

PUBLIC PATH CREATION ORDER/CREATION AGREEMENT

GUIDANCE NOTES

**Highways Act 1980 – Sections 25 & 26
(As amended by the Wildlife & Countryside Act 1981 and
The Countryside & Rights of Way Act 2000)**

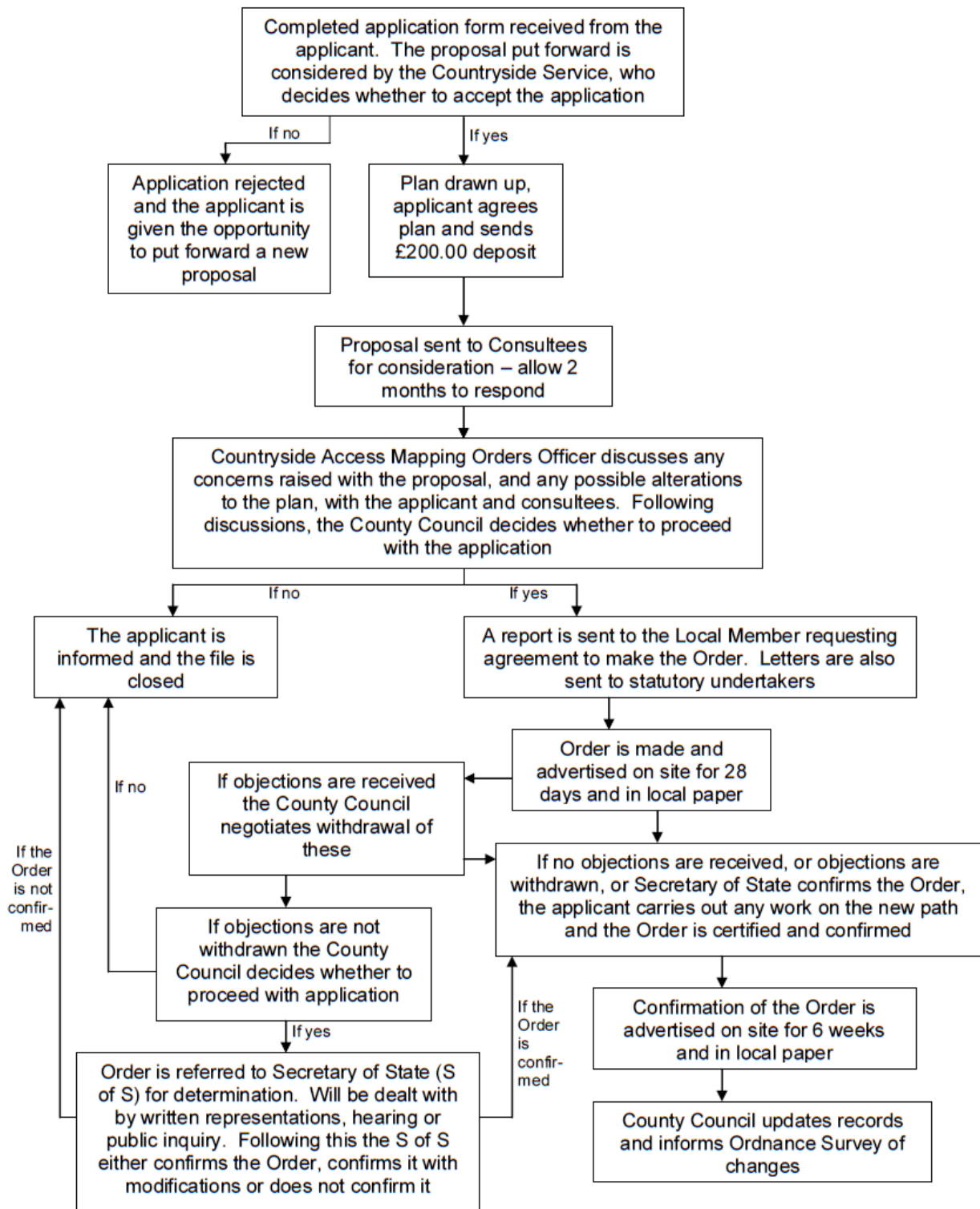
Contents

SIMPLIFIED FLOW CHART OF THE CREATION ORDER PROCESS	2
FREQUENTLY ASKED QUESTIONS	3
What legal tests have to be satisfied?.....	3
Creation Agreement	3
Creation Order	3
How long will the process take?.....	3
How much will the process cost?.....	3
Creation Agreement	3
Creation Order	4
Deposit.....	4
Invoice following the making and advertising of the Order	4
Advertising costs	4
New route works	4
Compensation	4
What should I consider when deciding on my new route?	5
How wide does the new route have to be?	5
What if I require a gate or a stile on my new route?	5
What if I don't own all the land affected by the proposed creation?	5
What if the proposed route crosses a hedgerow?	5
Who will be consulted during the process?	5
Creation Agreement	5
Creation Order	6
Who decides whether an Order should be made?	6
What happens after it has been decided that an Order should be made?	6
What happens if there are objections to the Order?.....	6
What if work is needed on the new route?	7
Creation Agreement	7
Creation Order	7
What happens once a Creation Order has been confirmed?	7
Who should I contact if I have any further questions?.....	7
NEW ROUTE CRITERIA.....	9

Every effort has been made to ensure the accuracy of the information given. However, this guide is not intended to be a definitive statement of law, nor can any responsibility be accepted for errors or omissions.

These notes have been compiled under the legislation as at July 2011 and are subject to change.

SIMPLIFIED FLOW CHART OF THE CREATION ORDER PROCESS



FREQUENTLY ASKED QUESTIONS



What legal tests have to be satisfied?

Creation Agreement

The legal requirements which need to be satisfied before a Creation Agreement can be made by the County Council are set out in Section 25 of the Highways Act 1980.

A local authority may enter into an agreement with anyone having the capacity to dedicate a footpath or bridleway in its area. The agreement should be in the form prescribed in regulations. Before making such an agreement the authority must consult any other authority in the area. The authority must also have regard to the needs of agriculture and forestry.

The agreement may provide for the new route to be subject to limitations (e.g. gates) and conditions. When an agreement is made, the authority must ensure that the path is physically created and must also publish a notice in a local newspaper informing the public. A path created by agreement under section 25 automatically becomes maintainable at public expense.

Creation Order

The legal requirements which need to be satisfied before a Creation Order can be made by the County Council are set out in Section 26 of the Highways Act 1980.

It must appear to the authority that there is a need for the new path and they 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;
- 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.



How long will the process take?

