

Town and Country Planning Act

Section 257

Diversion/Stopping-up of footpaths, bridleways and restricted byways

Guidance Notes for applicants

July 2017

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Please read this information carefully before completing the application form, as incorrect or incomplete information can cause delay or additional costs. If you need help completing the form, or have any questions about the process, please contact the Planning team at the South Downs National Park Authority by telephoning: **01730 814810**, or via email at planning@southdowns.gov.uk. Alternatively, the Case Officer dealing with your planning application should be able to offer advice.

Other helpful sources of information:

The following sources of information may also be helpful to applicants:

- **DEFRA Rights of Way Circular 1/09**
<https://www.gov.uk/government/publications/rights-of-way-circular-1-09>
- **The Town and Country Planning Act 1990 (Section 257 and Schedule 14)**
<http://www.legislation.gov.uk/ukpga/1990/8/section/106>
- **The Town and Country Planning (Public Path Orders) Regulations 1993**
<http://www.legislation.gov.uk/uksi/1993/10/contents/made>
- **The Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013**
<http://www.legislation.gov.uk/en/uksi/2013/2201/made>

I. Introduction

Although rights of way matters are usually dealt with by the Local Highways Authority (typically the County Council), Local Planning Authorities (District/Borough Councils and National Park Authorities) have been granted powers by Section 257 of the Town and Country Planning Act 1990 (the 'Act') to make Public Path Orders for the diversion or stopping-up of footpaths, bridleways or restricted byways.

This type of application can only be made however where the Local Planning Authority is satisfied that the diversion/stopping-up is necessary to enable development to be carried out in accordance with a planning permission. The Growth and Infrastructure Act 2013 also amended section 257 of the Act to allow an diversion/stopping-up Order to be made before planning permission has been granted provided a planning application has been submitted. Please note that an Order cannot be confirmed however, until such time as planning permission has been granted.

Please note that the provisions of this Act do not apply to highways with vehicular rights (e.g. byways).

Important:

The grant of planning permission does not entitle developers to obstruct a public right of way. The diversion or stopping up of footpaths, bridleways and restricted byways is a separate process which must be carried out before the paths are affected by the development. It cannot be assumed that because planning permission has been granted that an Order under section 257 will invariably be made or confirmed. Development, in so far as it affects a right of way, must not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect.

2. Procedure for Making an Order

The procedure for diversion or stopping-up of rights of way made under The Town and Country Planning Act 1990 is prescribed in Schedule 14 of The Town and Country Planning Act 1990 and The Town and Country Planning (Public Path Orders) Regulations 1993.

2.1 Timescales

Public Path Orders can be a lengthy process and can take between 6 and 12 months even for an unopposed Order. The process can be considerably longer if objections are received. The text and flow diagram in 2.7 below gives an overview of the steps which will be involved. The SDNPA can offer further detailed advice on the process.

2.2 Process

When an application is received, the SDNPA carries out informal consultations on proposals with the appropriate Parish/Town Council(s), the user groups (such as the Ramblers' Association, Open Spaces Society and British Horse Society), the local Councillor(s) and the relevant County Council (Rights of Way section). It is often the case that initial proposals are amended at the consultation stage, and suggestions made by the consultees can help achieve a successful outcome.

Following the feedback from the informal consultations, the SDNPA will take a decision on whether or not to make an Order. In the event the SDNPA decides not to make an Order, the applicant will be advised of this and the reasons why. There is no right of appeal on this decision, other than by way of a Judicial Review (see section 2.6).

If an Order is made, notices advertising details of the Order are posted at both ends of the affected section of the public right of way. Similar notices are published in at least one local newspaper and statutory consultees are notified. These notices give a period of 28 days minimum in which representations or objections can be made.

2.3 Unopposed Orders

If at the end of the 28 day notification period no objections have been received, or if any so made are withdrawn, the SDNPA may confirm the Order without modification. Notices are again posted at the ends of the affected public right of way and in the press to this effect, and the applicant will be informed that the Order has been confirmed.

