

Objecting to Public Path Orders

Introduction

1. These guidance notes relate only to objections to creation, diversion and extinguishment orders made under sections 25, 118 or 119 of the Highways Act 1980. A separate note is available relating to objections to orders made under the Wildlife and Countryside Act 1981. If your objection relates to a special order (e.g. made in the interests of crime prevention or school security) then please contact the Public Path Orders Officer for guidance.
2. The Highways Act gives councils the power to make amendments to footpaths, bridleways and restricted byways in the interests of the landowner, the public or both.
3. Public Path Orders are made by the council and notices served upon owners and occupiers of land affected, user groups, the local Member and every local council for the area concerned. Notices are also placed in the local press and at the ends of every way or path affected by the order.
4. As Public Path Orders affect rights available to all and usually also affect land in private ownership it is vital that anyone with an interest has the opportunity to make representations. There are specific tests that need to be met and if you do not feel that these tests have been met you are entitled to object to the order.
5. Shropshire Council is not able to confirm an order where there are objections that have not been withdrawn. In these instances the order will be forwarded to the Planning Inspectorate and the case will usually need to be heard at a Public Inquiry or Hearing.
6. Before making an order Shropshire Council will carry out an informal consultation process with all statutory consultees and any other interested parties we are aware of. This gives an opportunity for the applicant to make amendments to proposals in order to accommodate any concerns that might be raised. This process aims to reduce the chance of objections once the order is made. If you are aware that a diversion is being considered and feel you would like to be informally consulted then please contact the applicant or the Countryside Access Team.

Who may object to a Public Path Order?

7. Anyone may object to a Public Path Order.

When should an objection to a Public Path Order be made?

8. The notice specifies the exact date by which time any representation or objection relating to an order should be made. This is usually within 28 days of the date of the order notice.

Where should representations or objections be sent?

9. The notice provides the address to which all objections should be sent.

What should the objection include?

10. An objection to an order should be in writing and should clearly state the following information:-

- the full title of the order
For example – The Shropshire Council (FP 1(part), Parish of Pontesbury) Public Path Diversion Order 2009
- the part of the order the objection relates to¹
For example – Order Map 2, Footpath Diversion
- the reason for the objection
The reason for objecting to the order should be stated as clearly and precisely as possible.

What happens to the objection once made?

11. The council will acknowledge receipt of any objections received and may make contact with any objectors. Officers will usually try and negotiate the withdrawal of an objection.

12. If objections are not withdrawn the council will forward the order and any outstanding objections to the Planning Inspectorate. An Independent Inspector will be appointed by the Secretary of State to determine the order. This may be by way of a local Public Inquiry usually held at a nearby village hall or a Hearing usually held at the Shirehall. The Inspector will consider the evidence presented at the Inquiry or Hearing and then make a decision to -

1. confirm the order
2. not confirm the order
3. modify the order proposals

13. An order may also be determined by way of the written representations procedure if there are a small number of objectors; this involves the exchange of submissions without recourse to holding a meeting in public.

14. Should the decision be to modify the order proposals, and depending on the nature of the modifications, the Planning Inspectorate might require the order to be re-advertised. There is an opportunity at this stage to make objections to the proposed modifications which may lead to a second Public Inquiry, Hearing or exchange of written representations.

15. All objectors will be notified of the final outcome of the order.

16. Following publication of the notice of confirmation, there is a final opportunity to appeal against the validity of the order to the High Court on the grounds that the Inspector's decision was not within the powers of the Act.

¹ This only applies to orders which consist of more than one proposal.

Relevance of objections

17. Different types of Public Path Order have different legal tests that must be satisfied. The tests for the main types of order are set out below.

18. Creation Orders made under section 26. Before confirming such an order an Inspector will need to be satisfied that there is a need for the route proposed and that it is expedient to create it, having regard to:

- a) the extent to which the addition would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident on the local area; and
- b) the effect the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.

The Inspector will also need to have due regard to the provisions set out in the authority's Rights of Way Improvement Plan.

19. Diversion Orders made under section 119. The authority must ensure that the alternative way is not already a right of way (although part of the new route may follow an existing right of way) and must ensure that the new route connects with another highway that is the same highway or one connected to it. If the new route does not connect to another highway then it will have to terminate at the same place as the old one. The new route will have to be substantially as convenient to the public. Before confirming such an order an Inspector will need to be satisfied that:

- a) it is expedient in the interests of the owner, lessee or occupier of the land crossed by the path or of the public, that the line of the path or way, or part of that line should be diverted; and
- b) that the path or way will not be substantially less convenient to the public; and
- c) that it is expedient to confirm the order having regard to the effect which:
 - the diversion would have on public enjoyment of the path or way as a whole; and
 - the coming into operation of the order would have as respects other land served by the existing right of way; and
 - any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.

The Inspector will also need to have due regard to the provisions set out in the authority's Rights of Way Improvement Plan.

20. Extinguishment Orders made under section 118. Before making an order the authority must be satisfied that it is expedient that the way should be stopped up because it is not needed for public use. Before confirming an extinguishment order the authority, or an inspector, must be satisfied that it is expedient that the path or way should be stopped up having regard to:

- a) the extent that it appears the path or way would, apart from the order, be likely to be used by the public; and
- b) the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation. Also
- c) Section 118(6) which allows for temporary circumstances preventing use of the way being disregarded.

The Inspector will also need to have due regard to the provisions set out in the authority's Rights of Way Improvement Plan.

21. If the grounds of your objection are not relevant then the Planning Inspectorate may request you to withdraw your objection. You are nevertheless entitled to pursue such an objection at a Public Inquiry if one is held into the order. However, if the Inspector concludes that your objection is irrelevant you may be required to meet any extra costs incurred by other parties as a result of your actions.

The awarding of costs

22. The parties at Hearings and Inquiries are normally expected to meet their own expenses irrespective of the outcome. However, whilst the right of objection to an order under this legislation is a statutory right it should be exercised in a reasonable manner. The Secretary of State or Planning Inspectors are empowered to award costs by virtue of Section 250 (5) of the Local Government Act 1972 when unreasonable behaviour is held to have occurred and this power applies to opposed Public Path Orders.

23. Objectors who have been given the opportunity to modify grounds of a legally irrelevant objection but who have declined to do so will be at risk of an award of costs against them if they pursue the objection to a Hearing or Inquiry.

24. Other actions that can constitute 'unreasonable behaviour' and could be the cause of an application for costs against objectors include;

- Failing to comply with normal procedural requirements for Inquiries and Hearings
- Failure to provide a pre-inquiry statement when asked to do so
- Causing the proceedings to be unnecessarily adjourned or prolonged
- Being deliberately or wilfully uncooperative, such as refusing to discuss the matter or failing to provide necessary information when requested
- Failure to attend an Inquiry or Hearing
- Introducing new grounds of objection or new evidence late in the proceedings

25. For further information on relevant grounds for objections, procedures for determining opposed Public Path Orders or the awarding of costs please refer to www.planning-inspectorate.gov.uk