

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

12 September 2016

Report of the Strategic Director – Economy, Transport and Communities

CHARGES ASSOCIATED WITH THE PROMOTION OF PUBLIC PATH ORDERS

- (1) **Purpose of Report** To consider the Council's current Policy on charging for Public Path Orders where fees are likely to be waived.
- (2) **Information and Analysis** On 15 January 2007, the Regulatory – Licensing and Appeals Committee approved a report which recommended the current charging regime for Public Path Orders (PPO) (Minute No. 8/07 refers). It covers orders promoted under the Highways Act 1980 and the Town and Country Planning Act 1990. A copy of that report is appended. The aim of the Policy is to enable the Council to recoup a significant proportion of costs incurred when promoting PPOs whilst retaining discretion to work with landowners to provide a safe and sustainable network. This report focuses on the charges and not the statutory requirements that must be met in order that the Council may make a PPO. An application which meets the criteria for a reduction in charges may not result in an order being made if it fails to meet the minimum legislative criteria.

The current charging framework acknowledges that there are circumstances where the Council, the applicant and the public can benefit by diverting a path. This could be via the creation of a new path or a better or safer route. The current charging framework is shown below and this report focuses on Item 4 – the diversion of paths passing through domestic or agricultural premises.

	Consideration	Reduction	Benefit
1	Where an applicant is willing to upgrade or create a new route as a part of a diversion package.	50%	Meets the Rights of Way Improvement Plan target. Improves access to the countryside.

2	Where a landowner is willing to dedicate a route on his/her land to complete a circular route.	No Charge	Meets Rights of Way Improvement Plan target. Improves access to the countryside.
3	A new route enhances public safety.	No charge	Safer walking or riding. Accident reduction.
4	Diversion of paths passing through domestic or agricultural premises.	Discretionary 25% (see explanation below)	Improves security and safety.
5	Definitive Map anomaly.	No charge	Corrects the Definitive Map and Statement (Statutory function).

Following this Committee's expression of concern at its last meeting regarding waiving charges for PPOs, consideration has been given to the current Policy, as well as the likely impact of new regulations that will come into effect as a part of the progressive implementation of the Deregulation Act 2015. The Act intends to amend The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (Statutory Instrument No. 407). The new regulations are currently in draft form and are expected to be implemented from 1 April 2017. It is likely that the new regulations will enable the Council to charge for all the costs of making and confirming an order, and include a charge for submission. This amendment should benefit the Council and assist with the offset of costs. A report on the effect of the Deregulation Act, as it affects Public Rights of Way, will be presented to the Committee in 2017.

It should be noted that the promotion of a PPO is not a duty but a power vested in the Council. Councils have generally promoted orders for the benefit of applicants where the application meets the criteria laid down in the legislation. A full explanation of the Council's powers is provided below under Legal Considerations. For a local authority not to promote an order that meets with the criteria could be punitive, particularly where Government has given local authorities the power to recharge their costs to the applicant and is now reviewing that process with a view to extending the scope to recharge.

The discretionary element advocating a 25% reduction in fees, where a path passes through domestic or agricultural premises, has continued since it was introduced in 1986 by the Highways and Transport Committee (Minute No. 385/86 refers). The two main factors governing a reduction in fees are security of the premises and public safety.

Security of premises is of paramount importance to owners. The legislation does not specifically allow for the diversion of a path solely on this issue,

however, if an equally commodious path can be agreed then it is possible to divert the path.

Public safety in working farmyards is a concern, particularly on little used paths where members of the public can suddenly appear. Clearly, an individual or group of people would not be unexpected on a well-used public path but on a path where the volume of use is low, the sudden appearance of the public may give rise to concern when machinery or livestock is being moved. Again, the legislation does not specifically allow for the diversion of a path solely on this issue, however, if an equally commodious path can be agreed then it is possible to divert the path.

The presence of a Public Right of Way through premises, for example a farm yard or a private garden, does not allow the landowner an opportunity to challenge any person who is walking through premises if they are on the path which is available 24 hours a day for any person to use. Furthermore, the legislation does not allow premises to be secured owing to the presence of the path which should remain unobstructed.

The Council has shown support in the past for these two situations which addresses the concern of landowners and farmers, and may contribute towards a reduction in reported rural crime currently estimated at £42.5 million in 2015 for the whole country (NFU Mutual Rural Crime Report 2016).

Assessing whether an applicant should receive a reduction will remain at the discretion of the Council.