Due to the contentious nature of the process, delays can be experienced, especially if concerns are raised at the consultation stage. It is therefore difficult to specify an exact time period, as each application can vary considerably, however the average time from receipt of application to completion is approximately 18 months.



How much will the process cost?

Creation Agreement

We are always keen to improve the network of paths in Worcestershire. If you are offering to dedicate rights across your land then the County Council will cover the costs. However, if the Creation Agreement has come about because of another reason e.g. as part of a Diversion Order proposal, then we require you to cover our costs accordingly (please see below).

Creation Order

The procedure in making, confirming and certifying a Creation Order involves a considerable and variable amount of officer time and, therefore, no exact figures for the costs of any particular application can be given at the outset. The County Council has no control over the costs charged for the advertising. If there are objections at the consultation stage the costs can rise considerably. The County Council is legally required to give a figure which is the maximum you will be charged for an application in respect of one particular Creation Order: that figure is £10,000, however that would only be in exceptional circumstances. Costs are generally in the region of £4,000.

Deposit

A £200.00 non-returnable deposit is required before the application is processed. Do not send any money now, this will be requested when we are about to process your application.

Invoice following the making and advertising of the Order

The County Council is entitled to recover the costs incurred in the making of a Public Path Creation Order under "The Local Government Regulations 1993" as amended by "Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996".

The applicant must pay the costs of the application up to and including the making and advertising of the Order within 28 days of the date of the invoice from the County Council. Failure to make payment in full (and for any cheque to be cleared) within the specified time period will mean that the Order will not be confirmed and legal proceedings may be commenced for recovery of the unpaid costs.

Advertising costs

The applicant will pay direct to the publisher, agent or County Council (as directed) the costs of advertising the making of the Order(s) in one local newspaper. If the Order is subsequently confirmed, the applicant will also be required to pay the costs of advertising a notice of confirmation of the Order in the same local newspaper.

New route works

The applicant will be required to pay any costs involved in bringing the new route(s) up to an appropriate standard. This may include the purchase and installation of gates, waymark posts, surface works, removal or repositioning of statutory undertakers apparatus e.g. gas, water, electricity, and telecommunications, equipment etc. If such works are carried out by the County Council the charge for the works and also officer time will be invoiced separately from the charge for the costs associated with the making of the Diversion Order.

The applicant will pay for any signposts that the County Council consider necessary, although the County Council will arrange for their installation.

