Footpath Diversion Orders

Notes & Guidance

Introduction

Although footpath matters are usually dealt with by the local Highways Authority (Gloucestershire County Council), District Councils have been granted powers by section 257 of the Town and Country Planning Act 1990 (the "TCPA") to make diversion orders covering both the stopping up of a highway and the creation of a new right of way concerning footpaths, bridleways and restricted byways.

However, the Council will only be able to make an Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission. An Order can be made before permission has been granted provided a valid planning application has been submitted to the Council.

A conflict between the planning permission and a public right of way is essential for the grant of an Order under section 257. The existing right of way does not have to be obstructed by the intended physical development and a change of use of land can be sufficient provided that the change of use requires the right of way to be closed or diverted.

The Council must also have regard to:

- the need for an alternative highway to be provided, and
- the disadvantage or loss likely to arise as a result of the stopping up or diversion to members of the public generally, or to persons whose properties adjoin or are near the existing highway, weighed against the advantages of the proposed stopping up or diversion.

If you wish to stop up or divert a footpath, bridleway or a restricted byway when applying for or following the grant of a planning permission, a separate application should be made to the Council using the accompanying application form.

It should be noted that the Council cannot make or confirm an order under section 257 retrospectively if the development, meaning the planning permission to which the diversion order relates, has already been carried out and is considered to be substantially completed.

For these purposes, “substantial completion” is taken to mean the point at which the development is functional, safe to occupy, and has achieved the primary aims of the planning permission, even if minor snagging works remain outstanding. The development can, however, have started and even have blocked the right of way. Nevertheless, if the relevant development becomes substantially completed before or during the consideration of an application under section 257 of the TCPA, the application cannot proceed and you will not be entitled to a refund.

If you have already carried out the development, with it therefore being considered to be substantially completed, you will need to contact the Highways Authority and use an alternative process to divert or extinguish the public right of way through an application made to them.

A section 257 footpath order application can take between 6 to 12 months to complete and may take substantially longer if the Order is opposed.

The total cost to an applicant for an application for an Order under section 257 is £3,000, payable in two stages as set out below. This fee covers the Council’s costs in considering and, where appropriate, validating the application together with supporting documentation, undertaking informal and formal consultation, preparing and making the Order, seeking confirmation of the Order, facilitating negotiations with any objectors and, arranging the publication of the statutory notices and advertisements required throughout the process.

Procedures for Making an Order

There are two distinct stages in the process:

Stage 1(a)

To apply for an Order under section 257, the Applicant must complete the application form (available at Apply and pay for planning permission - Tewkesbury Borough Council) and submit it to the Council with payment of the initial fee of **£1,500**. For the application to be validated by the Council, the application form should contain and/or be supported by the following information:

(1) The name(s) and address(s) of the individual(s) making the application, including name(s) and address(es) of all owners, occupiers and lessees of the land which is crossed by the existing route and the proposed route, if the route is to be diverted.

If the land is owned by a business, the application form should be completed in the name of the business by the Company Secretary or one of the partners/directors. If the form is completed by an agent, written authority to act on behalf of the applicant should accompany the application. If the applicant is not the owner, occupier or lessee of the land crossed by the affected route, they should state the capacity in which they are applying and why.

(2) The application must be accompanied by an A4 or A3 extract of the current Ordnance Survey Map at a scale of 1:2500 accurately showing the definitive route of the right of way to which the application relates.

The existing route should be shown by a bold continuous black line and any proposed diverted route should be shown by a bold broken black line. The map should also contain sufficient detail to show the effect, not just on the path or way to be stopped up or diverted, but on those highways connected to it. Any other adjoining public rights of way should also be accurately shown on the plan by a bold dotted black line.

(3) Details of the proposed development, including the planning application reference number.

(4) Description of the existing route and proposed route, if the application is for a diversion, including details of the surface type (eg tarmac, grass, gravel etc). The description should further include the length and width of the existing route and the proposed route (with the latter being at least 2m in width unless the width of the existing route is greater than the width of the proposed route should be at least the same as the existing route). Greater widths may also be appropriate if increased use of a route is likely as a result of the development or if the route is fenced on both sides.

The sections of the existing route should be marked A-B, C-D etc and the proposed diverted route as W-X, Y-Z etc. Each section should be described (eg along field edge, following river bank, within eastern boundary of proposed public open space) and the land ownership, occupation, leasehold details for each section be provided (together with written confirmation from all owners, occupiers and lessees that they are in agreement with the proposal).

(5) Grid references which must be shown using 8-digit grid referencing (eg "OS Grid Reference SO 0000, 0000").

