

## **Highways Act 1980 section 119 Diverting a Public Footpath, Bridleway or Restricted Byway**

These notes are for guidance to those wishing to divert a footpath, bridleway or restricted byway where this would be in the interests of the owner, lessee or occupier of land crossed by the public right of way or of the public.

A Public Path Order is the legal order required to divert a public right of way. Applications for Public Path Orders under section 119 of the Highways Act are normally dealt with on a date of application basis.

### **Policy**

Herefordshire Council has powers to process applications for Public Path Orders under the Highways Act 1980. When using these powers, Herefordshire Council will use its discretion and consider the merits of each application and the benefits obtained from an application for both the users of the network and the landowner.

### **Herefordshire Council will endeavour to: -**

- Determine a PPO application within 6 months from the date of receiving a valid application form and plan.
- Make an order within a further 3 months unless objections are received which cannot be overcome.
- Ensure all costs are appropriate.
- Supply appropriate waymarking.
- Provide appropriate help and advice both verbally and in writing

### **Applicants for PPOs will be expected to: -**

- Meet the requirements set out below as appropriate.
- Agree in writing to pay all costs associated with making and confirming an order.
- Pay all costs required to put the diverted route in place on the ground including the cost of any changes in signage that may be required.
- Ensure the on-site welfare of any consultees during site visits.
- Ensure all affected landowners and tenants are aware of the impending site visits by consultees.
- Indemnify Herefordshire Council against any accidents or injuries that may occur to a consultee whilst on site inspecting a proposal.
- Ensure the existing route is clear of obstructions unless it is significantly inconvenient to do so. In cases where it would be extremely difficult to open up the legal line of the path (e.g. where a building is the cause of obstruction) the applicant should ensure there is a clear convenient way around the obstruction.
- Set out as far as possible the proposed route on the ground at pre-order consultation stage.

### **Decisions on processing applications for a diversion will take account of the following factors affecting the public's enjoyment of the path: -**

**Condition**                      The condition of the proposed new route should be substantially as convenient as the original route.

<b>Directness</b>	The proposed new route should not unreasonably lengthen the path other than where it is in the interests of an overall improvement to the local network. The proposed new route should avoid introducing unnecessary “dog legs” into the path, or be overly circuitous. It should retain or improve a connection with another public right of way to reduce the distance travelled along metalled carriageways.
<b>Width</b>	The proposed new route should have a minimum width of 2m for a footpath and 3m for a bridleway but Herefordshire Council may insist on a wider route being provided, especially where the existing route is wider, or where the circumstances of the new route dictate that it should be.
<b>Structures</b>	All structures to be placed on the new route of the path must be agreed at the application stage and be in accordance with the note below entitled, <i>‘Herefordshire Council Guide to the Authorisation of Structures across Public Footpaths and Bridleways in Accordance with British Standard BS5709:2006’</i> .
<b>Landscape</b>	The proposed new route should not result in lower quality or diversity of views for the path user.
<b>Features of Interest</b>	The proposed new route should not remove paths from significant features of interest, natural or man-made.
<b>Status</b>	There will be no downgrading of the existing rights other than where it is in the interests of an overall improvement to the local network.
<b>Financial</b>	The proposed new route should not result in significant additional maintenance costs. Applicants may be required to enter into a maintenance agreement with Herefordshire Council. Applicants should also take into account the provision for compensation.
<b>Safety</b>	The proposed new route must not subject users to any significant dangers or hazards. It should not introduce conditions (e.g. darkness, narrowness, poor visibility, hiding places, etc) likely to encourage antisocial or criminal behaviour against users, nor should it create a perception that this may be the case.
<b>Needs of all Users</b>	Proposed new routes should include features to improve access for all users, including mobility impaired users. For example – gates rather than stiles, ramps rather than steps. Authority for the erection of stiles / steps will be given only in very exceptional circumstances.
<b>Use of Land</b>	Applicants should consider the effects of the proposals on farming, forestry and the keeping and breeding of horses.
<b>Termination point</b>	Proposed new routes should terminate at the same point, or another point on the same path or another highway connected with it.
<b>Alternatives</b>	The applicant will be required to demonstrate that they have considered alternatives to the altering of a right of way, i.e. amending proposals, changing boundary locations etc.

## **Herefordshire Council Guide to the Authorisation of Structures across Public Footpaths and Bridleways in accordance with British Standard BS5709:2006**

These are Herefordshire Council's requirements when authorising any new structure across a public footpath or bridleway.

### **When will this apply?**

- When authorising any new structure as a condition of a public path order. [Under Highways Act 1980 s119 or s26, or Town and Country Planning Act 1990 s257]
- When a new boundary is required on an existing path for the purposes of stock control. [Under Highways Act 1980 s147]

The authorisation includes a requirement that the structure is installed and maintained to an agreed standard. Failure to meet this requirement at any point will mean that the structure is no longer authorised and technically becomes an illegal obstruction. Enforcement action may then follow to ensure that the structure is made compliant or is removed.