It is therefore suggested that the Council's approach should be amended as follows:

Security

- a) To qualify for a reduction in fees the applicant shall demonstrate to the Council that there has been a crime or attempted crime on the premises which can be attributed to the presence of the path. This should be supported by a Police Incident Number.
- b) Perceived problems will not be accepted as a reason to reduce fees.

Public Safety

- a) The application for a reduction of fees where public safety is a concern shall be supported by a risk assessment. It must demonstrate that there is a risk to the public.

Rights of Way and Development

Where planning permission is being considered by the local planning authority and the resultant development is likely to obstruct the path, the planning authority is reminded of the presence of the path and the requirement that it is will need to be diverted by the County Council when officers view planning

applications. Planning authorities, which includes Derbyshire County Council, have a power under the Town and Country Planning Act 1990 to divert a public path where planning permission has been granted. There is no requirement for the planning authority to pursue the diversion of a path if it grants planning permission; the onus rests with the developer to apply to the authority granting planning permission to promote an order to divert the path. The County Council has never had the resources to monitor developments approved by other planning authorities in its area to assess whether an order has been promoted in line with the Council's recommendation at the consultation stage. Where no application is received, the path may be obstructed leaving the County Council, as the Highway Authority for Public Rights of Way, to liaise with the landowner to resolve the issue.

Where an application is received to divert a Public Right of Way under these circumstances, it is recommended that the full cost of the diversion should be borne by the applicant as it was avoidable when the structure was built.

(3) **Financial Considerations** Income from PPOs has varied over the years depending on the capacity of the Authority to process applications and the number of applications received. The table below illustrates the variation.

2012-13	£18,003
2013-14	£8,441
2014-15	£12,513
2015-16	£8,254

PPOs are charged according to the Officer time involved in processing the order. The current charge of £38.16 an hour is out of date and was based on an average rate of the officers involved. It is therefore proposed that staff time will be charged according to actual grade of the officers involved as detailed below and that the charge ceiling be lifted.

Grade	Hourly Charge
6	£32.06
8	£40.42
10	£51.61
11	£58.82

Additional charges are levied by the Legal Services Department based on the charging rate of person dealing with the matter:

Post	Hourly Charge
Legal Assistant	£46.00
Solicitor	£65.00
Senior Solicitor	£75.00

The cost of advertising an order is passed to the applicant. These are governed by local advertising rates and not under the control of the County Council.

Furthermore, it is recommended that the current maximum charge of £500 per unit of work outlined in the appendix to the 2007 report is cancelled to enable to Council to recoup a significant proportion of its costs in respect of the promotion of PPOs.

If approved, the revised charges will come into effect immediately for new applications.

Applications currently being processed will be completed based on the previous hourly rate except where the applicant has requested that their application is put on hold for an indefinite period, in which case the new charges will apply when the application proceeds.

(4) **Legal Considerations** The County Council is empowered to make orders to divert, extinguish and create rights of way under the Highways Act 1980.

Public Path Diversion Orders – Section 119

The Council needs to be satisfied that it is in the interests of the owner/occupier of the land and/or of the public for the footpath, bridleway or restricted byway to be diverted. It also needs to be satisfied that the proposed route will not be substantially less convenient for the public to use than the existing route. The Council has to consider the effect of the diversion on public enjoyment of the route as a whole, on other land served by the existing route, and on the land (and any land held with it) where the new route is created. The Council also has to have due regard to the needs of agriculture (including the breeding or keeping of horses), forestry and the desirability of conserving nature.

Application to a Magistrates Court to Extinguish or Divert a Highway – Section 116

If it appears to a Magistrate's court that a highway is unnecessary or can be diverted so as to make it nearer or more commodious, the court may, by order, authorise it to be stopped up or, as the case may be, diverted.

The parish/town councils and the district /borough councils may veto the application if they do not support the application to the court.

Public Path Extinguishment Orders - Section 118

Before making an order, the Council will need to be satisfied that the footpath, bridleway or restricted byway concerned is not needed for public use. It also needs to take into account what the likely use of the right of way would be if an order was not made, and also the effect the change would have on the

land the route currently crosses. The Council also has to have due regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving nature. For the purposes of an extinguishment order, any obstruction on the route must be disregarded.

Public Path Creation Orders – Section 26

Before making an order to create a new footpath, bridleway or restricted byway, it must appear to the Council that there is a need for the path. The Council must be satisfied that it is expedient to create it having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public or of local residents, and the effect that the creation would have on the rights of those with an interest in the land, taking into account the provisions for compensation.

