

Section 3: Guide to assessing changes to the network for Inspectors

Introduction

You might be asked by the Assessors, relevant Area Officer (AO) or Courts & Inquiries Officer (C&IO) to look at a proposed diversion, extinguishment¹, stopping up² or creation of a public right of way in your area.

1 Getting started

1.1 Read the documents and other information you receive. Note if it is a pre order consultation (POC) or a statutory order. If a POC it is possible to raise wider issues which cannot form the basis of a legal objection, but which need attention for the diversion to either benefit, or have a minimal impact on, walkers. For example

- Where the diversion leads directly to an obstruction on another path
- Where there is an obstruction on a section of the path not affected by the diversion
- Where a stile could be replaced by a pedestrian or kissing gate.
- Where the adjoining path or a section not being diverted is badly out of repair.

1.2 As a matter of Society policy these matters should be dealt with at the same time as the diversion is being processed so that walkers will either benefit from, or suffer the least inconvenience from, the diversion.

1.3 If it is a statutory order, we can, if necessary, lodge a formal objection to the order if our representations at consultation stage have not, in our view, been adequately addressed. An objection will prevent the order being confirmed by the highway authority. This means that the order will either be withdrawn or all objections and representations about the order, will be referred to the Secretary of State at DEFRA. It will then be determined the Planning Inspectorate by way of an inquiry/hearing/written representations.

2 Site visit

2.1 Before undertaking a site visit, read the relevant section of the legislative guide for all volunteers. This information provides an overview of the relevant legislation and the associated practicalities³. Also refer to the relevant checklist for the type of order. You will find these in the Consultation Checklists available on the website.

2.2 In addition to the checklist, you may also find the following general considerations helpful.

- Length – is any proposed change in length significant, given the likely usage?
- Gradients- do the proposals involve any significant change in gradient(s)?
- Width – are the proposed widths adequate, particularly if the way is to be fenced or hedged?

¹ Extinguishment- the destruction or nullifying of a right.

² Stopping up- the removal of public rights of way.

³ You may also find the following document of interest [Rights of way circular \(1/09\) - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362822/Rights_of_way_circular_1_09.pdf) (www.gov.uk)

- Surface – are proposals for surface treatment likely to be adequate for the expected usage?
- Structures – what is proposed in respect of not only gates or stiles, but also do any streams need bridging or wet areas need boardwalks?
- Openness / sense of enclosure – will the proposed route be enclosed by high hedges, walls or fences?
- Attractiveness – this is always subjective, but what do you think?
- Hazards- what hazards can be identified? If the path meets a road, how good are the sightlines, how busy is the road, and will more (or less) of the road need to be used to access continuation rights of way?

2.3 When undertaking the site visit, take the relevant checklist with you to refer to. If you arrive on site and find that the path or way is obstructed, rendering it inaccessible, or the proposed diverted route is inaccessible because, by definition, it is not yet public, then let the Assessor or AO know.

2.4 They will notify the Highway Authority who can arrange that the path concerned, and/or the proposed alternative being suggested, can be walked or at the very least viewed with the consent of the applicant. It is in the applicant's interest after all to facilitate this.

2.5 You may find it useful to liaise with other interested groups who may also be consulted. For example, the Ramblers, Open Spaces Society, British Horse Society, or local user groups. Some of them may be affiliated to PNFS, so check the list of current affiliates on the Society website.

3 Site meetings

3.1 You may be invited to attend a site meeting by the highway authority to resolve concerns and/or objections to a diversion proposal. It is in the Society's interest to attend and try to obtain a satisfactory outcome. If the site meeting is to resolve an objection, this will be attended by a C&IO. And you will be invited to accompany them.

3.2 If you attend a site meeting be careful not commit the Society in any way before you have seen the made path order. If you don't want to attend a site or other meetings by yourself, don't hesitate to ask the AO, other PNFS member, partner, or friend to accompany you.

4 Your report

4.1 Report back to the Assessor/AO/C&IO -you are not expected to report back to the HA. Please submit your report within the deadline you have been given. If there is a possibility that you cannot meet the deadline, contact the Assessor/ AO/ C&IO immediately.

4.2 Use the findings from your site visit including your assessment made using the relevant checklist. Provide photos from your visit if you think these will be helpful. State if the proposed diversion is potentially acceptable or not. If not please give your reasons, making it clear why the proposal is detrimental to walkers.

4,3 Is it useful to have waymarks on the new route? If so, please include in your report where way marks are needed to ensure that the diversion is easy to follow. This should include guideposts where appropriate. If the local authority does not, as standard practice, erect a sign showing the path has been officially diverted this should be suggested, where it would be helpful that they do so. Suitable wording would be: "This path has been officially diverted, please follow the waymarks."

5 What's next?

5.1 The Assessor/AO/C&IO will submit a full report to the HA in response to the pre-order consultation or to the order. This will then be filed in the Society's digital filing system so you will be able to see it. If you have commented on a POC, then when the order is made, you may be asked to comment again. When the order is confirmed, you will be notified by the Assessor or AO so that you are aware of the changes to the network.

CONSULTATION CHECKLISTS FOR HIGHWAYS ACT 1980, TOWN & COUNTRY PLANNING ACT 1990 AND WILDLIFE AND COUNTRYSIDE ACT 1983 (S53)

HIGHWAYS ACT 1980 s118 – STOPPING UP OF FOOTPATH, BRIDLEWAY OR RESTRICTED BYWAY.

This provision allows a highway authority to make a public path extinguishment order on the ground that the way is "not needed for public use". If the path is unobstructed consider these points in your report.

- Is the path being used?
- If so, for what purpose?

