

PUBLIC PATH ORDER APPLICATIONS TO DIVERT OR EXTINGUISH PUBLIC FOOTPATHS AND BRIDLEWAYS

To: **Cabinet**

Date: **25 May 2010**

From: **Acting Executive Director : Environment Services**

Electoral division(s): **All**

Forward Plan ref: **Not applicable** *Key decision:* **No**

Purpose: **To set out what criteria the Council will apply in considering the extinguishment and diversion of public paths under sections 118 and 119 of the Highways Act 1980 respectively in order to ensure equitable consideration of proposed path diversions.**

Recommendation: **The Cabinet is asked to approve:**

the County Council's standard criteria for public path extinguishment orders to reflect the aims and objectives of the Rights of Way Improvement Plan as identified in Appendix 1, which includes:

- **the removal of specific references to Parish Council objections**
- **allowing the County Council to agree variable widths for the new routes of diverted paths in exceptional cases as appears to it to be reasonable**

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1. BACKGROUND

- 1.1 The County Council as Highway Authority has the power under sections ss118-119 to respectively extinguish or divert public footpaths, bridleways or restricted byways, which landowners and others may apply for. The Policy was first introduced as Appendix B of the 'Policy Guidelines on the upkeep of the Definitive Map and Statement for Cambridgeshire, and the management of the path network to which these documents refer' approved by Cabinet on 4th March 2003. It was last amended through the relevant Service Development Group on 30th September 2004 and the criteria now need to be updated to reflect changes in legislation, policies and experience. The criteria will also help evaluate the relative merits of each application in terms of sustainability, user satisfaction, and benefits to the public e.g. health that the path(s) in question and the proposed changes afford.

2.0 MAIN ISSUES

- 2.1 Officers have found the following aspects of the County Council's own criteria in the existing diversions policy are having unintended adverse effects in some circumstances, resulting in delays to processing applications, unfairness or unreasonableness to applicants and their needs:
- The requirement that the Parish Council does not object. Any objector should give the grounds for their objection, and they must be 'reasonable' in the eyes of the law. Occasionally, a parish council has objected where they have been unable to provide reasonable grounds, resulting in unfair delay to the application. It is thus proposed to amend this criterion such that, whilst still consulted, a parish council will not be able to unreasonably veto an application any more than any other consultee can (see section 3 point vi of Appendix 1).
 - The requirement that the width of a diverted path must be 2metres (m). In certain situations, notably cross-field paths, it is not always reasonable to require a 2m width. For example, many cross field paths are 3 or 4 feet wide, reflecting their nature. The current policy means that a cross-field path that is being relocated as a consequence of a diversion in an adjacent plot of land would have to be given a width of 2m, resulting in the farmer losing productive land. This has led to some eventual diversions not being the optimum solution, or even failing. The proposal is therefore to allow the Director: Highways & Access the discretion to permit appropriate widths in limited circumstances (see section 3 point viii of Appendix 1).
- 2.2 Some additional criteria have been added to the extinguishment order criteria in order to better reflect the Team's aims and objectives as set out in its Rights of Way Improvement Plan (ROWIP)¹, and to link with other corporate objectives such as sustainable transport and inclusion. For example, whilst the existence of parallel paths may suggest that one could be extinguished, it may be that the nature and particular use of that individual path can provide a safe, off-road route for local children to school, or be part of circular walks etc. to encourage healthy living.

¹ Approved by Cabinet as Policy in July 2006 as part of the LTP

3.0 SIGNIFICANT IMPLICATIONS

3.1 Resources and Performance

There are no significant implications for any of the headings within this category.

3.2 Statutory Requirements and Partnership Working

There are no significant implications for any of the headings within this category.

3.3 Climate Change

There are no significant implications for any of the headings within this category.

3.4 Access and Inclusion

There are no significant implications for any of the headings within this category.

3.5 Engagement and Consultation

There are no significant implications for any of the headings within this category.

Source Documents	Location
<ul style="list-style-type: none">• 'Policy Guidelines on the upkeep of the Definitive Map and Statement for Cambridgeshire, and the management of the path network to which these documents refer' approved by Cabinet on 4th March 2003; revised by SDG on 30th September 2004• Rights of Way Improvement Plan, approved by Cabinet July 2006	<p>3rd floor, A wing Castle Court Cambridge</p> <p>http://www.cambridgeshire.gov.uk/environment/countrysideandrights/public/</p>

APPENDIX 1

1. **Applications**

Applicants are advised that prior to formally submitting their diversion or extinguishment application to the Rights of Way & Access Team, they must continue to complete informal consultations with the prescribed bodies (see below). This will identify at an early stage whether the proposal is likely to be accepted by the public, and all responses received should be attached to the application form.

