

Derbyshire County Council

Extinguishment of a Public Right of Way under Section 118 of the Highways Act 1980

Guidance Notes for Applicants

IMPORTANT: Please read the guidance notes carefully before completing the application form as incorrect or incomplete information can cause delays. Public Path Extinguishment Orders are made very infrequently and applications must meet the required legal tests under Section 118 of the Highways Act 1980 in order to be processed. Those applications which do not meet the necessary criteria will not be accepted. It should be noted that, whilst the Council has a power to process public path orders, this is not a statutory duty. District/ Borough Councils and the Peak District National Park Authority also have the power to make public path extinguishment orders.

No authority for the stopping up of a footpath, bridleway or restricted byway is granted unless and until an Extinguishment Order has been confirmed and brought into effect. Any obstruction of the definitive route is an offence and may make it impossible to proceed with the Extinguishment Order.

We recommend that anyone thinking of extinguishing a public right of way first finds out the correct legal line of the path (this may not be exactly how the path is used in practice) by contacting the Public Rights of Way Team. We also recommend that a site meeting is conducted before an application is submitted as this will save time determining whether the proposal meets the requirements of the legislation. Each public right of way is uniquely referenced by the name of the parish in which it is located and a number. We will need this information to process an application. We can assist you by supplying this information, alternatively you could visit the mapping portal which can be accessed online via the Rights of Way page entitled Derbyshire Maps.

1. Legal Tests

- 1.1 Derbyshire County Council may make a Public Path Extinguishment Order under s118 Highways Act 1980 if it is satisfied that it is expedient that the path should be stopped up on the grounds that it is not needed for public use.
- 1.2 A Public Path Extinguishment Order shall not be confirmed as an unopposed order, unless it is expedient to do so having regard to the extent (if any) to which it appears that the path would, apart from the order, be likely to be used by the public. It is also necessary to have

PUBLIC

regard to the effect which the extinguishment of the path would have as respects the land it serves. Account needs to be taken of the provisions with regard to the payment of any compensation.

- 1.3 Any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.
- 1.4 Consideration should be given to any material provision in Derbyshire County Council's Rights of Way Improvement Plan.

2. Applications

- 2.1 Due to the large number of applications being processed, Derbyshire County Council will be operating a waiting list for new applications. Applications that are in the interests of public safety, user enjoyment of the route or which relate to new development will be given the highest priority.
- 2.2 Please ensure that you answer **all** questions correctly and fully in accordance with the instructions provided on the application form.
- 2.3 It cannot be stressed too strongly that it is for the applicant to make the case for the extinguishment, having regard to the statutory requirements under s118 Highways Act 1980. If the Council is not satisfied that the application meets these criteria then it will not process the application.
- 2.4 The following documentation must accompany your completed application form:
 - (a) **A clear map** at a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily available. The scale and north point should be clearly shown as well as grid references. The map should also contain sufficient detail to show the existing line of the path and any effect on those highways connected to it
Please note: Due to copyright restrictions Derbyshire County Council cannot accept plans that it has provided for information purposes. The applicant must obtain their own plan for submission with their application. Any applications received with a plan produced by Derbyshire County Council will not be processed and will be returned to the applicant.
 - (b) If any person other than the applicant has an interest in the land over which the path runs, **a letter of authority** from that person confirming their agreement to the proposal must accompany the application.
 - (c) If the land over which the extinguishment is proposed is held in joint names then the application form will need to be signed by all legal owners.
 - (d) If the applicant has **proof of ownership of the land** affected by the extinguishment then this should be provided with the application. If this is not provided or the documentation is considered to be too old to be relied on, then the County Council will carry out a Land

PUBLIC

Registry search and obtain the necessary proof of title documents. This will be recharged to the applicant as part of the processing costs.

- (e) Applications on behalf of companies should be signed by a director with capacity to act on their behalf and the position of the signatory should be indicated. Should an agent be acting on behalf of the company then a letter from a director providing authority should accompany the application.
- (f) Applications completed by an agent must also be signed by the applicant.

3. Procedures for making an Order

- 3.1 The making of Public Path Orders is governed by statutory procedures of the Highways Act and the waiting list and priority system adopted by Derbyshire County Council. The **minimum** time likely to be taken to secure confirmation of an unopposed Order is in the region of twelve months from the date of receipt of a valid application. If objections are received to the proposal, then the period of time taken before a decision is made to confirm the Order will be considerably longer.
- 3.2 Once a complete application has been received and accepted, Derbyshire County Council will carry out an **informal consultation**. This involves contacting the local user groups, statutory consultees and any affected landowners. Notices will also be posted on site inviting comments from members of the public. At the end of the consultation period any comments received will be considered and a decision will be taken as to whether the County Council considers it expedient to make the Order.
- 3.3 If the County Council does not consider it expedient to make the Order following the informal consultation then the application will be rejected.
- 3.4 If the County Council does consider it expedient to make the Order then the proposals will be reported to the Regulatory Licensing and Appeals Committee with a request for authority for the Director of Legal Services to make the Order.
- 3.5 Once an Order has been made there is a statutory requirement to consult all statutory consultees and affected landowners. The notice of the making of the Order will be advertised on site and in a local newspaper circulating in the area. There is then a 28 day statutory consultation period from the date of the notice.
- 3.6 If no objections are received to the making of the Order then the Order will be confirmed, advertised and the path will be legally extinguished.
- 3.7 If any objections are received to the making of the Order then the County Council will attempt to resolve these by way of negotiation between the parties.

PUBLIC

- 3.8** Where the objections are not withdrawn the County Council will either decide not to continue with the application as it is incapable of confirming the Order or submit the Order to the Secretary of State for the Department of Environment Food and Rural Affairs for determination. An Inspector will be appointed to determine the Order by written representations, local hearing or Public Inquiry.
- 3.9** If the Inspector decides to confirm the Order then the Order will be confirmed, advertised and the path will be legally extinguished. If the Inspector decides not to confirm the Order then Derbyshire County Council cannot proceed any further and the public right of way will not be legally extinguished and **must** be available for use by the public. The Inspector's decision can only be challenged in the courts by means of a judicial review.

4. Costs

- 4.1** If the County Council decides to proceed with an application for a Public Path Extinguishment Order it will normally do so subject to the applicant agreeing to cover all reasonable costs incurred in processing the application and making the Order including Land Registry Fees, advertising fees and any compensation which may be payable. Please note that there are statutory requirements to advertise the notice of the making of the Order and the notice of the confirmation of the Order and therefore two advertising fees will be incurred. Please note that these are not standard fees and will vary according to local advertising rates.
- 4.2** The County Council has the discretion to waive part or all of the costs (excluding any compensation) where this is considered to be appropriate. Any applicant wishing the County Council to exercise this discretion should state this in the application with clear grounds for requesting all or part of the costs to be waived.
- 4.3** The current charges for applications are detailed in the County Council's list of Public Path Order Charges
- 4.4** Please note that applicants may still be liable for payment of costs already incurred if they subsequently withdraw an application.
- 4.5** The County Council may send interim invoices as the application is processed
- 4.6** The applicant will be liable for the cost of any works (including the removal of any signposts or statutory undertakers' apparatus in, or under the highways to be extinguished) necessary as a result of the Order coming into effect

5. Return of Application Form and Enquiries

PUBLIC

- 5.1** A copy of the application form with all necessary enclosures and any enquiries should be addressed to Rights of Way Team, Derbyshire County Council, Economy Transport & Environment, Q8 Stable Block, County Hall, Matlock, Derbyshire DE4 3AG. Telephone 01629 533190 or email eteprow@derbyshire.gov.uk