Compensation

If the proposal affects land not in your ownership, then the landowner may request compensation. Any compensation which may become payable to any third party as a consequence of the coming into operation of the Order must be met by the applicant.



What should I consider when deciding on my new route?

Selecting a suitable new route is very important and getting this right at the beginning can save a lot of time and money at the consultation stage. We have enclosed a set of criteria on page 9 that you should follow, where possible, when choosing your new route (also consider the legal requirements above).



How wide does the new route have to be?

The requirement is a minimum width of 2 metres for a footpath and 3 metres for a bridleway, but the full width of an available track or enclosed way if greater. If you intend to enclose the new route on both sides you must allow a minimum of 3 metres for a footpath and a minimum of 4 metres for a bridleway. Barbed wire fencing adjacent to any route is not acceptable.



What if I require a gate or a stile on my new route?

Stiles will not be approved because of the requirement to take into account the needs of people with restricted mobility. Gates should only be used to control stock (cattle, sheep, pigs and horses, but not household pets) and not simply to mark a boundary. Particular problems with control of stock can justify a kissing gate or self-closing gate. The County Council can advise on suitability and availability of such gates if required.



What if I don't own all the land affected by the proposed creation?

If you are not the owner of all of the land on which the proposed route(s) passes then you must supply details and written consents from the owner(s) and anyone with an interest in the land affected.

Any liability for incorrect landownership information will rest with the applicant. It is therefore most important that the applicant checks that the extent of their own ownership and also that of any other parties whose agreement was required, is known accurately.



What if the proposed route crosses a hedgerow?

If the proposed route crosses any existing hedgerow(s) you must supply with your application a signed declaration that you have the appropriate authority to remove the necessary section(s) of hedge. Applications should be made to the District Council Planning Department (Environmental Act 1995 as amended by Hedgerow Regulations 1997).



Who will be consulted during the process?

Creation Agreement

The local Parish Council and District/Borough Council will be consulted on a Creation Agreement.

Creation Order

The local Parish Council, District/Borough Council and local user groups e.g. The Ramblers, are among those consulted. They will be provided with a plan and an explanatory letter about the proposal.

Consultation is valuable as it may help to avoid the possibility of objections if an Order is made and advertised. Please note consultees may wish to inspect the proposed new route and applicants should allow access for this purpose.



Who decides whether an Order should be made?

The PRoW Mapping Officer dealing with the application will prepare a report for the elected members of the Council. The report will be based on the responses received to the consultation and the officer's professional judgement.

The Director of Business, Environment and Community will make a recommendation to the elected members whether or not to make the Public Path Order. This decision is delegated to the local member.



What happens after it has been decided that an Order should be made?

If the Local Member decides that an Order should be made and advertised, the Order will be drafted by a PRoW Mapping Officer.

Public notice of the making of the Order must next be given. This is done by advertising the notice of the making of the Order in a newspaper sold in the local area. Notices will also be placed at either end of the route to be closed. These site notices will remain in place for 28 days during which time anyone can make objections to the Order. Objections must be in writing and addressed to the County Council.



What happens if there are objections to the Order?

Hopefully, because of the initial consultation process, objections to Orders may be few and far between.

Nevertheless if an objection is made in writing, addressed to the County Council and made within the 28 days period for objections, it is a valid objection; even if the objection appears unfounded or even malicious.

If an Order is objected to it is usual to write to the objector(s) to negotiate the withdrawal of their objection.

If an objection is not withdrawn the County Council cannot confirm the Order but may refer the matter to the Secretary of State (who refers it to the Planning Inspectorate (PINS)) for determination. PINS are an executive agency of the Department of the Environment, Food and Rural Affairs. An independent Inspector will be appointed to determine the application. They can do this by holding a local public inquiry, a hearing or receiving the written representations of the County Council, the applicant and the objector(s). The Inspector can make a decision to confirm the Order, not confirm the Order or confirm it with modifications (changes).

Legally the County Council is not obliged to refer an Order to PINS.



What if work is needed on the new route?

Creation Agreement

We will arrange and cover the costs for any work required on the new route; you will be notified of the work that will be done during the process. However, if the Creation Agreement has come about because of another reason, e.g. as part of a Diversion Order proposal, then we will require you to arrange for the work to be done on the new route and to cover the costs (please see below).

