

**PUBLIC PATH
DIVERSION ORDER
GUIDANCE
NOTES**

**Highways Act 1980 - Section 119
(As amended by the Wildlife & Countryside Act 1981 and Countryside & Rights of
Way Act 2000)**

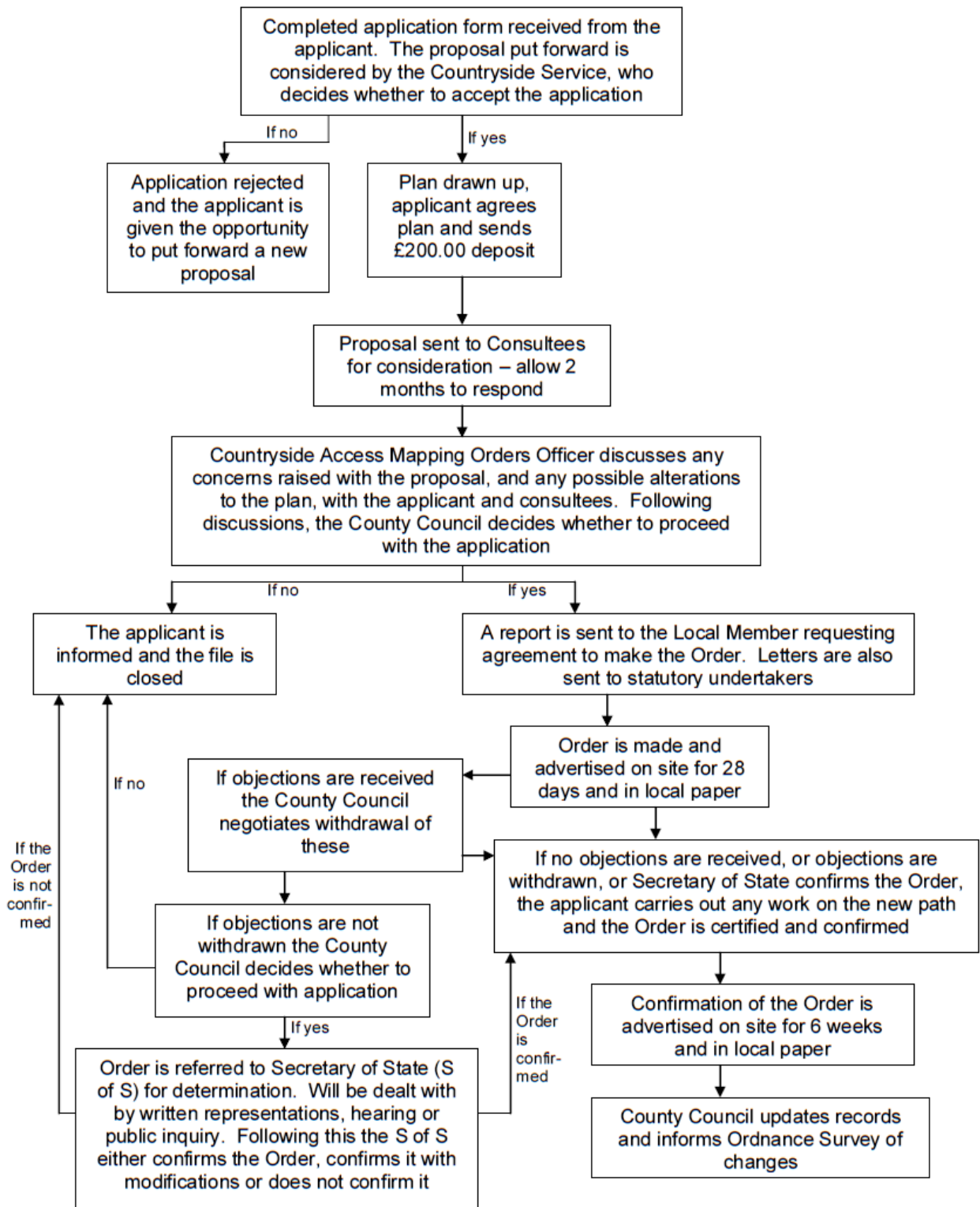
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Every effort has been made to ensure the accuracy of the information given. However, this guide is not intended to be a definitive statement of law, nor can any responsibility be accepted for errors or omissions.

These notes have been compiled under the legislation as at July 2011 and are subject to change.

