



GUIDANCE ON COSTS

Application for a Public Path Order to change the Public Rights of Way Network

“An application may be made to an authority requesting that it exercises its powers to make a Public Path Order to divert or extinguish a right of way in the interests of a landowner, lessee or occupier. Should the authority decide to proceed with application, then the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I.1996/1978), permit authorities to charge applicants the costs of making orders.”

Department of the Environment Circular 1/09

Please note that the following information on costs relates to applications for orders under Sections 117, 118, 118A/C¹, 119, and 119A/C¹/D of the Highways Act 1980 and Sections 257 and 261 of the Town and Country Planning Act 1990.

Applicants for public path orders are expected to pay an administration charge for the processing of an application, the costs of advertising (at the making and confirmation stage of an order), the costs for any works that are needed and any compensation that may become payable.

[Applications Policy Sects. 5.46 and 9.17]

Administration

The cost of Council administration is charged at the following rates:

Small schemes (up to 3 paths) are charged at £49.00 per officer hour with a minimum fee charged of £2071. The average cost of a small application is around £2071 - £2500.

Large schemes (4 or more paths) are charged at £49.00 per officer hour with a minimum fee charged of £3500.

The administration fee covers all officer time involved in: giving pre-application advice, the carrying out of consultations, drafting plans, site visits, compiling committee reports, posting notices, etc. The administration fee also includes

¹ Non-LEA schools only

two fixed fees² for making and confirming orders which covers the cost of their drafting, sealing, and laying out/proofing for publication. The administration fee **does not** include the cost to the Council of publicising the order twice in a local newspaper plus any certification notice (if required). This is an additional charge, see below.

Any legal advice received from the Council's own legal advisors will be charged at £113 per hour. Any external legal advice received will be charged at the invoiced rate. Charges for the certification of an order will include officer time and mileage and advertising costs. If a particular task takes two officers (i.e. site survey for plan production) the hourly rate will be doubled. Officer's car mileage will be charged at the HMRC mileage rate in force at the time of the journey (currently 45p per mile). Please also note the section on compensation costs below.

The applicant will not be charged for time taken in forwarding opposed orders to the Secretary of State or for any administration involved in negotiating the withdrawal of objections³.

Magistrates' Court Application Costs

Applications to the Magistrates' Court will be charged at £49.00 per officer hour for work done by Countryside Access Team Officers, and at the Council's Legal Services Team standard charging rate of £113 per hour for any services provided by them. Any external legal advice will be charged at the invoiced rate. The applicant will also be liable for all Court costs and advertising costs. There is no upper costs limit, and the applicant is liable for all costs irrespective of the outcome of the application.

[Applications Policy Sect. 7.12]

Advertising

Legal orders have to be advertised in the local press at two stages. The Council will advertise the making of an order and the confirmation of an order (if either unopposed or if confirmed by the Secretary of State). For a typical one path scheme, the cost of each advert will average between £200 - £300 plus VAT at 20% depending on the particular publication and complexity of the order. Where works are required a certification notice may also be needed at a cost of around £100 (plus VAT). The advertising cost of large schemes can be around (and sometimes exceed) £1000 per advertisement. The applicant will be charged the cost price of any adverts once these have been published.

[Applications Policy Sect. 5.54]

² An order making fee of 490.00 (£539.00 for plans greater than A3) and an order confirmation fee of £147.00 (£196.00 for plans greater than A3).

Works

The cost of works required to bring the route of any new path up to a standard suitable for use by the public will be borne by the applicant. This charge will also include the cost of materials and labour for any structures required along the route.

The extent of works required, and any costs involved, will be agreed with the applicant before an Order is made. The works and structures required may be subject to restrictions imposed by and/or the consent of other organisations (e.g. English Heritage, Natural England, Environment Agency, or Internal Drainage Board). You will be liable for all costs involved in gaining any required consent from such bodies. We will endeavour to provide an applicant with accurate estimates and quotes.

If the costs of the agreed works are less than the sum paid then a refund of the difference will be made (if already paid for). If the agreed works cost more than the sum paid the applicant will not, usually, be liable for the additional costs.

