

Highways Act 1980 Section 119:

Diversion of Public Footpaths, Bridleways and Restricted Byways – Notes for Applicants
West Sussex County Council

Please note: This guidance should be read in conjunction with the attached report to the Rights of Way Committee on 2nd December 2003.

1. The Grounds for Making and Confirming an Order

- 1.1 It will be for applicants to satisfy the County Council on the ground for making an Order. In law, a Diversion Order can be made on one of two grounds, i.e. “in the interest of the owner/occupier – provided that the new route is not substantially less convenient to the public” or “in the interests of the public”. The first ground normally applies to most applications, and applicants are asked to provide detailed reasons for making the diversion request - eg applicants may feel that the diversion they are seeking would improve the security/privacy of their property.
- 1.2 Additional and separate tests have to be applied before a made Order proceeds to confirmation stage. In addition to meeting the grounds above, the order making authority must be satisfied that the diversion is not substantially less convenient to the public and that it is expedient to confirm the order having regard
- (a) to the effect which the diversion would have on public enjoyment of the way as a whole;
 - (b) to the effect which the coming into operation of the Order would have respects other land served by the existing public right of way; and
 - (c) to the effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.
- 1.3 Although the tests for making and confirming an Order are different and separate, it is only sensible to ensure that the requirements of both are satisfied at the outset.

Therefore, in reaching a conclusion with regard to the legislation a number of wide ranging considerations must be taken into account including:

- Physical features which include distance and direction of travel, path widths, gradients, levels and condition, convenience and future maintenance of surfaces and structures.
- Assessment of the public’s enjoyment of the path which requires subjective judgements to be made about views, amenity value and quality of the experience offered to users of the path.
- The possible impact of any new path on other properties would also be taken into account, for example, it would be unreasonable to divert a path so as to improve the applicant’s privacy/security if the new route would have an adverse effect on the properties of neighbours.
- Generally a proposed route would need to compare reasonably favourably with the length of path proposed to be stopped up under the application in terms of distance, other physical characteristics and amenity value.

- The County Council in taking into account its responsibilities under the Disability and Discrimination Act 1995, would also bear in mind the needs of the disabled. Open access would generally be expected on the new route - any gate or barrier that may be required by the landowner would need to be the subject of a separate application to the County Council, upon confirmation of a Diversion Order, under the provisions of Sections 66 or 147 of the Highways Act 1980.

2. Consent(s) of Any Other Landowner(s) Affected

- 2.1 Applicants will also need to clarify, at an early stage please, whether there is any other landowner affected by the suggested diversion. If so, it will be necessary for the written consent of the person(s) to be supplied with the diversion application. If the applicant is the sole owner of the land involved, this should be confirmed.

3. Consideration/Inspection of the Diversion Proposal and Consultations

- 3.1 On receipt of confirmation of the points summarised in paragraph 10 of this note, the Rights of Way Team will add the application to the list of such applications awaiting consideration. When the application falls to be considered, a site inspection will be undertaken. The Rights of Way Manager will then be able to say whether or not the proposal can be supported and applicants will be advised. In reaching a conclusion about support for a diversion application, the inspecting officer would take into account the considerations in paragraph 1.3 of this guidance. In terms of width a minimum of 2 metres for a footpath and 3 metres for a bridleway would usually be expected, but in some circumstances a greater width may be required and most likely would be required for a Restricted Byway.
- 3.2 If support can be given to the requested diversion at this stage, the relevant District and Parish Councils will be consulted on the proposed diversion. Details will also be sent to the Police Crime Prevention Officer and in line with usual practice, to the representative(s) of the amenity groups in the County concerned with public rights of way, as it has been found from experience that such early consultation can be valuable. The consultation may result in an inspection of the proposed route by the representative. If the applicant has any objection to such an inspection he should advise in his reply please.

4. Procedure after the Inspection has been made

- 4.1 If the diversion proposal can be supported, the applicant will be asked to complete a formal letter of application for diversion which will also include details of the works which are considered necessary on the new route. (If the diversion application is successful in due course, the applicant will be responsible for carrying out these works, and for the cost of any signposting that may be undertaken by the County Council to clarify the new route).
- 4.2 The completed application will then be placed before the Rights of Way Committee for a decision, and applicants will be kept informed. If the Committee approve the application, a Diversion Order will be made.

5. When the Order has been made

- 5.1 The County Council will, as required by law, publish a Notice of the making of the Order in a local newspaper, and there will be a twenty eight day period in which objections may be received. Applicants will be notified, after that time, whether or not there have been any objections.

