

NOTES FOR APPLICANTS

PUBLIC PATH DIVERSION ORDERS

These notes are intended to advise you of matters that should be considered before you make an application for a Diversion Order.

You will find information below relating to:

- Requirements regarding the condition of existing public rights of way
- Physical aspects that would make a proposed alternative route suitable
- The legal matters that the County Council will need to consider
- Liaising with your neighbours if they may be affected by your proposal
- The cost of applying for a Diversion Order
- The stages of processing of an application

The existing public rights of way:

Before you consider a proposed new route, it is very important that all existing public rights of way through your property are open and available for public use and easy to follow (via way-markers where necessary). Any gates should open easily, and stiles should be in a good, usable condition. Paths should be clear of obstructions including encroaching hedges, overhanging branches, barbed wire and locked/tied gates. If a path is difficult to follow due to lack of way-marking, please contact the public rights of way team for assistance. Consider potential responses to your proposal: difficulties encountered by the public whilst using existing public rights of way across your land may prompt objections to a proposed diversion of a path.

Considering a new route:

Selecting a suitable new route is very important, and getting it right at this stage will reduce the likelihood of objections being made during the Order-making process. The proposal should not only satisfy the relevant legal tests under Section 119 of the Highways Act 1980 but should also be seen as expedient and fair.

The diversion 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 the Order is advertised.

Width: Footpaths should be at least 2.0 metres wide and 4.0 metres for a bridleway, but generally the wider the better.

If a new route is to be enclosed by a fence we require minimum widths of 3.0 metres for a footpath and 5.0 metres for a bridleway. If a route is to be enclosed by hedges, an extra metre is required from the edge of the path to the root of the new hedge.

Distance: The proposed route should be as direct as possible and not add significant distance to the overall length of the route.

Views: Try to choose a route that offers views as good as, or better, than the existing route.

Surface: The new route must have a surface that will withstand the expected use. It should be firm, dry and even. Soft, wet or boggy ground, or difficult terrain, would be unacceptable.

Safety: Consider the safety of path users and try to minimise their exposure to risk. If the new route is shared with vehicles, will there be blind spots or hazardous junctions on the new route?

Barbed wire or electric fencing adjacent to any route is not acceptable unless it is completely shielded from path users.

Security & Privacy: You may be considering diverting a public right of way away from a dwelling onto the property boundary in order to improve privacy or security. Consider the effect on neighbours if you wish to divert onto a boundary. Whilst you may feel happier if the public are diverted onto the edge of your land, your neighbour may have concerns.

The legal tests:

Before making an Order, the authority (North Yorkshire County Council) must be satisfied that:

- i) It is expedient to divert the path in the interests either of the public or the owner, lessee or occupier of the land crossed by the path.
- ii) The authority must also be satisfied that the proposed diversion does not alter any point of termination of the path, other than to another point on the same path, or to another highway connected with it, and which is substantially as convenient to the public, (i.e. the diversion must terminate on a highway, and not create a cul-de-sac). If a route is already a cul-de-sac, the termination point cannot be altered by a Diversion Order – there are other processes to manage this situation.

Before confirming a Diversion Order, the authority or Secretary of State must be satisfied that:

- i) It is expedient to divert the path in the interests of the person(s) stated in the order;
- ii) The route will not be substantially less convenient to the public as a consequence of the diversion
- iii) It is expedient to confirm the Diversion Order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing path, and on land affected by any proposed new path taking into account the provisions for compensation.

Land ownership and boundaries with neighbours:

The County Council will ask the applicant for a plan showing the area and boundaries of the applicant's land. It is the applicant's responsibility to ensure that information regarding land ownership and boundaries crossed by the proposed diversion is correct. Land and boundary disputes are a private matter and as such the County Council cannot become involved.

The installation of any necessary gates or stiles or the creation of gaps on the proposed diversion route must either be in the applicant's boundaries (fences, hedges, walls) or with the written permission of a neighbour where applicable. A copy of the neighbour's written permission must be provided to the County Council with the application. It is better to first ensure that no dispute/objections will arise from neighbours regarding land ownership or boundaries before submitting an application for a public path diversion.

The County Council will also ask for the names and addresses of all landowners who have property on the remainder of the public right of way and other parties with an interest in the same land, e.g. tenants, commoners, those with shooting or fishing rights, etc.

If you are proposing to divert a public path onto a neighbour's land, we will require written permission from your neighbour before we will proceed with the application.

The Hedgerows Regulations 1997:

If your proposed diversion route crosses an existing hedge you must check whether it is protected under the Hedgerows Regulations 1997. The local planning authority administers the regulations. The local planning authority will be the relevant district council or National Park Authority if the property is within a National Park. For more information go to www.gov.uk/guidance/countryside-hedgrows-regulation-and-management.

Please supply with your diversion application a signed declaration that you have the appropriate authority, where relevant, to remove the necessary section of hedge.

Land Drainage Consent

If a proposed diversion route operates in, over, under or near an Ordinary Watercourse, a [Land Drainage Consent](#) might be required from the LLFA (Lead Local Flood Authority), North Yorkshire County Council. Such activities might include:

- Constructing a culvert in any ordinary watercourse;
- Altering a culvert that would affect the flow of an ordinary watercourse; or
- Temporary works in an ordinary watercourse, such as scaffolding, a dam, pumping off excessive water or any major drainage work.