Creation Order

A confirmed Order will only take effect when it has been certificated. Before the Order can be certificated, the new route must be made up to a suitable standard. The PRoW Mapping Officer will advise applicants about the works which they will need to carry out. These may include surfacing, drainage, installation of gates at fence/hedge lines, bridges. The County Council also has to consider access by people with mobility problems when creating new routes. Therefore, any gates installed will be required to comply with the current British Standard. Details will be provided as appropriate.

When the applicant is unable to carry out the necessary works, they must agree to pay in advance for any works arranged by the County Council on their behalf. Payment must be received within 28 days of the date on the invoice raised by the County Council.



What happens once a Creation Order has been confirmed?

Once the Order has been confirmed, whether by the County Council, or by an Inspector, public notice of the confirmation must be given. Notice is given in the same way as for the Order, however the Notices will be maintained on site for 42 days rather than 28 days. During this period any person can challenge the Order in the High Court on the grounds that the required legal procedures have not been properly followed by the County Council. However, legal challenges to orders are extremely rare.

Once the creation has been completed the County Council will amend its records. Copies of the confirmed Order are sent to the County Records Office and to the Ordnance Survey (O.S.). The O.S. will update its publications in due course, although this may not happen for some time.



Who should I contact if I have any further questions?

If you have any questions, please contact the Public Rights of Way Team on 01905 845617 or e-mail: countryside@worcestershire.gov.uk

Postal address: Public Rights of Way Team, Worcestershire County Council,
Worcester Woods Country Park, Wildwood Drive, Worcester WR5 2LG

Further guidance, 'A Guide to Definitive Maps and Changes to Public Rights of Way', is available on the Natural England website. Alternatively, contact the PRoW Team on the number above for a hard copy, or a copy via email, of this publication.

**Please return your completed
application form to:**

***Public Rights of Way Team
Worcestershire County Council
Wildwood
Wildwood Drive
Worcester
WR5 2QT***

NEW ROUTE CRITERIA

The process for deciding whether and how any footpath or bridleway should be diverted or closed is a public one. Therefore, the procedures which have to be followed are designed to ensure that the public are made aware of the proposed change and are given the opportunity to give their views on a proposal. This will be at the pre-order consultation stage and also when the Order is advertised. The proposal should not only satisfy the relevant legal tests but should also be seen to be necessary and fair. It is important to keep this in mind when sending in your application.

Beside the general legal tests that have to be satisfied, outlined in the previous section, there may be more specific requirements depending on the diversion proposal, as with the diversion of a Bridleway for instance, where the surface and width would be an important consideration.

Below is a list of things to consider that you may find useful when deciding where to put your proposed alternative route in order to cut down the possibility of objections when the order is advertised.

Things to consider

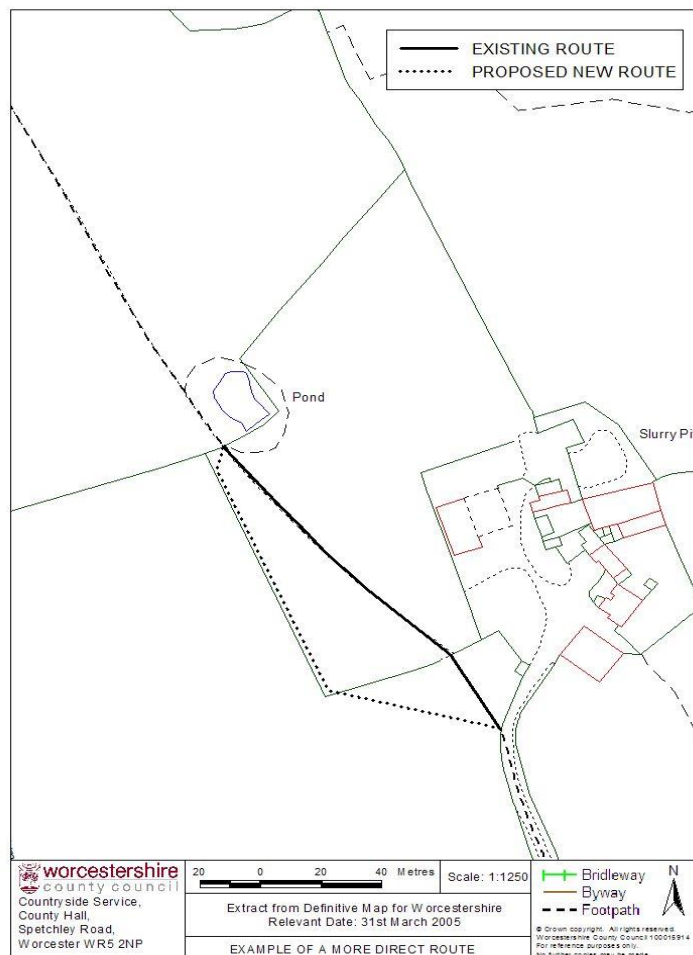
- **DO** consider the views from the new route; it's much better to have pleasant scenery to look at while you walk.