SIMPLIFIED FLOW CHART OF THE DIVERSION ORDER PROCESS



FREQUENTLY ASKED QUESTIONS



How much will a Diversion Order cost?

The procedure in making, confirming and certifying a Diversion Order involves a considerable and variable amount of officer time and, therefore, no exact figures for the costs of any particular application can be given at the outset. The County Council has no control over the costs charged for the advertising. If there are objections at the consultation stage the costs can rise considerably. The County Council is legally required to give a figure which is the maximum you will be charged for an application in respect of one particular Diversion Order: that figure is £10,000; however that would only be in exceptional circumstances. Costs are generally in the region of £4,000.

Deposit

A £200.00 non-returnable deposit is required before the application is processed. Do not send any money now, this will be requested when we are about to process your application.

Invoice following the making and advertising of the Order

The County Council is entitled to recover the costs incurred in the making of a Public Path Diversion Order under "The Local Government Regulations 1993" as amended by "Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996".

The applicant must pay the costs of the application up to and including the making and advertising of the Order within 28 days of the date of the invoice from the County Council. Failure to make payment in full (and for any cheque to be cleared) within the specified time period will mean that the Order will not be confirmed and legal proceedings may be commenced for recovery of the unpaid costs.

Advertising costs

The applicant will pay direct to the publisher, agent or County Council (as directed) the costs of advertising the making of the Order(s) in one local newspaper. If the Order is subsequently confirmed, the applicant will also be required to pay the costs of advertising a notice of confirmation of the Order in the same local newspaper.

New route works

The applicant will be required to pay any costs involved in bringing the new route(s) up to an appropriate standard; this may include the purchase and installation of gates, waymark posts, surface works, removal or repositioning of statutory undertakers (e.g. gas, water, electricity, and telecommunications) apparatus or equipment etc. If such works are carried out by the County Council the charge for the works and also officer time will be invoiced separately from the charge for the costs associated with the making of the Diversion Order.

The applicant will pay for any signposts that the County Council consider necessary, although the County Council will arrange for their installation.

Compensation

If the proposal affects land not in your ownership, then the landowner may request compensation. Any compensation which may become payable to any third party as a consequence of the coming into operation of the Order must be met by the applicant.



How long will the process take?

Due to the contentious nature of the process, delays can be experienced, especially if concerns are raised at the consultation stage. It is therefore difficult to specify an exact time period, as each application can vary considerably, however the average time from receipt of application to completion is approximately 18 months.



What should I consider when deciding on my new route?

Selecting a suitable new route is very important and getting this right at the beginning can save a lot of time and money at the consultation stage. We have enclosed a set of criteria on page 9 that you should follow, where possible, when choosing your new route (also consider the legal requirements below).



What legal tests have to be satisfied?

The legal requirements which need to be satisfied before a Diversion Order can be made by the County Council are set out in Section 119 of the Highways Act 1980.

Before making a diversion order the authority must be satisfied that it is expedient to divert the path in the interests either of the public or of the owner, lessee or occupier of the land crossed by the path.

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 another highway connected with it, and which is substantially as convenient to the public. Nor can the termination be altered where this is not a highway (i.e. a cul-de-sac).

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

- The diversion is expedient in the interests of the person(s) stated in the order;
- The route will not be substantially less convenient to the public as a consequence of the diversion;
- 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.



What does the "existing right of way" mean?

The "existing right of way" means the correct legal line of the public right of way, as shown on the Definitive Map and Statement for Worcestershire, and may not necessarily be the route currently used in practice.

The existing definitive line of the route must not be obstructed or otherwise affected until the confirmation of the Order has been advertised. You must contact the Senior Mapping Officer if this will not be possible. (Contact number 01905 845617).



How wide does the new route have to be?

The requirement is a minimum width of 2 metres for a footpath and 3 metres for a bridleway, but the full width of an available track or enclosed way if greater. If you intend to enclose the new route on both sides you must allow a minimum of 3 metres for a footpath and a minimum of 4 metres for a bridleway. Barbed wire fencing adjacent to any route is not acceptable.



What if I require a gate or a stile on my new route?

Stiles will not be approved because of the requirement to take into account the needs of people with restricted mobility. Gates should only be used to control stock (Cattle, sheep, pigs and horses, but not household pets) and not simply to mark a boundary. Particular problems with control of stock can justify a kissing gate or self-closing gate. The County Council can advise on suitability and availability of such gates if required.