6. Unopposed Orders – Procedure

- 6.1 If no objections are forthcoming within the time stated in the Notice, the Order will be capable of confirmation and the applicant will be notified. Before the Order is confirmed, the applicant will be expected to undertake any works on the new route for which he is responsible and to settle the County Council's signposting account (4.1 above) and its administrative and advertising account (8 and 9 below). The County Council will then be in a position to publish the Notice of confirmation in the press. The Order will come into operation shortly afterwards.

7. Opposed Orders – Procedure

- 7.1 If an objection(s) is received, its content will be conveyed to the applicant and to the inspecting officer for comments. When these are received the County Council will write to the objector(s) to seek withdrawal by explaining the reasons for the Order and by answering the points of concern.
- 7.2 If the objection(s) is withdrawn the procedure is as outlined in 6.1 above.
- 7.3 If the objection(s) is not withdrawn, the County Council cannot confirm the Order itself, and will need to consider, with the applicant, whether to adopt the only course open, if the Order is to proceed, i.e. its submission to the Secretary of State for determination. If this course is adopted, the Order will be added to the list of opposed Order awaiting submission and prior to submission the applicant will be expected to settle the County Council's administrative and advertising account up to that time (8 and 9 below). If the Order is sent to the Secretary of State, he may appoint an Inspector to hold a Public Local Inquiry before reaching a decision.
- 7.4 If the Secretary of State's Inspector's decision is given in favour, the County Council will be in a position to publish the Notice of Confirmation in the press and the Order will become operative shortly afterwards. The applicant will be expected to undertake any works on the new route for which he is responsible (4.1 above) and to settle the County Council's signposting account and its advertising account for confirmation.
- 7.5 If the Secretary of State decides not to confirm the Order, the path will remain on its existing route.
- 7.6 Where, in the light of the objection(s) received it is decided by the County Council in consultation with the applicant, that the Order should not proceed (i.e. not submitted to the Secretary of State for determination) the path will remain on its existing route and the applicant will be expected to settle the County Council's administrative and advertising account (8 and 9 below).

8. Administrative Costs

8.1 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations, 1993 and The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 enable the County Council to recoup the costs incurred in connection with processing applications for the diversion and stopping up of public paths.

8.2 The amount of officer time will vary according to whether the Order is opposed or unopposed hence applicants should note the two levels of fee payable.

The County Council's administrative fee for Orders where no objections have been received is £650.00.

The County Council's administrative fee for opposed Orders is up to £900.00.

8.3 These are the current charges and are liable to review.

8.4 Where an application relates to more than one path, the County Council will usually make a separate Order for each. However, in most cases there will be a significant reduction in the amount of administration time spent by officers in relation to second and subsequent paths where they form part of a package. The actual charge in any particular case for second and subsequent paths will be notified to applicants.

8.5 Applicants will normally be expected to bear the cost of making an Order. However, the County Council may decide to waive all or part of the charge where it considers it appropriate. In this connection the County Council would take into account factors such as potential benefits to rights of way users.

8.6 In the event that a made Order is not confirmed, the applicant is not necessarily entitled to a refund. The County Council does have to refund charges if asked by the person who requested the Order where, in the case of a Diversion Order:

- (i) it fails to confirm an unopposed Order; or
- (ii) it fails to submit an opposed Order to the Secretary of State for determination, without consultation with the person who requested the Order; or
- (iii) the Order cannot be confirmed because it has been invalidly made.

9. Advertising Costs

9.1 The County Council is required by statute to publish a Notice of the making of an Order in the press and, if the Order is confirmed, to publish a further Notice. The cost of advertising varies from one newspaper to another but on average is in the region of £400 - £700 exclusive of VAT for an Order relating to one path. This figure will increase when two or more paths are involved, and will be reduced where the Notice of Confirmation is not published (7.5 and 7.6 above). Applicants will be charged the actual cost of advertising.

10. Summary

10.1 In summary the applicant will be responsible:-

- (a) For the actual advertising charges.
- (b) For the County Council's administrative fee.
- (c) For implementing the works required by the County Council, to bring the new path into being, and for bearing the cost of signposting required.
- (d) For advising if there is an objection to an inspection of the new route by a consultee (3.2 above refers), and for confirming, in the event that an opposed Order is submitted to the Secretary of State, that there is no objection to an inspection by his representative.
- (e) For satisfying the County Council on the grounds for making an Order (please include as much information as possible in support of your application).
- (f) For supplying the necessary consents of any other landowners affected. If you are the sole owner, please confirm this.
- (g) For supplying a plan showing the length of path proposed to be stopped-up, and the proposed route.