Note: This is to be considered separate to the planning process.

An ordinary watercourse is every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage that water flows through and doesn't form part of a main river.

If you own land adjoining, above or with a watercourse running through it, you have certain rights and responsibilities. In legal terms you are a 'riparian owner'. Further details of your rights and responsibilities can be found at "Living on The Edge - A guide to your rights and responsibilities of riverside ownership", published by the Environment Agency.

[The Environment Agency is responsible for consents relating to main rivers](#) and internal drainage boards (IDB) are responsible for consents in their administrative boundaries.

Please supply with your diversion application a signed declaration that you have the relevant consent for the proposed works.

Consent through your local planning authority may also be required for any new structures, please contact the relevant local planning authority.

Please be aware that it is the applicant's responsibility to ensure all relevant consents are in place.

How much will a Diversion Order cost?

The Diversion Order process involves a considerable and variable amount of officer time, and as such no exact figures for the costs of a particular application can be given at the outset. In addition, the County Council has no control over the costs charged for necessary advertisements, and charges vary between local newspapers across the county. Costs currently vary from approximately £200 - £800 per advertisement.

Charges for the various stages of the Diversion Order process are listed on the attached Schedule of Charges.

Briefly, the various stages are:

1. Initial advice and site visit
2. 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 public path Order, and arranging advertisement of the Order
6. Liaison/negotiations with applicant and objectors if the Order is opposed
7. Submission of an opposed Order to the Secretary of State (no charge). Please note that as the authority cannot recover any costs for the submission of opposed Orders to the Secretary of State, the authority will first make a decision whether or not to proceed any further. The authority does not have a statutory duty to submit opposed public path diversion Orders to the Secretary of State. If the authority does decide to proceed, it will require the preparation of various documents/reports/appendices for determination by written representations or a public hearing or inquiry, and representation at a public hearing or inquiry.
8. Confirmation by the authority of an unopposed Order, and arranging advertisement of Orders confirmed by either the authority, or the Secretary of State
9. Waymarking and signposting.

As previously mentioned, the costs of two advertisements (after Stages 5 & 8) must be added to the charges for the above i.e. one advertisement for the making of an Order, and one for the confirmation of 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 completed stage.

Who pays for structures and works on the new route?

The applicant is responsible for the cost of bringing the new route into being. This typically includes the provision of structures such as gates, stiles, bridges and way-marking, but may also include other works such as surfacing or drainage where required. Specifications must be agreed with the Diversion Officer before any work is undertaken. Gates and stiles can only be permitted if their purpose is to control stock (sheep, cattle, pigs and horses). Gaps, gates and stiles must conform to British Standard 5709:2018.

If the applicant is unable to carry out the necessary works they must agree to pay in advance for the works to be carried out by the County Council on their behalf.

The installation of way-marking and signposting is the responsibility of the Rights of Way Team, and this work will be undertaken by county council officers after the Order is confirmed. Charges will be made to the applicant for any necessary way-marking and signposting. We will ensure that the new route is adequately way-marked and will install 'Route Diverted' signs at each end of the old route.

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 a diversion Order is confirmed and any required works on the new route are completed and certified where applicable.

The initial or 'informal' consultation stage

We have a statutory duty to consult the relevant Parish Council and District Council before making a diversion 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 proposed route 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 confirmed, so before making an Order we have to be confident that the proposed diversion satisfies the legal tests set out under Section 119 of the Highways Act 1980 (above) for both making and confirming an Order. Both the existing path and the proposed path must be considered. If there are no objections at the informal consultation stage, and the proposal satisfies the legal tests for making an order, Officers have 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 diversion. 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 liaise with the objectors on behalf of the applicant there will be a further charge.

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, authorisation to make an Order must be granted by the Assistant Director of Transport, Waste and Countryside Services (the Diversions Officer will write a report to the Director).

The making of the Order

If an Order is to be made the Diversion 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 diverted. 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 is not possible we would decide whether to refer the Order and objection(s) to the Secretary of State for confirmation. 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 refuse to confirm the Order. In such cases a formal resolution not to proceed with the Order would be made by the Corporate Director – Business and Environmental Services, and the applicant and other consultees would be informed as such in writing.

When the Order is confirmed

Once the Order has been confirmed, 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 anyone can challenge the Order in the High Court on the grounds that the correct legal procedure has not been followed by the County Council. Such challenges are extremely rare.

In a few circumstances no new structures are required on new routes, e.g. across an open field; however, where new structures/works are required, a confirmed Order will only take effect once the works have been certified. The certificate will be issued when the Diversion Officer is satisfied that the new route has been made up to a suitable standard and in accordance with the Order. This includes the installation by the landowner of any gates, bridges, surfacing or drainage works and must comply with the current British Standard. The Rights of Way Team will undertake any way-marking and signposting once the works are complete.

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 an Order fail to be confirmed. There are several points at which a proposal may fail:

- 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.

**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	Pre-payment required before visit
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	£1780 plus advertising Further £170 for each additional route	£1780 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.