What if I don't own all the land affected by the proposed diversion?

If you are not the owner of all of the land on which the existing or proposed routes pass then you must supply details and written consents from the owner(s) and anyone with an interest in the land affected.

Any liability for incorrect landownership information will rest with the applicant. It is therefore most important that the applicant checks that the extent of their own ownership and also that of any other parties whose agreement was required, is known accurately.



What if the proposed route crosses a hedgerow?

If the proposed route crosses any existing hedgerow(s) you must supply with your application a signed declaration that you have the appropriate authority to remove the necessary section(s) of hedge. Applications should be made to the District Council Planning Department (Environmental Act 1995 as amended by Hedgerow Regulations 1997).



What if there are "higher rights" or "private rights" on the route?

The diverting of a footpath or bridleway will only divert those public rights, but will not divert any other rights that may also exist over the route, e.g. a neighbour's private access rights to adjoining property, or unrecorded public rights.



Who will be consulted during the process?

The local Parish Council, District/Borough Council, local user groups (e.g. The Ramblers' Association) and the statutory undertakers (gas, electricity, water and telecommunications) are among those consulted. They will be provided with a plan and an explanatory letter about the proposal.

Consultation is valuable as it may help to avoid the possibility of objections if an Order is made and advertised. Please note consultees may wish to inspect the proposed new route and applicants should allow access for this purpose.



Who decides whether an Order should be made?

The Countryside Access Mapping Orders Officer dealing with the application will prepare a report for the elected members of the Council. The report will be based on the responses received to the consultation and the officer's professional judgement.

The Director of Business, Environmental and Community will make a recommendation to the elected members whether or not to make the Public Path Order. This decision is delegated to the local member.



What happens after it has been decided that an Order should be made?

If the Local Member decides that an Order should be made and advertised, the Order will be drafted by a Countryside Access Mapping Orders Officer.

Public notice of the making of the Order must next be given. This is done by advertising the notice of the making of the Order in a newspaper sold in the local area. Notices will also be placed at either end of the route to be closed. These "site" notices will remain in place for 28 days during which time anyone can make objections to the Order. Objections must be in writing and addressed to the County Council.



What happens if there are objections to the Order?

Hopefully, because of the initial consultation process, objections to Orders may be few and far between.

Nevertheless if an objection is made in writing, addressed to the County Council and made within the 28 days period for objections, it is a valid objection; even if the objection appears unfounded or even malicious.

If an Order is objected to it is usual to write to the objector(s) to negotiate the withdrawal of their objection.

If an objection is not withdrawn the County Council cannot confirm the Order but may refer the matter to the Secretary of State (who refers it to the Planning Inspectorate (PINS)) for determination. PINS are an executive agency of the Department of the Environment, Food and Rural Affairs. An independent Inspector will be appointed to determine the application. They can do this by holding a local public inquiry, a hearing or receiving the written representations of the County Council, the applicant

and the objector(s). The Inspector can make a decision to confirm the Order, not confirm the Order or confirm it with modifications (changes).

Legally the County Council is not obliged to refer an Order to PINS.



What if work is needed on the new route?

A confirmed Order will only take effect when it has been certificated. Before the Order can be certificated, the new route must be made up to a suitable standard. The Countryside Access Mapping Orders Officer will advise applicants about the works which they will need to carry out. These may include: surfacing, drainage installation of gates at fence/hedge lines, bridges. The County Council also has to consider access by people with mobility problems when creating new routes. Therefore, any gates installed will be required to comply with the current British Standard. Details will be provided as appropriate.

When the applicant is unable to carry out the necessary works, they must agree to pay in advance for any works carried out by the County Council on their behalf. Payment must be received within 28 days of the date on the invoice raised by the County Council.



What happens once the Order has been confirmed?

Once the Order has been confirmed, (whether by the County Council, or by an Inspector). Public notice of the confirmation must be given. Notice is given in the same way as for the Order; however the Notices will be maintained on site for 42 days rather than 28 days. During this period any person can challenge the Order in the High Court on the grounds that the required legal procedures have not been properly followed by the County Council. However, legal challenges to diversion orders are extremely rare.

Once the diversion has been completed the County Council will amend its records. Copies of the confirmed Order are sent to the County Records Office and to the Ordnance Survey (O.S.). The O.S. will update its publications in due course, although this may not happen for some time.