If the path is obstructed so that it cannot be walked.

- Consider what the use of the path would be if it were to be cleared?
- Has the obstruction been reported to the HA?
- Have they acted to remedy the matter?

The Highway Authority may claim that the path is not needed for public use because there is an equally convenient path nearby. If this claim is made, assess whether it is equally convenient in terms of

- Surface
- Length
- Gradient
- Attractiveness – views from path or other desirable features
- Safety of walkers both on and emerging from the path.

- Start and finish points and the route in-between particularly regarding connections to other PROWs

HIGHWAYS ACT 1980 s119 DIVERSION OF FOOTPATH, BRIDLEWAY OR RESTRICTED BYWAY

Compare the proposed diversion with the present path considering the following-

- Are the end points of the diversion on the same highway or one connected with it?
- Is the diversion substantially longer considering the typical use of the path? For example, as a recreational route or a short cut to shops or a bus stop? If so, by what approximate percentage is the length increased?
- Are walkers exposed to increased dangers from traffic because of the diversion? For example, the exit point has no verge or footway, or is on a bend?
- Is there a significant increase in gradient in using the diversion?
- Is the surface of the proposed diversion at least as good as the original path? If not, how is it worse?
- Does the diversion increase the difficulties for walkers? Do any limitations (i.e. gates or gaps) comply with the Equalities Act 2010?
- Would using the diversion deprive the walker of pleasant views?
- Does the diversion provide a satisfactory and safe link to the nearest public right of way?
- Is there loss of historical character or features?
- Is the diversion a positive improvement to the original route or on an alignment which is only marginally less satisfactory? If not, how could the diversion be made acceptable?

Ensuring the Diversion Will Be Available for Walkers.

Inspectors should walk the whole length of the path, even when only part is subject to a diversion application. Any faults on the rest of the path, such as it being obstructed or out of repair, should be reported. Whilst these are not valid legal reasons to object to the diversion, they need to be drawn to the attention of the highway authority with a view to ensuring that the diversion route is available to walkers. Similarly, if a path providing a continuation from the diversion is obstructed or out of repair, this should be reported.

TOWN & COUNTRY PLANNING ACT 1990 s257 DIVERSION OR STOPPING UP OF FOOTPATH, BRIDLEWAY OR RESTRICTED BYWAY

Is it necessary to stop up or divert the PROW to enable the proposed development to be carried out (i.e. the development could not go ahead without it)?

In the case of a stopped-up PROW without replacement, is there a route for a diversion of the PROW (to avoid the stopping up) that is potentially suitable and that would allow the proposed development to go ahead?

In the case of a diverted or alternative PROW, is there a more suitable route that could be used for the diversion or alternative PROW? If so, what are the advantages of that route (e.g. shorter detour, convenience, safety, gradient, width, number of stiles, attractiveness)

If the order provides for improvements to an existing PROW for use as a replacement for the stopped-up PROW or for works to the proposed diversion of the PROW, do those improvements/works appear appropriate/adequate?

Are notices advertising the order placed onsite?

Can the proposed new route (where applicable) be walked?

Can the PROW that is to be stopped up or diverted be walked?

Has the PROW that is to be stopped up or diverted already been obstructed by the development?

WILDLIFE & COUNTRYSIDE ACT 1981 s53 DEFINITIVE MAP MODIFICATION ORDER (DMMO) CONSULTATIONS

There are five kinds of DMMO that the Society might be consulted about and receive Orders for.

1. To add a PROW of whatever status to the DM&S.
2. To upgrade a PROW that is already on the DM&S to a higher status. For example, a public footpath to a public bridleway.
3. To downgrade a PROW that is already on the DM&S to a lower status. For example, a public bridleway to a public footpath.
4. To vary the particulars on the DM&S. For example, amending the position, width or limitations on the PROW.
5. To delete a PROW from the DM&S altogether. The Society considers this type of proposal to be the most controversial of the five types of DMMO. Such a consultation or Order MUST be referred to the relevant C&IO straight away.

For the Society to formulate a response to a consultation or order, relevant evidence is required. To elicit this evidence, consider the points below. But remember that for evidence to be relevant it must be objective. Subjective opinions - such as whether the proposal is desirable, needed or safe (horse riders on a narrow footpath, a footpath close to a cliff edge) or if there are other rights of way nearby that perform a similar function - are not relevant evidence.

- Is the route open now to be walked?
- If the route is a definitive PROW already, is there visual evidence, such as hoof prints, dung, tyre tracks, of use by horse riders, cyclists or mechanically propelled vehicles.
- If you are the local inspector: do you know of anyone else who uses the route in question that may be able to advise the Society as to the correct status of the route?
- Did you see any signs or notices on the route in question that might be considered a challenge to someone's right to use the route? For example, a notice saying "No Horse riding" on a public footpath?
- Do you have any information as to who the landowner is, and what the landowner's attitude is to the claim? Are you aware of any challenges to use of the path by the landowner or anyone else?

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- Are there any barriers or other obstructions on the route in question that may have prevented the use being claimed in the consultation? If so, what were they?

Is there any evidence in the Society's digital records that might be helpful in determining what the Society's response should be, such as-

- records of complaints from the public, Society members or our inspector about the use of a public footpath by cyclists or horse riders?
- photos, old maps, or booklets which may indicate that this route has been in existence for a long time?

Do you have any other comments which may help the Society form a view on what its response to the consultation/Order should be?

Abbreviations used:

PRoW = Public right of way

DMMO = Definitive Map Modification Order

DM&S = Definitive Map & Statement

C&IO = Courts & Inquiries Officer