It is possible for someone to contest a confirmed Order but this has to be to the High Court and would be for a procedural or technical reason.

Please note that while an application to divert/stop-up a public right of way can be made in advance of planning permission being granted, the Order cannot be confirmed until such time that planning consent has been granted. Therefore an unopposed Order may sit pending confirmation until such time that planning consent is granted. If planning consent is not granted then the Order cannot be confirmed.

2.4 Opposed Orders

If objections are received to an Order within the specified time limit and are not withdrawn, the SDNPA must refer the Order to the Secretary of State who will take the decision on whether or not to confirm the Order.

2.5 When does the Order come into effect?

The Public Path Order will typically state that the diversion or stopping-up will come into force on the date at which the Order is confirmed by the Local Planning Authority. However, there may be instances in which the Order specifies a different date. This may occur for diversion Orders when certain works need to be carried out to the new route in order to make it suitable for use by the public e.g. resurfacing works, installation of way markers or gates etc. If this is the case, then the Order will usually state that the diversion will only come into force once the Local Planning Authority has certified that the new route (or other such works) have been completed. This certification process usually involves officers from the SDNPA and Highways Authority visiting the site to inspect the works, and an advertisement will need to be placed in a local newspaper.

The Local Planning Authority will notify the Ordnance Survey once an Order has been confirmed, and again if certification is required.

2.6 Challenging a Local Authority decision by Judicial Review

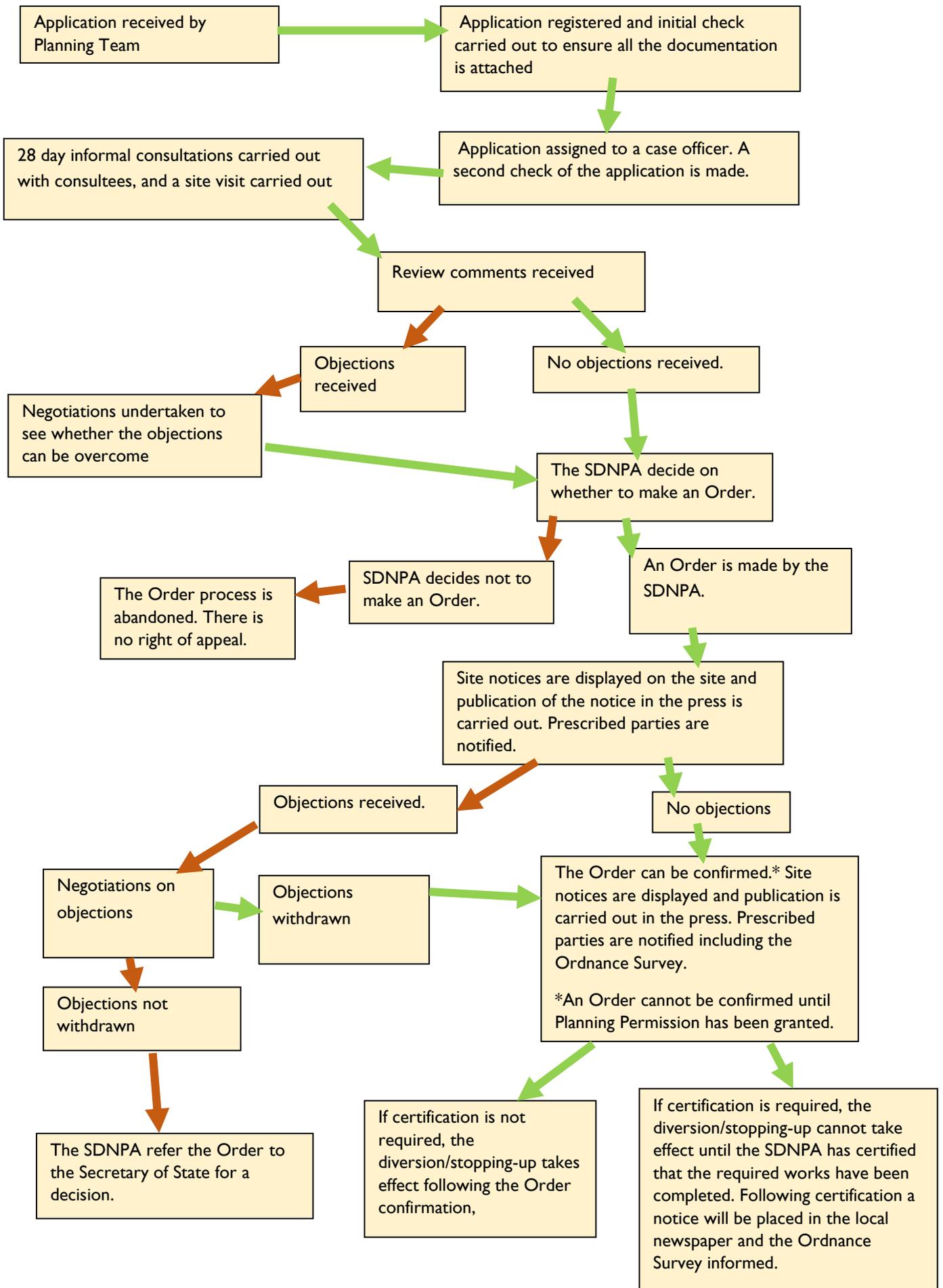
If any party is aggrieved by a Local Authority's decision i.e. the decision to not make an Order, or the decision to confirm an Order, then a third party can challenge this decision on a point of law.