What documents do I need to return with my application form?

- A plan showing the current route(s) and proposed route(s).
- A plan indicating the extent of your land ownership with a red outline.
- Proof of landownership. This can be in the form of Deeds and/or Land Registry documentation (including a plan).
- If you are not the owner of any part of the land on which the existing or proposed routes pass, please supply written consents from the owner(s) and anyone with an interest in the land affected.
- A written statement signed by all owners of the land on which the affected route(s) run agreeing to it being walked by officers of the County Council, members of any group consulted by the County Council and by an Inspector; should the matter be referred to the Secretary of State for determination.

- If the proposed route crosses any existing hedgerow(s) you must supply with your application a signed declaration that you have the appropriate authority to remove the necessary section(s) of hedge. Applications should be made to the relevant District Council Planning Department.



Who should I contact if I have any further questions?

If you have any questions, please contact the Countryside Service on:
Telephone: 01905 845617 or E-mail: countryside@worcestershire.gov.uk

Postal address: Countryside Service, Worcestershire County Council, Worcester
Woods Country Park, Wildwood Drive, Worcester WR5 2LG

For further guidance “A Guide to Definitive Maps and Changes to Public Rights of Way”, is available on the Natural England website. Alternatively, contact the Countryside Service on the number above for a hard copy, or a copy via email, of this publication.

Please return your completed application form to:

**Countryside Service
Worcestershire County Council
Worcester Woods Country Park
Wildwood Drive
Worcester
WR5 2LG**

NEW ROUTE CRITERIA

The process for deciding whether and how any footpath or bridleway should be diverted or closed is a public one. Therefore, the procedures which have to be followed are designed to ensure that the public are made aware of the proposed change and are given the opportunity to give their views on a proposal. This will be at the pre-order consultation stage and also when the Order is advertised. The proposal should not only satisfy the relevant legal tests but should also be seen to be necessary and fair. It is important to keep this in mind when sending in your application.

Beside the general legal tests that have to be satisfied, outlined in the previous section, there may be more specific requirements depending on the diversion proposal, as with the diversion of a Bridleway for instance, where the surface and width would be an important consideration.

Below is a list of things to consider that you may find useful when deciding where to put your proposed alternative route in order to cut down the possibility of objections when the order is advertised.

Things to consider

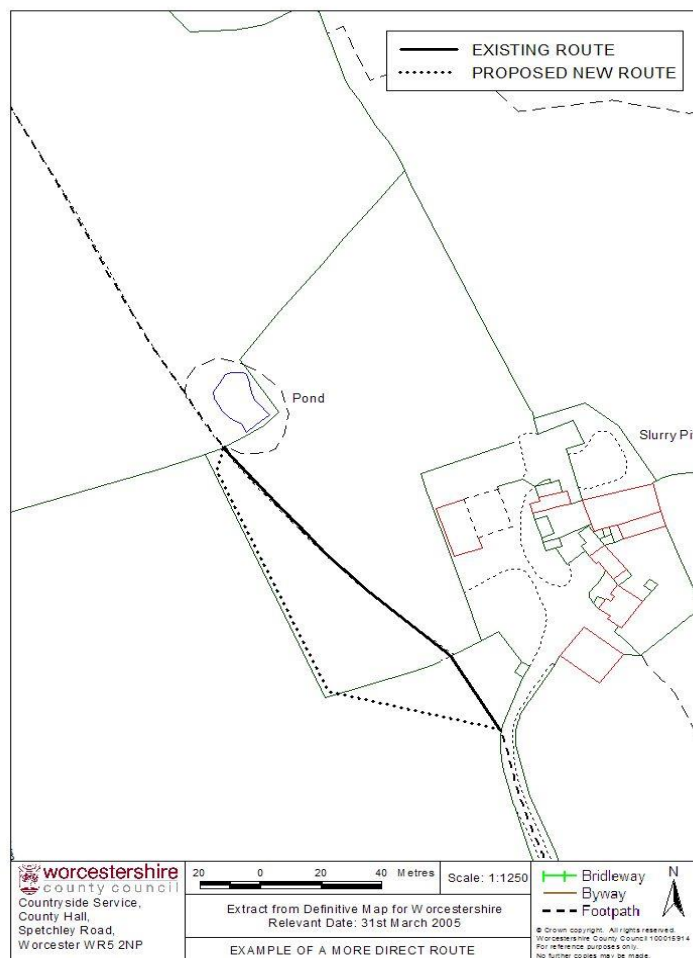
- **DO** consider the views from the new route; it's much better to have pleasant scenery to look at while you walk.



