

A guide to making a permanent diversion of public footpaths and bridleways under Section 119 of the Highways Act 1980

Introduction:

These notes are intended to provide guidance relating to the application procedure and process to be followed in order to divert a public footpath or bridleway in accordance with Section 119 of the Highways Act 1980.

Under certain circumstances it may be more appropriate to use other powers contained within the Highways Act 1980, which enable Orders to be made for other reasons. An example of this would be for the prevention of crime, improvement of school security and for the protection of Sites of Special Scientific Interest.

There are additional powers contained in the Town and Country Planning Act 1990 which enable an Order to be made to divert or extinguish a public right of way, if it is deemed necessary to carry out a development, for which you have been granted planning permission. If this is the case you should discuss this with the Councils Planning Department at the time you make your application for planning consent and await the confirmation of such an Order before the development is commenced.

Things to consider prior to making an application:

The diverted route should provide a safe, convenient and reasonable alternative route for users. In choosing a route the reasonable needs of the user should be properly considered and fully set out within the application.

Unless there are special circumstances the following minimum widths for the proposed diversion routes will apply: Footpaths 1.8m, Bridleways 3m.

Ideally the diverted route would be on land owned, or controlled by the applicant, or on land for which the applicant has obtained the written consent of the owner, to the proposed diversion.

In most instances it takes a minimum of 9 months to process a diversion application. This could be substantially longer if replies to the consultation or publication of any Order result in a requirement to carry out further negotiation or a modification of the proposal.

The costs of providing an alternative route to the satisfaction of the Borough Council are usually borne by the applicant. In addition, there is an administration charge made by SMBC to cover the costs incurred in processing, advertising and making an Order. The current application fee (2018/19) for an uncontested order is £2480. This fee and all other costs associated with the Order will under normal circumstances be passed to the applicant.

Due to the number of variables involved in the Order making procedure a maximum overall cost cannot be guaranteed. Other costs can include the costs associated with claims for compensation or costs for additional works that will be passed to the applicant. The Council will carry out the necessary consultations which starts the process upon receipt of the application fee.

Please note that this fee is non-refundable and payment does not guarantee that the Authority will promote an application.

The original route of the public right of way must continue to exist until the diversion Order has been confirmed and the alternative route has been approved by SMBC to be fit for public use.

Bear in mind that the formal diversion procedure will have the effect of publicising the existence of the public right of way, but will not guarantee that the right of way will be diverted.

Making an application:

Prior to submitting a formal application it is suggested that you contact us using the details at the foot of this guidance to discuss your proposal. Officers will be able to provide informal advice and guidance that may assist in the submission of any subsequent application. A copy of the application form is included at the end of this guidance note for your use.

Once an application is submitted the Council will carry out informal consultation with key stakeholders to gauge the likely feedback and identify any issues which may prevent an application from being progressed.

If the Borough Council agrees to make a diversion Order this is only the start of the formal procedures. The Order must be publicised and any person or organisation has a right to make representations about, or object to, the proposed diversion.

If there are objections that are not withdrawn, then confirmation of the Order will be dependent upon an independent Inspector considering the objections and making a decision whether or not to confirm the Order. The independent Inspector may consider objections by written representations, a hearing or by holding a local public inquiry.

In certain circumstances the Council may decide not to refer the Order for confirmation and this would result in the public right of way remaining unchanged.

To maximise the chance of achieving a successful diversion it is advisable to discuss your proposal with your local representative of the national user groups, i.e. the Ramblers Association, Open Spaces Society, British Horse Society, as well as any local parish council, residents association and neighbours before submitting your application.

In addition to a diversion under section 119, it may be necessary to consider creating or extinguishing lengths of rights of way under sections 25 or 118 of the Highways Act 1980. In this instance the Councils Officers will be able to advise you following submission of your application and follow up site meeting.

Please be aware that the Council will hold a record of your proposal and contact details on file. Furthermore, a copy of your application and supporting documentation will be held on file and a copy will be made available to the public on request, and may be made available online on the Councils Website. In addition details of the applicant and the owners of the land are included in the report to the Planning Committee and other formal documents associated with the proposal. Please ensure that any supporters of

your application are aware that their statements may also be used in this manner and subsequently will be available for public inspection.

Fees:

There is a standard fee for processing diversion applications of £2480. This is as set out in the schedule below. Applications will not be processed without full payment of this fee.

Please note, this fee only covers costs incurred by the Authority in considering an uncontested application. Further fees may be applicable where works are needed to bring the diverted route up to a suitable condition for use or such as in instances where a diversion will require the removal of apparatus or other diversionary works. For further information on this element please contact the Traffic Management Team using the details at the foot of this document.

