide not to proceed with the Order.

Invoices

The applicant will receive an invoice for costs at the end of certain stages; please refer to the Schedule of Charges below. Non-payment of costs may prevent moving on to the next stage. Please note that costs are not refundable after any stage in the process, whether or not the Order is successful. The charges made are to recover the costs already incurred by the council, at the completion of each stage.

How long will it take?

Applications are generally processed in chronological order of receipt and there is currently a large backlog of applications. It may take several months before your application reaches the top of the list. Once an application is underway we would hope to complete it in around 12 - 18 months, but objections at any stage will cause delays and may ultimately lead to rejection of the application.

The existing public right of way must remain open and available until such time as an Extinguishment Order is confirmed and the process is complete.

The initial or 'informal' consultation stage

We have a statutory duty to consult the relevant Parish Council and District Council before making an Extinguishment Order. We will also consult various local user group representatives and interested parties including The Ramblers, the British Horse Society,

etc. We also consult statutory undertakers such as gas, water and electricity companies; they will receive a plan of the proposal and an explanatory letter.

The informal consultation is very valuable as it gives the opportunity to address potential concerns before an Order is made. It is likely that representatives of user groups will wish to inspect the route proposed for extinguishment (and any local alternative rights of way if applicable) before making their comments, and applicants should allow access for this purpose.

How do we decide if an Order should be made?

There would be little point in making an Order that could not then be legally confirmed, so before making an Order we have to be confident that the proposed extinguishment satisfies the legal tests set out under Section 118 of the Highways Act 1980 (above) for both making and confirming an Order. If there are no objections at the informal consultation stage, and the proposal satisfies the legal tests for making an Order, the authority has the power to make an Order.

If objections are received in response to the informal consultation we will discuss with the applicant whether they still wish to pursue the proposed extinguishment. To mitigate against a further charge, as indicated in the Schedule of Charges below, it would be open to the applicant to liaise directly with the objectors. If we (the County Council) liaise with the objectors on behalf of the applicant there would be a further charge to cover our costs.

If objections made to the informal consultation are not withdrawn, the authority will decide whether the proposal is likely to succeed and advise the applicant accordingly. If it is considered it may succeed, and if the applicant is prepared to pay the necessary further charge, authorisation to make an Order would need to be sought by the Definitive Map Officer from the Assistant Director of Transport, Waste and Countryside Services for the process to proceed.

The making of the Order

If an Order is to be made the Definitive Map Officer will draft an Order.

The Order is then sealed and signed by our Legal Service, and becomes a legal document. A public notice of the making of the Order must be made and advertised in a local newspaper, and notices must also be posted on site at each end of the section of path to be extinguished. The site notices remain in place for 28 days. During this time anyone can comment on or make objections to the Order. Objections must be in writing and addressed to the County Council.

Objections to the Order

Objections are considered valid if they are made in writing to the County Council within the 28 day notice period, even if the objections appear unfounded.

By law we are only able to confirm unopposed Orders; however, we can attempt to seek the withdrawal of objection(s), at a cost indicated in the Schedule of Charges below. If this it is not possible to persuade the objectors to withdraw their objections we would decide whether to either refer the Order and objection(s) to the Secretary of State for confirmation, or whether to abandon the Order. The Secretary of State usually appoints a Planning Inspector to determine whether or not to confirm an opposed Order; this is done either by written representations, a formal hearing or a Public Inquiry.

We have no legal obligation to send an opposed Order to the Secretary of State, and indeed may decide not to do so if we consider that an Inspector would be likely to refuse to confirm the Order. In such cases a formal resolution not to proceed with the Order would be made by the Assistant Director of Transport, Waste and Countryside Services, and the applicant and other consultees would be informed of such in writing.

When the Order is confirmed

Once the Order has been confirmed, either by the County Council or by the Secretary of State, public notice is given and, as with the making of the Order, the notice is advertised in a local newspaper and site notices are displayed. This time the statutory period for notices is 42 days (6 weeks) rather than 28 days. During this period challenges can be made to the Order in the High Court, but only on the grounds that the correct legal procedure has not been followed by the County Council. Generally, such challenges are rare.