2. **What the Council will do**

The Council will:-

- Consider all applications for diversion and extinguishment orders received on the Council's standard application form
- Consider all applications as appropriate and in accordance with its biodiversity duty under section 40 of the Natural Environment & Rural Communities Act 2006
- Determine all applications in accordance with its prioritisation programme.

NB Where an alternative route is to be provided (for example where a path cannot be technically diverted but has to be changed using concurrent extinguishment and creation orders), the criteria will be slightly different in accordance with relevant legislation but will largely follow the diversion order criteria.

3. **Criteria for Diversion Orders**

The Council will make orders where the following criteria are met:

- i. Pre-application consultations have been carried out with the prescribed bodies.
- ii. The existing route is available for use and any 'temporary' obstructions have been removed, in order to allow a comparison to be made. Any request for exemption will be decided by the Director Highways & Access as to whether or not that is appropriate.
- iii. A suitable alternative path is provided for every path that is to be diverted.
- iv. The proposed new route is substantially as convenient to the public as the original
- v. The proposed new route is not less convenient for maintenance than the original
- vi. No objections are received to the proposals during the statutory consultation period prior to making an order. However, the County Council will review this criterion in individual cases in light of objections and potential public benefit of the proposal.
- vii. The maintenance burden on the County Council is no greater than that of the original. If the maintenance burden is greater, the landowner may be required to enter into a maintenance agreement with the County Council.
- viii. A minimum width of 2m is provided for a diverted footpath, and a minimum width of 4m for a diverted bridleway. In exceptional cases, e.g. cross-field paths, it may, taking into account all the available facts, require such a width as it considers reasonable and appropriate.
- ix. That all the works required to bring the new route into operation are carried out at the expense of the landowner and to the County Council's specifications unless otherwise agreed.

Please note that the County Council reserves the right to refuse to make an Order where it feels the criteria of the legislation are not met, even where consultation responses suggest there are no public objections.

4. Criteria for Extinguishment Orders (s118 Highways Act 1980)

The Council will make orders where the following criteria are met:

- i. Pre-application consultations have been carried out with the prescribed bodies
- ii. Section 118 of the Highways Act 1980 is satisfied i.e. the applicant must demonstrate that the path is not needed for public use
- iii. The confirmation test of section 118 (i.e. how much would the public use the route if it was not extinguished) is met
- iv. The applicant provides clear evidence to show the path is not needed for public use, for example in the form of letters from the Parish Council, and all affected landowners/occupiers.
- v. 'Temporary' obstructions have been removed to allow the public the opportunity of using the route so that 'need' can be assessed, as far as reasonably possible. We will therefore not make an order where a path is 'temporarily' obstructed, but will expect the path to be opened up and made available for public use for a period of not less than 2 months, to see if the public wish to use route. Any request for exemptions will be decided by the Director Highways & Access as to whether or not that is appropriate.
- vi. Where there is a desire line on the ground that is not on the definitive route because that is obstructed we will consider that to be evidence of a desire to get from points A-B, and will require the definitive route to be opened up or diverted onto the desire line or another mutually agreed route.
- vii. The County Council will not automatically consider that a route is not needed if there is a parallel route, as parallel routes can serve a useful purpose especially if close to a village by providing a short circular walk for small children, or people with reduced mobility.

Please note that the County Council reserves the right to refuse to make an Order where it feels the criteria of the legislation are not met, even where consultation responses suggest there are no public objections.

List of Statutory Consultees

Ramblers Association 2 nd Floor Camelford House 87-97 Albert Bank London SE1 7TW
British Horse Society Stoneleigh Deer Park Kenilworth Warwickshire CV8 2XZ
Auto-Cycle-Union Auto-Cycle-Union House Wood Street Rugby Warwickshire CV21 2YX
Open Spaces Society 25 a Bell Street Henley-on-Thames Oxon RG9 2BA
Byways and Bridleways trust PO Box 117 Newcastle-Upon-Tyne NE3 5YJ
Local representative of the Ramblers' Association (varies with District)
Local representative of British Horse Society (varies)
Local representative of Auto-Cycle Union (varies)