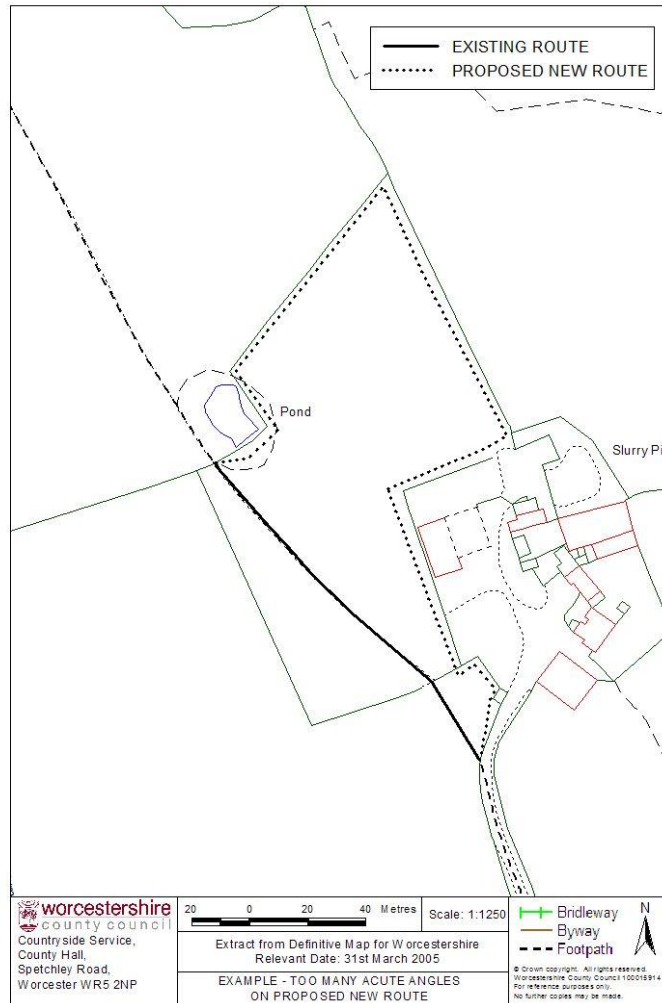
- **DON'T** put the new route through a dark enclosed area, users may find this intimidating.



- **DO** make the new route as direct as possible. Generally walkers prefer to use more direct routes.



- **DON'T** have sharp bends. This makes the route longer and less convenient.



- **DO** allow for a width of **no less** than 2 metres for a Footpath and 3 metres for a Bridleway. If the diverted Footpath or Bridleway is to be enclosed by fences or hedges, the width should be increased to **no less** than 3 metres for Footpaths and 4 metres for Bridleways.



- **DON'T** route a Bridleway close to trees unless there is plenty of headroom for the horse rider. Overhanging branches and other obstructions should be cleared to a **minimum** of 3 metres.



- **DO** give consideration to the surface of the new route, which should be firm, dry and even.



- **DON'T** divert a Footpath or Bridleway onto wet or boggy ground, or ground which is unstable or steep. Here are some surfaces which are considered to be particularly suitable for Bridleways: grass, cinder tracks, earth tracks, wood/bark chippings, road planings (which should be crushed and properly flattened using a roller or vibrating plate). Surfaces that are considered to be unsuitable are: cobblestones, fine gravel, heavy ruts, poorly laid or worn tarmac and poorly laid stone chippings.



- **DON'T** forget **HEALTH & SAFETY**. Avoid running the new route through areas which could put users at risk, e.g. farm yards, timber yards and factory sites.



- **DO** Consider the continuity of the rights of way Network. If the route you are trying to divert starts or ends opposite another right of way, moving it to a point further away from the other route would be unpopular and may also lead to objections. Having the rights of way opposite each other cuts down on road walking and is substantially more convenient for the public. The footpaths shown below ticks all the right boxes. The continuation of the rights of way Network is not disrupted and the footpaths join a straight section of road, which has good visibility for walkers.



We hope that this list describing some of the most common causes for objections to diversion orders will assist you in making a successful application.