### **The British Standard BS5709:2006**

This standard currently forms the basis of Herefordshire Council policy and authorisations. BS5709 is based on the principle of least restrictive access, meaning that the design of structure chosen should be the least restrictive possible that still achieves the necessary purpose. It sets out measurable and functional performance criteria for these structures rather than a rigid specification so there may be a number of possible designs of structures that meet the standard. However BS5709 is inflexible in some of the general requirements and Herefordshire Council have recognised the need to have a more flexible approach taking into account local distinctiveness and usage of the rights of way network.

The following general requirements are applicable in all circumstances:

- New stiles will not be authorised on public footpaths unless very exceptional circumstances can be demonstrated.
- No barbed wire or electric fencing within 1 metre of the structure or associated manoeuvring space.

The following requirements should be considered a guide and subject to variation based on individual circumstances:

- Brambles, nettles and similar plants should be removed from the immediate area around the structure
- The ground around the structure to be free of surface water, except immediately after rain, and provide a firm surface.
- Where structures are next to a road they need to be set back ideally by 4 metres for a bridleway and 2 metres for a footpath. Where footpaths are likely to be used by large groups of walkers and in all cases where the footpath continues on the other side of the road, the structure may need to be set back further.
- All structures shall be appropriately waymarked.

In all other aspects, BS5709:2006 should be used when considering new structures along a proposed diversion or path creation agreement.

In accepting the authorisation of a structure you are also accepting the requirement to meet all these conditions for as long as the structure is in place.

#### **Further information**

- Herefordshire Council Rights of Way Improvement Plan [https://www.herefordshire.gov.uk/download/downloads/id/10510/rights\\_of\\_way\\_improvement\\_plan\\_rowip.pdf](https://www.herefordshire.gov.uk/download/downloads/id/10510/rights_of_way_improvement_plan_rowip.pdf)
- Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>
- British Standard for Gaps, gates and stiles – Specification (BS5709:2006, British Standards institute, April 2006)
- Authorising Structures (gaps, gates & stiles) on rights of way – Good Practice Guidance for local authorities on compliance with the Equality Act 2010 (DEFRA, October 2010) <http://www.pittecroft.org.uk/structureguidance.pdf>
- Understanding the Defra guidance on Public Path Structures (Pittecroft Trust, version 3c, 2011) <http://www.pittecroft.org.uk/understanding.pdf>
- Understanding the British Standard for Gaps Gates and Stiles: BS5709:2006 explained (Pittecroft Trust, August 2007) <http://www.pittecroft.org.uk/5709.pdf>

#### **Procedure**

With the exception of seeking the views of local Council Member/s, the applicant will be responsible for carrying out work up to order making stage. This involves: -

- Undertaking a pre-order consultation
- Establishing an acceptable proposal (where a proposal receives objections at this stage Herefordshire Council may decide not to proceed with the application)
- Ensuring full written agreement with other affected landowners

Herefordshire Council will normally only accept an application which has received broad agreement at pre-order consultation stage. There may be circumstances where an application may receive objections at that stage which Herefordshire Council considers irrelevant or insufficient when set against the benefits of making an order, and where it considers that an order is capable of being confirmed. In these instances Herefordshire Council will consider accepting the application and making an order.

This approach allows applicants to informally assess the likely support or opposition to a proposal. It is also likely to reduce objections at order making stage and speed up the whole process. It is, therefore, in the applicant's interest to think carefully about any comments / objections that may be made at this stage.

The procedure for applications is as follows: -

#### **Stage 1 – Pre-Order making**

##### ***Herefordshire Council: -***

1. Receive proposal from the applicant.
2. Provide the applicant with an application pack, including guidance notes, application forms, template letters, blank plan showing the existing public rights of way and a list of all consultees (including the parish or town council) who must be invited to comment.

**Applicant: -**

3. Send letters and two copies of the map indicating an accurate depiction of the proposals to consultees for their observations and comments. The letter should contain a general invitation to the consultees to make an unaccompanied site inspection of the proposed route if they so wish.
4. Receive consultee replies after a two-month consultation period.
5. Consider replies – possible discussions and amendment of proposals by the applicant. The applicant may wish to invite relevant consultees to a site meeting in order to reach a consensus. (This may require a repeat of stages 2-5). **An application may not be accepted if there are outstanding objections to the pre-order consultation stage.** All comments made by user groups and statutory undertakers must be considered in detail.
6. Send the completed application form with a map and written description to Herefordshire Council. Applicant must also send copies of **all** consultation responses (whether relevant or not) and written landowner agreements to Herefordshire Council. This will include consultation with statutory undertakers (i.e. utility companies - water, gas etc). This will be considered as a valid application.