Town and Country Planning Act 1990 – Section 257

The County Council, as an authority granting planning permission, is empowered to make a PPO to stop-up or divert a public right of way where planning permission has been granted.

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property, social value and transport considerations.

(5) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Peter White, extension 39673.

(6) **OFFICER'S RECOMMENDATIONS** That the Committee:

6.1 Approves the following amendments to the Council's Policy on charges for Public Path Orders:

Security

- a) To qualify for a reduction in fees the applicant shall demonstrate to the Council that there has been a crime or attempted crime on the premises which can be attributed to the presence of the path. This should be supported by a Police Incident Number.
- b) Perceived problems will not be accepted as a reason to reduce fees.

Public Safety

- a) The application for a reduction of fees where public safety is a concern shall be supported by a risk assessment. It must demonstrate that there is a risk to the public.

- 6.2 Approves the full cost of the diversion of a path to be recharged to the applicant where there was an opportunity to divert a path when planning permission was granted.
- 6.3 Authorises the introduction of the revised charges for processing new Public Path Orders.
- 6.4 Approves that the current maximum charge of £500 per unit of work is no longer applicable.
- 6.5 Notes that a report on the effect of the Deregulation Act 2015, as it affects Public Rights of Way, will be submitted to a future meeting of this Committee when the Regulations are published.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Derbyshire County Council

Regulatory – Licensing and Appeals Committee

15 January 2007

Report of the Strategic Director – Environmental Services

Charging for Public Path Orders

(1) **Purpose of Report** To seek the Committee's approval of a proposed scale of charges for Public Path Orders promoted under the Highways Act 1980 and the Town and Country Planning Act 1990.

(2) **Information and Analysis** The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 [as amended] empower the County Council to charge for the making and advertising of certain Creation, Diversion and Extinguishment Orders made and confirmed under the provisions of the Highways Act 1980 and the Town and Country Planning Act 1990. The Regulations apply to public footpaths, public bridleways and restricted byways only.

To date the County Council has charged applicants £400 for administration plus advertising costs, with a further charge of £75 for each additional path included in the Order, this being the maximum amount permitted under the 1993 Regulations. Subsequent amendment of the Regulations has removed the ceiling on administrative costs. In light of the increasing costs of making such Orders it is considered appropriate to raise the level of charges made.

The 1993 Regulations specify that charges may be made in respect of:-

“(a)... the costs incurred in the making of the Order; and (b)...a charge in respect of each of the following local advertisements, namely the local advertisements on the making, on the confirmation, and on the coming into operation or force, of the Order”.

It is proposed that the Council publishes a scale of charges to reflect the costs involved. Charging at an hourly rate will enable the Council to make charges to those requesting Orders commensurate with the amount of work involved in the processing of an Order. The specification of an upper limit will provide those making requests with a guide to the potential costs.

Appendix One lays down recommended charges for each stage of the Order making process. The County Council is not permitted to charge for costs incurred in holding a public inquiry.

There may be instances where an application to divert, create or extinguish a right of way benefits the County Council or the public, in which circumstances it may be appropriate to reduce charges. The following reductions are suggested:-

Consideration	Reduction	Benefit
Where an applicant is willing to upgrade or create a new route as a part of a diversion package.	50%	Meets ROWIP* Target. Improves access to the countryside.
Where a landowner is willing to dedicate a route on his/her land to complete a circular route.	No Charge	Meets ROWIP* Target. Improves access to the countryside.
A new route enhances public safety.	No charge	Safer walking or riding. Accident reduction.
Diversion of paths passing through domestic or agricultural premises.	Discretionary 25% (see explanation below)	Improves security and safety.
Definitive Map anomaly.	No charge	Corrects the Definitive Map and Statement (Statutory function).

* Rights of Way Improvement Plan

Previously the Council has agreed to the reduction of charges where applications to divert paths passing through farmyards or close to domestic premises were considered to be in the public interest, provided that the diversion was not sought to enable "development or the better use of land". (Highways and Transport Committee Minute No. 385/86).

It is considered that it is appropriate to continue applying a reduction of charges where an application which meets the requirements of the legislation would also address a public safety or security problem (eg where the safety of the public is compromised by agricultural vehicles). In this instance it is recommended that the County Council reduces its fee by 25%.