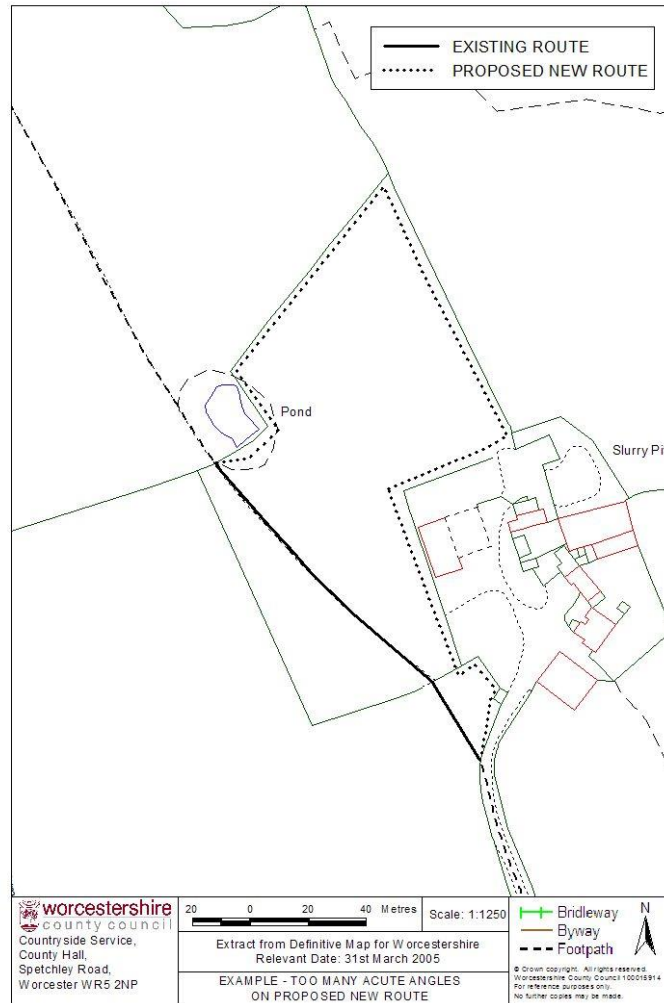
- **DON'T** put the new route through a dark enclosed area, users may find this intimidating.



- **DO** make the new route as direct as possible. Generally walkers prefer to use more direct routes.



- **DON'T** have sharp bends. This makes the route longer and less convenient.



- **DO** allow for a width of **no less** than 2 metres for a Footpath and 3 metres for a Bridleway. If the diverted Footpath or Bridleway is to be enclosed by fences or hedges, the width should be increased to **no less** than 3 metres for Footpaths and 4 metres for Bridleways.



- **DON'T** route a Bridleway close to trees unless there is plenty of headroom for the horse rider. Overhanging branches and other obstructions should be cleared to a **minimum** of 3 metres.



- **DO** give consideration to the surface of the new route, which should be firm, dry and even.



- **DON'T** divert a Footpath or Bridleway onto wet or boggy ground, or ground which is unstable or steep. Here are some surfaces which are considered to be particularly suitable for Bridleways: grass, cinder tracks, earth tracks, wood/bark chippings, road planings (which should be crushed and properly flattened using a roller or vibrating plate). Surfaces that are considered to be unsuitable are: cobblestones, fine gravel, heavy ruts, poorly laid or worn tarmac and poorly laid stone chippings.



- **DON'T** forget **HEALTH & SAFETY**. Avoid running the new route through areas which could put users at risk, e.g. farm yards, timber yards and factory sites.



- **DO** Consider the continuity of the rights of way Network. If the route you are trying to divert starts or ends opposite another right of way, moving it to a point further away from the other route would be unpopular and may also lead to objections. Having the rights of way opposite each other cuts down on road walking and is substantially more convenient for the public. The footpaths shown below ticks all the right boxes. The continuation of the rights of way Network is not disrupted and the footpaths join a straight section of road, which has good visibility for walkers.



We hope that this list describing some of the most common causes for objections to diversion orders will assist you in making a successful application.