**Stage 2 – Order Making**

**Herefordshire Council: -**

7. Application will be reviewed and comments / objections considered in detail.
8. A site visit will be made prior to producing a final plan and description. Any future maintenance burden is considered.
9. Consult with local Council Member.
10. The applicant is invoiced for the initial fee (£500).
11. Once the fee is paid the plan and schedule are sent to the applicant for approval.
12. Receive approval from the applicant.
13. Prepare a report for submission to the relevant Herefordshire Council delegated officer.
14. Delegated Officer considers and decides on proposal.
15. If the proposal is accepted a Public Path Order is made (*go to 17*)
16. If the proposal is rejected then the applicant is informed and no further action taken.
17. The applicant is invoiced for the administration and the cost of the initial advert for the public Notice (£1100)
18. The Notice of the making of the Order is advertised in a local newspaper and posted on site.
19. A minimum period of 28 days is allowed for any formal representations or objections to the order to be made.
20. If no objections or representations are received, or any received have been withdrawn, the applicant will be advised to complete any works required to provide the diversion route.
21. The diversion route is inspected by PROW Officer.
22. The applicant will be charged for the cost of the public Notice of confirmation of the order in a local newspaper (currently in the region of £400).
23. When payment is received the order will be confirmed and the Notice of confirmation advertised in the local newspaper and posted on site.
24. Wherever possible confirmation of the order and certification (of the new route) will be combined in one advert. However, if necessary, certification may need a separate advert and the applicant will be charged (i.e. amount charged will be greater than the £400 in 22 above).
25. The new route is certified and Notice of Certification advertised in a local newspaper and posted on site.

26. There is a period of 42 days after the date of confirmation of the order where there is potential for any procedural challenge to the courts.
27. Case closed, the Definitive Map and Statement is amended to show the changes and Ordnance Survey informed.

***If objections to an order are received the following procedure will apply: -***

28. Any objections are considered by PROW Diversions Officer and discussed with the applicant.
29. If objections are considered to be minor or insignificant then an attempt is made to persuade the objectors to withdraw the objections.
30. If objections are considered to raise valid points not previously considered then the PROW Diversion Officer may recommend amendment of the proposal, or that the order is not proceeded with. If a new proposal is made then it will be necessary to repeat stages 3 onwards.
31. If objections are not withdrawn Herefordshire Council may still decide to proceed with the application. If so, then the Order must be referred to the Secretary of State to determine, and Herefordshire Council will hand over jurisdiction / control of the process.
32. If the order is referred to the Secretary of State to determine the final decision will be made by an independent Inspector appointed by The Planning Inspectorate by means of either a "written representation" procedure, a public hearing or by the holding of a public inquiry. All parties must usually agree to the written representation procedure.
33. The decision of the Inspector is final and binding unless overturned by a court within the period specified.

**Additional Notes**

Herefordshire Council's costs incurred when an order is submitted to the Secretary of State cannot be recharged to the applicant. Consequently, if objections are raised at either pre-order consultation stage or order advertising stage then Herefordshire Council may decide not to proceed with the order making procedures.

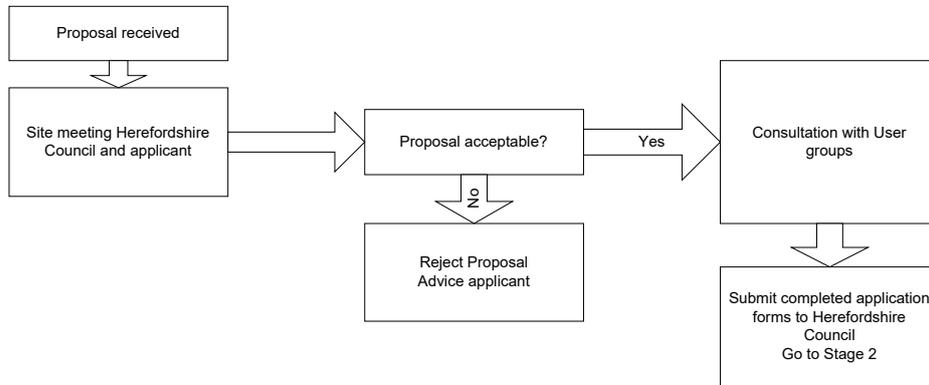
The applicant is required to provide appropriate support in promoting the order during the decision-making process. This may include appearing at a public inquiry or public hearing to justify the proposal.

Further information and advice is available from: -

Public Rights of Way  
Herefordshire Council  
Plough Lane  
Hereford  
HR4 0LE

Or by email to: [PROW@herefordshire.gov.uk](mailto:PROW@herefordshire.gov.uk)

### Stage 1 - Pre Order Making



### Stage 2 - Order Making