Applications for the diversion or extinguishment of paths may comprise one or more paths. In such instances the Council should not be making a double charge on the applicant, given that there will be a reduced amount of work

involved compared to the preparation of two unrelated Orders. In these circumstances a flat fee of £100 per additional path is recommended, provided that the total charge made to the applicant does not exceed the actual costs incurred by the Council.

Refund of Charges - There are certain circumstances where the 1993 Regulations require the repayment of charges:-

"The authority shall, on application by the person who requested them to make the Public Path Order, refund a charge where:-

- (a) they fail to confirm an unopposed Order; or
- (b) having received representations or objections which have been duly made, and have not been withdrawn, the Authority fail to submit the Public Path Order to the Secretary of State for confirmation, without the agreement of the person who requested the Order; or
- (c) the Order requested was an Order made under Section 26 of the 1980 Act and proceedings preliminary to the confirmation of that Order were not taken concurrently with proceedings preliminary to the confirmation of an Order made under Section 118 of the 1980 Act; or
- (d) the Public Path Order is not confirmed by the Authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made".

All fees will be displayed on the Council's website and within application documentation.

The County Council is currently handling a number of applications. In these instances it would be appropriate to reclaim the costs as previously charged in line with the 1993 Regulations, ie £400 plus advertising costs with a charge of £75 for each additional path included within an Order.

As a part of the procedure for processing applications the County Council should publish a list of applications for Highways Act and Town and Country Planning Act Orders on its website. This may be achieved with relative ease as all applications are held in a database currently supplying information about the Register of Claims for Public Paths.

Should the Committee approve the new charges it is intended to round charges for each stage of the process up or down to the nearest 15 minutes and to seek to recover costs at intervals as the procedure progresses.

(3) **Financial Considerations** The framework for charging is laid out in the body of the report and the accompanying Appendix.

It is appropriate that applicants who will benefit from the diversion or extinguishment of a path should contribute to the costs incurred by the Council in promoting the Order.

(4) **Legal and Human Rights Considerations** The 1993 Regulations were made under the provisions of Sections 150 and 152(5) of the Local Government and Housing Act 1989. Amending Regulations were made in 1996. The Regulations, as amended, empower the Council to impose charges, as detailed above, in relation to Orders which it is requested to make under the following statutory provisions:-

Highways Act 1980	
Section 26	Creation Order
Section 118	Extinguishment Order
Section 118A	Extinguishment Order (Rail Crossing Order)
Section 119	Diversion Order
Section 119A	Diversion Order (Rail Crossing Order)
Town and Country Planning Act 1990	
Section 257	Footpaths and bridleways affected by development: orders
Section 261(2)	Temporary stopping up of highways for mineral workings

The power to charge arises in relation to Orders under the Highways Act 1980 only if the person making the request is the owner, lessee or occupier of land, or a railway operator.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality of opportunity; and environmental, health, personnel and property considerations.

(5) **Background Papers** Highways and Transport Committee Minute No. 385/86. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 SI 1993/407. The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 SI 1996/1978. Department of the Environment Circular 11/1996: Recovery of costs for Public Path and Rail Crossing Orders Amendment Regulations.

(6) **Key Decision** Yes.

(7) **Officer Recommendations** That:-

- 7.1 Committee approves the scale of charges as listed in Appendix One with effect from 1 January 2007, until 31 March 2008.
- 7.2 Applications received prior to 1 January 2007 be charged at the previous rate of £400 (and an additional £75 per additional path where appropriate) plus advertising costs.
- 7.3 The Strategic Director – Environmental Services be given discretion to reduce or waive charges as indicated in the body of this report.

David Harvey

Strategic Director – Environmental Services

APPENDIX ONE

Proposed Charges for Public Path Orders Effective from 1 January 2007

Element	Includes	Hourly Rate	Maximum Charge
Informal consultation to gauge the response from statutory consultees and interest groups / organisations.	Initial consultation and site visit, consultation letter and plan, responses queries.	£36.92	£500
Reporting to an appropriate Committee of the Council.	Preparation of report and plan.	£36.92	£500
The making of the Order.	Preparation, sealing the Order.	£50.00	£500
Formal consultation.	Preparation and circulation of consultation letter, consideration and responses to representations and objections.	£50.00	£500
Advertising the Order and the Notice of Confirmation and Certification*.	Advertisement in local newspaper(s).	Current advertising rates.	N/A Cost of advertisement in one newspaper.
Charges for each additional path.	All of the above except all advertising charges which will be charged at the local rate.	One off payment of £100 per path.	N/A

* Certification only applies in the case of Town and Country Planning Act 1990 Orders.