Item	Details	Including	Fee
Process application	Acknowledgement of receipt Checking of application including comparison of existing records. Site visit Meeting with Applicant Consultation with Statutory Undertakers and other consultees as specified. Assessment of implications and feasibility. Report preparation Preparation of notice Publication of notice in press Publish notice on website Publish notice in Connect Centre	Officer time, computer work, general administration, Legal Fees (18 hours)	£1100
Post notice of application	Post notices on site at or near either end of the route to which the application relates. Inspection of notices and replacement as necessary.	Officer time, general administration, travel expenses (5 hours)	£250

	Removal of notice following decision.		
Update registers	Add entries to relevant registers (paper and electronic forms)	Officer time, general administration, scanning and digitisation of records (2 hour)	£100
Advertising fees	Publish of notice in newspapers as per Schedule 12 requirements.	Officer time, general administration (2.5 hours)	£610
Decision Making	Legal fees associated with preparing and presenting the application.	Officer time, general administration (7 hours)	£420
Total fee			£2480

Contact us:

For further information please contact us at:

Highways Management, Highway Services, Solihull Council, 5th Floor, Council House, Solihull, B91 3QT

Telephone: 0121 704 8000

Email: rightsofway@solihull.gov.uk

**HIGHWAYS ACT 1980, s.119
APPLICATION FOR AN ORDER PERMANENTLY TO DIVERT A PUBLIC
FOOTPATH OR BRIDLEWAY**

When completing this form please read the attached notes, then fill in the form carefully

Name of applicant

Address

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Tel. (work) Tel. (home)

I hereby apply for the diversion of the footpath/bridleway* known as in the parish of under s.119 of the Highways Act 1980 and undertake, if the Borough Council agrees to make the order for the diversion of the path, to carry out such work on the diverted route of the path as may be required to bring the path into a fit condition for public use at such time as the diversion order can be confirmed. (*Delete if not applicable.)

Signed Date

The path to be diverted

Parish No.....

From OS grid ref.

To OS grid ref.

General description of path

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Status: This path is a footpath/bridleway (delete the term that does not apply)

Stated widths (For office use)

Is the right of way open and available for use at all times by members of the public? If not, give details of any obstructions or impediments

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Landowner

Name.....

Address.....

Lessee/tenant

Name

Address

Occupier

Name

Address

Reasons for the diversion

Section 119 of the Highways Act 1980, as amended by Schedule 16 para. 5 of the Wildlife and Countryside Act 1981, permits diversions of public footpaths and bridleways on the grounds that it is expedient in the interests of (i) the owner, lessee or occupier and/or (ii) the public. Please indicate whether this application serves the interests of (i) and/or (ii) and give specific reasons why. Please provide as much detail as possible as this will help to inform the Councils decision making process (Please continue on a separate sheet as necessary):

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What effect will the diversion have on the convenience and enjoyment of the path by the public?

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The proposed new route of the path

Please enclose a signed and dated plan, preferably at scale of not less than 1:2,500 and based on an Ordnance Survey map.

From OS grid ref.

To OS grid ref.

General description of new path

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Landowner

Name

Address

Lessee/tenant

Name

Address

Occupier

Name

Address

Please give details of any other person(s) having a legal interest in the land over which the right of way is to be diverted including a mortgagee or a person having an easement over the land:

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Has the written consent of all such persons been obtained?

Yes/no* (*Delete if not applicable.)

The consents must accompany this application.

General

State what work (including the construction of stiles, gates and fences) will be necessary to put the proposed route into a fit condition for use by the public and how long this should take (a maximum of three months is usually allowed):

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You may be required to enter into an agreement with the Borough Council for you and your successors to maintain such bridges to the satisfaction of the Council.

The new path will be signposted and/or waymarked to the extent deemed necessary by the Council.

Statement

The applicant (named above) agrees the following:

- Costs** to reimburse the Council's costs for making and processing this application. These costs include the cost of carrying out consultations, advertising the application and the Council's legal fees and Officer time. The fee for an uncontested order is £2480. Please note that additional costs may become payable if the application is contested.
- New Works Cost** to put the new route(s) into a fit condition, as approved by the Council, for use by the public within 28 days of a request by the Council to do so. (I acknowledge that under the provisions of *s.119(5) of the Highways Act 1980* the Borough Council will put the path(s) into a fit condition if I have not already done so and recover the costs of doing so from me).
- Compensation Costs** to reimburse the costs in full of any compensation which becomes payable under Section 28 of the Highways Act 1980 as applied by Section 121 (2) of the Highway Act 1980.
- Statutory Undertakers** undertake with Solihull Metropolitan Borough Council to meet in full the requirements of any statutory undertaker in respect of any apparatus which may be over, in or under the right of way in respect of which I am making this application. I understand that the consent of the statutory undertakers (i.e. gas, water, electricity, telecommunications, the Post Office and the Civil Aviation Authority) is required before the order can be confirmed by the Council and that their consent may be conditional on my carrying out works to protect the statutory undertakers' apparatus and/or rerouting it. (The Council will consult with statutory undertakers on your behalf).