This challenge must be made within 6 weeks of the Local Authority's decision. This time limit cannot be extended.

A challenge cannot be made simply because someone disagrees with the Local Authority's decision and instead a challenge can only be made if the Local Authority has acted unlawfully in coming to their decision.

Any person intending to commence a claim for Judicial Review is advised to seek independent legal advice promptly due to the strict time limits.

2.7 Flowchart showing procedure for S.257 applications



3. Costs

The diversion or stopping-up of a public right of way under S.257 usually results in a private benefit to the developer as it enables a development to go ahead which would otherwise not be possible. Applicants will therefore usually be required to cover the SDNPA's administrative and legal costs incurred from making an Order. These comprise the following costs:

3.1 Administration/Legal Costs

The current administration charge for making an Order is £1,500. This covers the SDNPA's administrative and legal fees, including case officer time and travel costs involved in undertaking site visits as well as the cost of land registry searches, costs of stationary and printing etc. VAT is not charged on this fee.

3.2 Advertising Costs

Public Path Orders must be advertised in a local newspaper twice: once when an Order is made and secondly when it is confirmed. A third advert may also be required to certify that the diversion can go ahead. The applicant will be required to cover the cost of these adverts. Depending on the timing of the works, it may be possible that the Order can be confirmed and certified at the same time, thereby saving costs. The SDNPA will discuss this possibility with the applicant during the process.

Advertising costs are outside of the SDNPA's control but are typically in the region of £100 to £400 per notice. The charge is dependent upon the amount of type required however, and it can therefore vary considerably for different Orders. Also, depending on the exact location of the right of way concerned, it may be necessary to advertise each notice in more than one newspaper. This can substantially increase the above estimate.

3.3 When is payment due?

The costs are split into two or three payments as set out in Table 3.1 below. The first payment includes the administrative/legal fee plus the cost of the first newspaper advert and is payable once the Order has been made and advertised. The second is payable when the Order is due to be confirmed. A third newspaper fee may be required if the new route needs to be certified.

By making an application, you agree to meet these costs. The SDNPA will write to you when payment is due. Confirmation of an Order will be deferred until payment has been received.

The applicant is advised to consider these costs carefully and the risks involved. Even if an Order is made, there is no guarantee that an Order will be confirmed and the decision may be taken by the Secretary of State. If an application is made in advance of planning permission being granted, then there is also a risk that the Order cannot be confirmed if the planning application is refused. The SDNPA will only issue refunds in exceptional circumstances (see 3.5).