(6) Details of limitations and structures such as gates and bridges along the route(s).

(7) Details of the rights of any statutory undertakers along each section of the proposed diverted route.

On receipt of the application and the initial payment of £1,500, the Council will check to see whether the application can be validated. This will include checking that a corresponding planning application has been submitted to the Council, the supporting information in the application, that the proposal is necessary to enable development to be carried out and that the development is not substantially complete.

If the application meets the validation criteria, the Council will decide whether or not an order under section 257 should be made. If the Council determines an order should be made, Stage 1(b) below commences.

Stage 1(b)

The immediate next steps will be for the Council to prepare a draft Order and draft Statement of Reasons and undertake informal consultation with the Highways Authority (Gloucestershire County Council), relevant Parish Council and selected stakeholders such as the Ramblers Association, Byways and Bridleways Trust and the Open Spaces Society. The aim of this informal consultation is to ascertain whether there are any immediate concerns with the proposal that can be addressed prior to the formal consultation.

Following the completion of informal consultation, a **further** payment of **£1,500** is required prior to the Council making the Order.

On receipt of the further payment of £1,500, the Council will undertake the following steps:

(1) The Council will produce and formally make the Order by having its Seal applied to the Order. At this point the Order is 'made'.

(2) Following the making of the Order, the formal consultation required under Section 257 of the TCPA must be undertaken. This entails undertaking the below publicity requirements in accordance with Part 1 of Schedule 14 of the TCPA.

The LPA must:

(i) Publish a notice in one local newspaper.

(ii) Display the notice prominently at either end of the affected route accompanied by a plan showing the general effect of the Order (**the applicant undertakes this task and the notice must be displayed no later than the date the notice is published**).

(iii) Serve the notice and the Order on all relevant consultees to formally notify them of the making of the Order.

(iv) Display a copy of the Order at the Council's offices (and on its website).

(v) The Order must be made available for inspection by members of the public at the Council's offices.

The formal consultation period is **28 days** and any objections must be made within this period.

Stage 2

At the conclusion of the 28 day consultation period, there are two possible outcomes.

If there are no objections, meaning the Order is **unopposed,** the Order can be confirmed subject to the completion of the procedure outlined below.

If there are objections to the making of the Order, the Order becomes **opposed** and the jurisdiction for either confirming or refusing the Order transfers to the Secretary of State via an appeals mechanism which is also outlined below. Before the Order is referred to the Secretary of State, the applicant will have the opportunity to engage with and seek to resolve the objections with the objector(s). Where all objections are subsequently withdrawn, the Order can be confirmed as an unopposed Order. If, following discussions with the objectors, amendments to the proposed Order are required, a new draft Order will be made and subjected to a further 28 day consultation period.

Unopposed Orders

If at the end of the 28 day consultation period no objections have been received, the Council may confirm the Order as an unopposed Order.

Notices are displayed along the path and advertisement is placed in the press to this effect, and the applicant will be informed that the Order has been confirmed. At this stage, members of the public may not object to the contents directly but may apply to the High Court within six weeks following the date the Order was confirmed if they believe the legal requirements of the TCPA have not been complied with.

If no application has been made to the High Court within the six week period set out above, the Order is considered valid and may not be further challenged. The Council will then, on completion of the necessary works by the applicant to bring any new route into existence, certify the work as satisfactory and the Order will come into operation. If no works were required, the Order will come into operation at the end of the six week period.

Opposed Orders

If any objections to the proposed Order are made to the Local Planning Authority within the 28 day consultation period, copies of the objection(s) will be published online and the applicant made aware who, if they wish, can engage directly with the objectors with a view to resolving the objections. Officers will work with the applicant and statutory consultees to try to negotiate resolutions to the objections received.

If after the expiration of two months from the end of the objection period the objections have not been withdrawn, the Council must refer the Order to the Secretary of State for determination. The Secretary of State will decide the matter either by holding a local public inquiry or by appointing an inspector to hear the representations of the objectors at a “hearing” or by considering written representations only.

The Secretary of State then decides on the basis of the reports submitted to him at the local public inquiry or by hearing representations whether to confirm the Order with or without modification.

Local public inquiries can take several months to arrange and complete, and it can take up to a year or more before an Order can be decided. It is therefore considered “time well spent” to try to resolve any problems at an early stage of the design of the development with a view to avoiding the need for a later inquiry.

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. It is difficult for applications for stopping up orders to succeed as unopposed, unless they are accompanied by other applications for diversions or creations that bring public benefit. The Council is keen to encourage applicants and consultees to reach agreement on proposals where possible.