10.2 Applicants are requested to forward their consent to points (a), (b), (c) and (d) above, and to supply the information requested at points (e), (f) and (g) to the Public Rights of Way Team, Environmental and Economic Policy Services Unit, The Grange, Tower Street, Chichester, West Sussex PO19 1RH.

Finally, applicants will appreciate from the information given, that the procedures involved in the making of a Diversion Order are lengthy. Additionally, because the Unit's workload is extremely heavy, the list of priorities necessarily means a delay in dealing with some tasks, including the consideration of diversion applications.

JEFF BARTLEY
Head of Environmental and
Economic Policy Services

MIKE KENDALL
County Secretary

June 2006

RIGHTS OF WAY COMMITTEE

2ND DECEMBER, 2003

PROCEDURES FOR THE DIVERSION OF PUBLIC FOOTPATHS &
BRIDLEWAYS UNDER THE PROVISIONS OF THE HIGHWAYS ACT, 1980
SECTION 119

REPORT BY DIRECTOR OF ENVIRONMENT & DEVELOPMENT AND THE
COUNTY SECRETARY

EXECUTIVE SUMMARY

The County Council's procedures for dealing with applications for the diversion of public paths have been reviewed with particular attention given to whether they could be improved and applicants better informed as to the very exacting requirements of the process. (Paragraphs 3 to 10 refer)

CONCLUSION

While the current guidance, 'Notes for Applicants', is considered to adequately set out the costs and procedures involved, it is felt that some additional clarification would assist applicants in understanding the exact requirements of the diversion order process. (Paragraph 11 refers).

In addition, it would be helpful, it is considered, for full details of consultation responses to be made available to Members. (Paragraph 13 refers)

RECOMMENDATION

That the suggested improvements to the diversion order procedures as set out in the conclusion of this report be approved and that in future the 'Notes for Applicants' will include a copy of this report together with a copy of a procedure flow chart.

1. At the Chairman's request, the procedures for dealing with applications for the diversion of public footpaths and bridleways have been looked at with particular attention to whether the process could be improved or clarified for applicants.
2. It is open to the County Council to consider applications from landowners for the diversion of public rights of way. At present this is a power not a duty, although under the Countryside and Rights of Way Act 2000, applicants will have a right of appeal against refusals. However this Council has long been one of the few authorities prepared to accept private applications from landowners. The law relating to the most usual types of diversion applications is the Highways Act 1980, Section 119 which is set out in the County Secretary's publication 'A Guide to the Law for the Rights of Way Committee'. The procedure by which an application

under this legislation is dealt with, from the point of making the initial request through to the making of Orders and possible courses of action if Orders are opposed is set out in the Legal Services Unit's guidance notes for diversion applicants, 'Notes for Applicants'. The costs involved are also set out in the Notes. A copy is attached as an appendix to this report together with a procedure flow chart. While District and Borough Councils have concurrent powers with the County Council to make diversion orders under S119 of the Highways Act 1980, such orders are normally dealt with by the County Council.

3. When landowners initially express an interest in the possible diversion of a path on their land, the 'Notes for Applicants' provide guidance on the whole procedure and costs involved. The Notes assist landowners in deciding whether to go ahead with an application and summarise the requirements of the application in list form. An application may then be submitted to Legal Services Unit who will ask Environmental and Economic Policy Services to make arrangements for an inspection of the proposal and to determine whether or not it can be supported at officer level.
4. Applications are inspected largely in order of the date received, although this may be varied in the interests of efficiency if, for example, a site can be inspected whilst an officer is in the area on other business. Generally, though, applicants must expect to wait some months before an inspection is made and their application determined. The West Sussex Rights of Way Milestones Target between receipt of an application and the officer's inspection and report on the proposal is 14 months. The time taken to process applications is monitored by Performance Indicators, with a report being presented to each meeting of the Rights of Way Committee, which currently show the average time taken for this stage of the process being approximately 7 months.
5. Prior to any site visit and as soon as possible after receipt of the application, relevant path records, particularly the definitive map, are cross-referenced against the information provided so that at an early stage any discrepancies can be addressed to the applicant and clarification sought. Queries regarding present management issues affecting paths in the Sussex Downs Conservation Board may also be raised.
6. Diversion proposals are then inspected by a senior officer from the Rights of Way Team and in many cases, a site meeting with the applicant is held. Site meetings are not, however, arranged as a matter of course as this can introduce delays by hindering the effective and efficient programming of site inspections. In those cases where sufficient information has been provided by the applicant, site meetings are not necessary, but any specific requests for a site meeting will be met.
7. The site inspection is a crucial part of the process as it is the stage at which the merits of the proposal in terms of the validity of the applicant's grounds for seeking the diversion and the adequacy of the proposed new route must be assessed within the terms of the relevant legislation. In reaching a conclusion as to whether or not to support a diversion application, the inspecting officer must take many different factors into consideration. The strength of the applicant's reasons for making a change to the existing situation is of fundamental importance. Most diversion applications are made in the interests of the landowner and so a vital ingredient in the process is for the officer to assess the extent to which the present definitive line