No guarantee of success

Officers will make every effort to minimise unnecessary costs for the applicant and will advise the applicant on the realistic chances of success. Applicants should be aware that costs are not refundable should a proposal or an Order be abandoned or fail to be confirmed. There are several points at which a proposal or Order may fail or be abandoned:

- If a proposal does not meet the legal tests for making an Order it may be rejected by the authority; however, the applicant will be given the opportunity to amend the proposal. This could happen before or after the informal consultation.
- If an Order attracts objections, and the authority believes that it would not be confirmed by the Secretary of State, then a decision may be taken to abandon the Order at this stage.
- Even if the authority submits an Order to the Secretary of State there is no guarantee that the Order will be confirmed by the Inspector appointed by the Secretary of State.

If you wish to apply for an Extinguishment Order, please contact us for advice and an application form:

Definitive Map Team
North Yorkshire County Council
County Hall
Northallerton
DL7 8AD
Tel: 01609 780780
Email: paths@northyorks.gov.uk

**SCHEDULE OF CHARGES FOR PROCESSING
AN APPLICATION FOR A PUBLIC PATH ORDER**

PLEASE NOTE: Charges below relate to work carried out during the period 1st April 2019 to 31st March 2020. Charges will be reviewed annually.

Stage	Actions	Unopposed Orders	Opposed Orders	Notes
1. Initial advice and site visit	Provision of advice to the applicant and site visit to discuss the proposal	£460	£460	
First invoice Stage 1: £460				
2. Application	Receipt and recording of application	£60	£60	
3. Initial consultation	Preparation of plan showing proposal, initial consultations	£710	£710	Consultation with statutory consultees, including local councils and utility companies. User groups also consulted.
Second invoice Stages 2 & 3: £770				
4. Initial liaison with objectors	Liaison and site visit with applicant and objectors, preparation of Decision Report. A decision will be taken to make an Order or reject the proposal.	n/a	£730	Only charged where a proposal is opposed. If opposed, the applicant will be given the opportunity to amend or withdraw the application.
Invoice (if applicable) Opposed proposal: Stage 4: £730				
5. Order Making	Site survey, final clarification of route with applicant, drafting of Order, Order plan and Notice, sealing of Order, advertising Notice in local press, posting Notices on site, receive, record and acknowledge responses to the advertising of the Notice	£1,780 plus advertising Further £170 for each additional route	£1,780 plus advertising Further £170 for each additional route	Advertising costs: See below.
Invoice Stage 5: Minimum £1,780 + cost of advert.				

6. Opposed Orders	Attempt withdrawal of objections, consideration of forwarding Order to Planning Inspectorate (PINS), preparation of a Decision Report.	n/a	£1,320	Only charged where an Order is opposed.
Consequences of Objections:	NYCC may abandon an Order at this stage if officers believe that it is not capable of being confirmed due to the strength of objection.			

Invoice (If applicable) Opposed Order: Stage 6: £1,320

7. Forwarding opposed Order to Planning Inspectorate (PINS)	Preparation of various documents for a public inquiry or formal hearing. Representation at public inquiry or formal hearing	No charge	No charge	
8. Confirming an unopposed Order	Confirm and seal the Order, advertise confirmation in local press, post notices on site	£390 plus advertising	Advertising only	If confirmed by PINS the cost of sealing will not be charged. Advertising costs: See below.
9. Way-marking & signposting	Installation of roadside signpost (where applicable), route-diverted signs, waymark arrows to mark new route, marker posts as required. Check works on site and certify where applicable. Close file and update records	Works to be carried out by NYCC on confirmation of the Order		Materials and labour charged at cost.

Final invoice

Unopposed Order: Stage 8 (and 9 if applicable): £390 + cost of 2nd advert (+ cost of way-marking etc., if applicable)

Opposed Order: Stage 8 (and 9 if applicable): Cost of 2nd advert (+ cost of way-marking etc., if applicable)

Total Cost of Diversion Order:	<p>Unopposed at all stages: Minimum £3,400</p> <p>plus advertising costs, any costs relating to provision of gates or any other necessary works, and relating to any signposting and waymarking.</p>	<p>Opposed Order: Minimum £4,130 (objection at stage 3 only) Minimum £4,720 (objection at stage 5 only) Minimum £5,450 (objections at stages 3 and 5)</p> <p>plus advertising costs, any costs relating to provision of gates or any other necessary works, and relating to any signposting and waymarking.</p>
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Advertising costs: Actual cost will be recharged. Costs vary between newspapers across the County - between £400 and £700. Complex diversions will cost more to advertise.