Table 3.1 Application costs

Payment type	Amount	When due?
Administrative + legal fee	£1500 (no VAT)	When the Order is made
Advert in local newspaper (first)	Variable depending on local newspaper (inc. VAT)	When the Order is made
Advert in local newspaper (second)	Variable depending on local newspaper (inc. VAT)	When the Order is due to be confirmed
Advert in local newspaper (third)	Variable depending on local newspaper (inc. VAT)	When the required works are certified by the SDNPA as complete

3.4 Cost of the Works

In addition to the above costs, applicants are also required to cover any costs required as part of the diversion/stopping-up process. This may include installing way marking, signposts, bridges, ground-works etc in order to bring the route up the required standards for the public to use.

3.5 Refunds and withdrawal

An application can be withdrawn at any stage by the applicant. However, the applicant will be liable for any cost incurred up to the point when the SDNPA receives notification of the withdrawal. The costs are also payable if the SDNPA abandons the Order making process because it believes an Order cannot reasonably be made or, once made, is incapable of confirmation.

The SDNPA will only refund an administration charge where:

- It fails to confirm an unopposed Order;
- It fails to submit a made Order to the Secretary of State
- If the Order is deemed to be invalidly made

It is up to the applicant to make an application for refund of charges.

Waivers

The Secretary of State expects authorities to use their power to recover costs, and applicants should expect to bear the abovementioned cost of making an Order.

However, authorities have discretion not to charge, or to charge only part of the cost. They will only do this in very exceptional circumstances.

4. Making an application

4.1 Application form

Please complete the application form in full. Please contact the SDNPA if you need help with completing this.

Details of all the landowners/occupiers/ lessees should be given in the form. If the land is owned by a business the form should be completed in the name of the business by the Company Secretary or one of the Partners. If the form is completed by an agent, written authority to act on behalf of the applicant should accompany the application. If you are not the owner/ occupier/ lessee of the land crossed by the affected route, state in what capacity you are applying. The applicant must seek consent from the landowner prior to making an application, and include a letter from them confirming their approval as part of your application.

Information relating to the footpath/bridleway/restricted byway (i.e. route number etc) can be found on the Definitive Map and Statement. This information can be obtained from the Local Highway Authority (the County Council).

4.2 Supporting Plans

Your application will need to be supported by the following plan(s):

- Prepare a plan (ideally based on a current Ordnance Survey map) at a scale of not less than 1:2500 of the entire area involved. This will be the application map. Please make sure this has a **scale** (ideally as a scale bar) and a **north arrow**. Please also include a **Plan title** and **Key**.
- Examine the Definitive Map and Statement held by the Local Highway Authority (the County Council) to accurately ascertain what public rights of way are already recorded over the land, and their precise routes.
- Accurately mark up on the application map the existing route of the footpath/bridleway/restricted byway with a **bold black continuous line**. Annotate the terminal points of the existing route, and any points where there is a significant change in direction i.e. A, B, C (i.e. as described in section 5 of your application form). Please note the **grid references** for these points on the map key.
- Accurately mark on the application map any new routes (for diversions only) in a **bold black broken line**. Mark on the terminal points/points of direction change of the new routes (as described in section 6 of your application form).
- Annotate the application plan to indicate any existing and proposed new features, such as gates, stiles, etc. on both routes.

- Mark on the application map (or a separate map if necessary) the extent of your land ownership/occupancy in relation to the path concerned. Also mark on the ownership of other interested parties (if applicable).

As many copies of this plan will be required, it is recommended that an electronic copy be provided to allow for easier and more accurate reproduction.

Complete and submit the application form with the necessary maps to:

By post:

Development Management team
South Downs National Park
South Downs Centre
Midhurst
West Sussex
GU29 9DH
Tel: 01730 814810

By email:

planning@southdowns.gov.uk