adversely affects the property (usually in terms of privacy and security of house or buildings) and the benefit that could be achieved by the diversion. The other major element of the decision concerns the merits of the proposed route as compared to the length of path proposed to be stopped up. Sometimes the comparison between the two routes can be quite straight forward but, more often it is more difficult to assess and may involve complex and often subjective issues.

8. Initially, the legal grounds for making a diversion order may appear to be quite straightforward i.e. a diversion order may be made where it appears that either

a) in the interests of the owner, lessee or occupier of land crossed by the path;

OR

b) in the interest of the public;

it is expedient that the path be diverted.

However, more complex issues come into play when considering the additional and separate tests that have to be applied before a made order proceeds to confirmation stage. In addition to meeting the grounds above, the order making authority must be satisfied that the diversion is not substantially less convenient to the public and that it is expedient to confirm the order having regard

(a) to the effect which the diversion would have on public enjoyment the way as a whole;

(b) to the effect which the coming into operation of the order would have respects other land served by the existing public right of way; and

(c) to the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

10. Although the tests for making and confirming an order are different and separate, it is only sensible to ensure that the requirements of both are satisfied at the outset. Therefore, in reaching a conclusion with regard to the legislation a number of wide ranging considerations must be taken into account including.

- Physical features which include distance and direction of travel, path widths, gradients, levels and condition, convenience and future maintenance of surfaces and structures.
- Assessment of the public's enjoyment of the path which requires subjective judgements to be made about views, amenity value and quality of the experience offered to users of the path.
- The possible impact of any new path on other properties must also be taken into account, for example, it would be unreasonable to divert a path so as to improve the applicant's privacy/security if the new route would have an adverse affect on the properties of neighbours.

11. All path proposals are different and there is often a difficult balance to be struck between the applicant's interests in seeking the diversion and the effect it would

have on the users of the path as a whole. Clearly, it is very difficult to give applicants specific advance guidance on this part of the process prior to an inspection of a particular proposal being made. The guidance, 'Notes for Applicants' are kept under review and have in fact quite recently been amended to include more information about this part of the process and in particular details as to the minimum width expected for the proposed path are included. Unfortunately though, without the benefit of experience of previous path diversions there will always be applicants who underestimate the quite exacting requirements of the diversion order process and are disappointed when unsatisfactory proposals cannot be supported. **Therefore, for additional clarity it is considered that the tests for confirmation should be included in the 'Notes for Applicants' so that the applicant is able to gain a fuller picture of exactly what is required and that a copy of this report and the Diversion Order procedures flow chart be also attached to the Notes.**

12. In the case of diversion proposals that can be supported, applicants are advised of the works required on the new route for which they will be responsible. This will be included in the formal letter of application and forms part of the legally binding agreement. When diversion proposals cannot be supported at officer level, applicants are given a full report on the reasons for the decision and the option of consideration of the matter by the elected members of the Rights of Way Committee is explained.
13. In preparation for submission to the Rights of Way Committee (and as explained in the Notes for Applicants) the LSU carries out consultations with the District and Parish Councils, the Sussex Police and the relevant path user groups. The Sussex Downs Conservation Board and the Chichester Harbour Conservancy are also consulted in respect of paths in their areas. Standard practices ensure that consultees are generally given a minimum of 6 weeks notice prior to committee and all responses are included as part of the report, if at all possible. Late responses are reported to Committee by the presenting officer. **So that members can be fully aware of the content of all views it is proposed that copies of responses will be made available in the Members' room prior to the meeting and the committee clerk will bring the copy consultation responses to Committee**
14. Once Committee authority for the making of a Diversion Order has been given an Order is published and there is a 28 day period in which representations and objections may be made. The procedure in the event that an order is opposed is as set out in paragraphs 7.1 – 7.6 of the 'Notes for Applicants'.

