

PUBLIC PATH EXTINGUISHMENT ORDER

GUIDANCE NOTES

**Highways Act 1980 - Section 118
(As amended by the Wildlife & Countryside Act 1981 and Countryside & Rights of
Way Act 2000)**

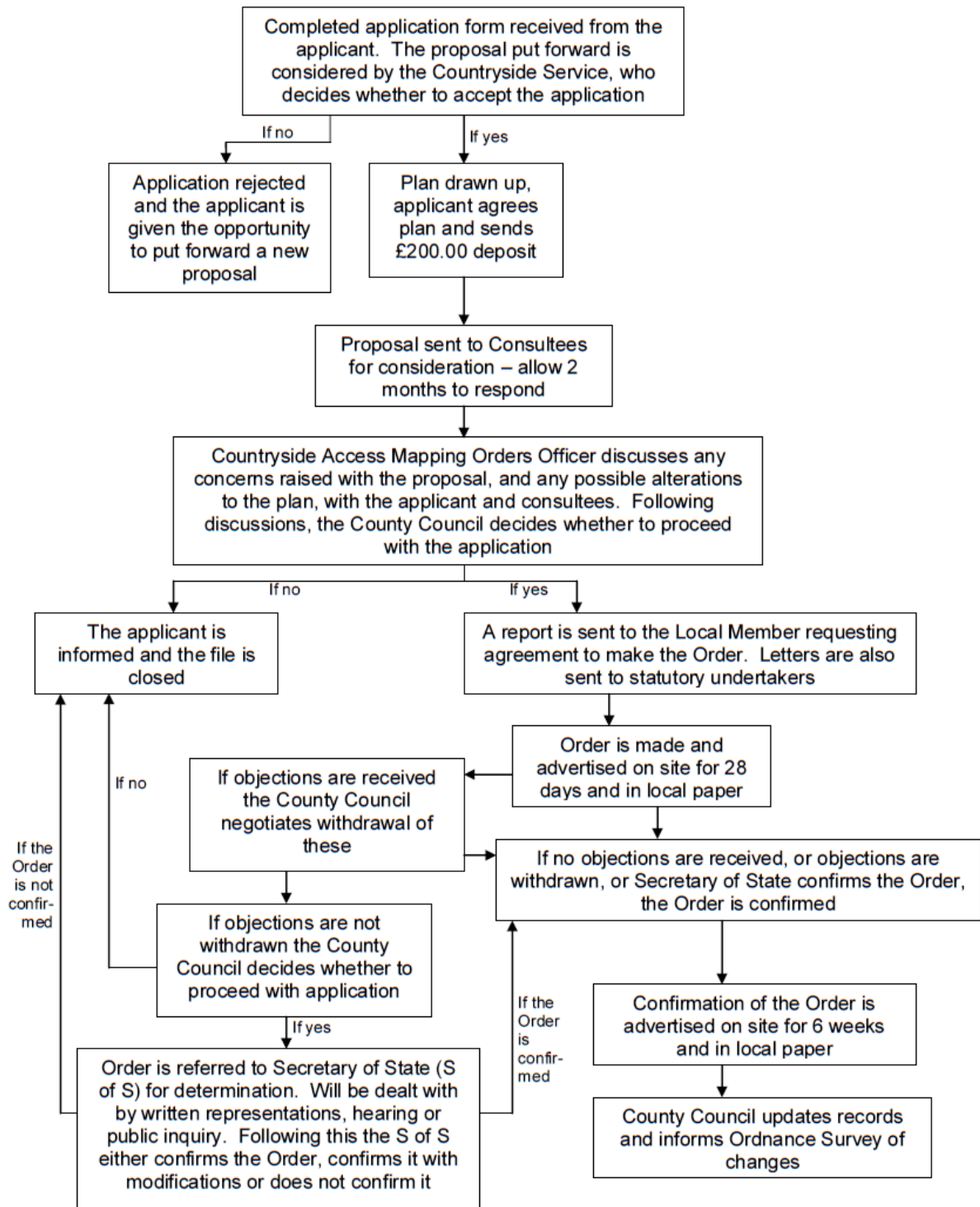
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Every effort has been made to ensure the accuracy of the information given. However, this guide is not intended to be a definitive statement of law, nor can any responsibility be accepted for errors or omissions.

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

SIMPLIFIED FLOW CHART OF THE EXTINGUISHMENT ORDER PROCESS



FREQUENTLY ASKED QUESTIONS



How much will an Extinguishment Order cost?

The procedure in making, confirming and certifying an Extinguishment 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 Extinguishment 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 Extinguishment 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.

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 legal tests have to be satisfied?

The legal requirements which need to be satisfied before an Extinguishment Order can be made by the County Council are set out in Section 118 of the Highways Act 1980.

Before making an extinguishment order, it must appear to the authority that it is expedient to stop up (extinguish) the path on the ground that it is not needed for public use.

Before confirming an extinguishment order the authority or the Secretary of State must be satisfied that it is expedient to confirm it having regard to the extent to which the path is likely to be used and the effect which closure would have on land served by it, taking into account the provisions for compensation.

Both in making and confirming an extinguishment order, the authority and the Secretary of State must disregard any temporary circumstances (such as obstruction) preventing or diminishing the use of the path by the public.



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).



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

If you are not the owner of all of the land on which the existing 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 there are "higher rights" or "private rights" on the route?

The extinguishment of a footpath or bridleway will only delete those public rights, but will not delete 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.



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, Environment 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 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 Public Path Orders are extremely rare.

Once the extinguishment 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.



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.