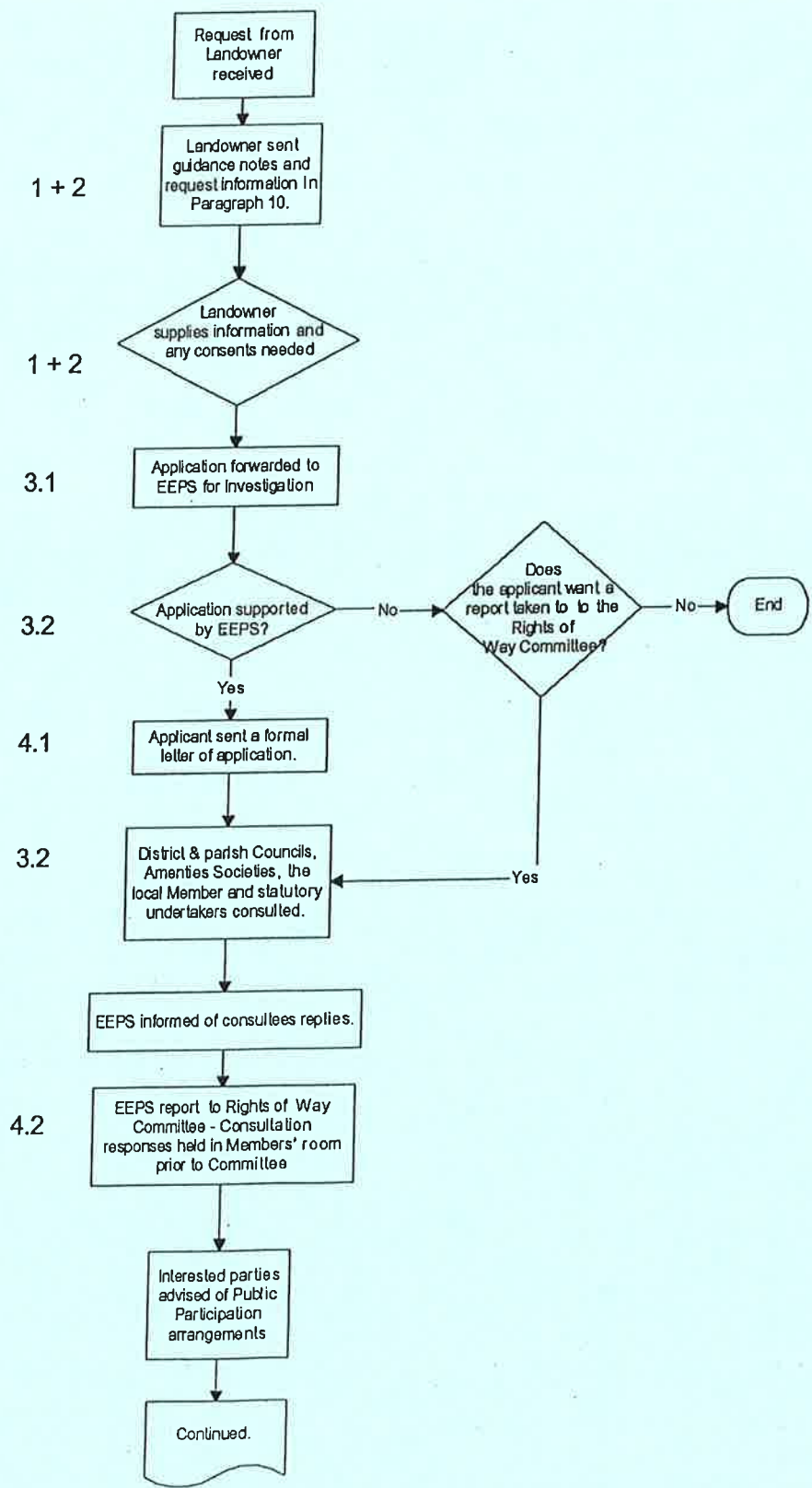
MARK HAMMOND
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Highways Act, 1980 Section 119 DIVERSION ORDERS

Notes for Applicants
Paragraph references:



1 + 2

1 + 2

3.1

3.2

4.1

3.2

4.2