Compensation

Section 28 of the Highways Act 1980 allows any person with an interest in the land to make a claim for compensation if it is shown that the value of their interest in the land is depreciated or that a person has suffered damage by being disturbed in their enjoyment of the land in consequence of the coming into operation of a public path order. Compensation can be claimed up to six months from the date that a confirmed order comes into operation.

The cost of any compensation will be payable by the applicant. The reasonable costs of any valuation or legal advice obtained by the Council or a third party in the pursuit of compensation will also be payable by the applicant, as will any reasonable costs incurred by the Council at an Upper Tribunal (Lands Chamber) appeal.

[Applications Policy Sect. 5.59]

Where a third party seeks to establish a fixed cost for valuations or legal advice related to a claim for compensation, the applicant will be informed of this amount prior to any agreement being entered into by the Council.

[Applications Policy Sect. 5.61]

Where an affected landowner indicates that they intend to claim compensation the Council will endeavour to provide the applicant with an estimate of any potential compensation prior to the order being made. However, the Council may recover the costs of obtaining a valuer's estimate of compensation from the applicant. This cost will not be incurred without the applicant's prior consent.

[Applications Policy Sect. 5.62]

VAT

VAT at the standard rate (currently 20%) is payable on any costs involved in advertising the making and confirmation of Orders and on any works undertaken and materials used. VAT is not payable on costs relating to Council administration and compensation.

Changes to Published Guidance

Central Bedfordshire Council reserves the right to change or amend its policies and guidance at any time to reflect best practice or changes in legislation. The charging rates in force when the application is formally accepted will be applicable at the time of processing and determination (and will include any permissible charges under the Deregulation Act Regulations³ where applicable). However, the application will be determined under the policy in force at the time of determination. If any relevant policies change you will be informed when your application is received and, if necessary, will be given the opportunity to amend your application.

When costs will have to be paid

1. The cost of advertising the making of the Order and the costs of Council administration will have to be paid within one month of being invoiced. You will be invoiced once an unopposed Order is ready for confirmation or before an opposed Order is forwarded to the Secretary of State.
2. The cost of advertising the confirmation of an unopposed Order and the cost of any works required will have to be paid within one month of being invoiced. You will be invoiced once an unopposed Order is confirmed or (where applicable) is ready for certification.
3. The cost of any works required for an opposed Order confirmed by the Secretary of State will have to be paid within one month of being invoiced. You will be invoiced once an opposed Order has been confirmed or (where applicable) is ready for certification.
4. The cost of advertising the certification of an Order where works are required will have to be paid within one month of being invoiced. You will be invoiced once the Order has been certified.
5. Compensation can be claimed at any time up to six months after the date a confirmed Order comes into operation. Any negotiation or appeal could take considerably longer. You will be required to pay all reasonable costs

³ Regulations may be made under the Deregulation Act 2016 to permit the charging of Council administration costs associated with dealing with objections to orders and any subsequent forwarding of the order to the Secretary of State and any consequent written representations, hearing or public inquiry. The Regulations may also permit the Secretary of State to recover his own costs for the same order. Notice of these charges will be publicised once any Regulation is published.

incurred by either the Council or a third party in relation to a claim for compensation when they become due.

Central Bedfordshire will issue invoices at the appropriate times for all costs outlined in this guidance.

Outstanding Payments

An unopposed Order will not be Confirmed or Certified (and therefore the Order will not take effect) until and unless all outstanding invoices have been paid.

An opposed Order will not be forwarded to the Secretary of State for determination until and unless all outstanding invoices have been paid.

[Applications Policy Sect. 5.56]

Where outstanding invoices remain unpaid after 42 days, these may be processed by the Council's debt recovery team using its established procedures⁴.

Refunds

If we decide not to confirm an unopposed Order, or not to forward an opposed order to the Secretary of State without the applicant's consent, you will have all administration fees (if already paid) refunded. If you have paid any funds towards works or compensation – this will also be refunded. However, any advertising costs already incurred **will not** be refunded.

[Applications Policy Sect. 5.50]

Should the applicant decide that they do not want to proceed with their application at any point, they will be invoiced for all Council administration and any advertising up to that point.

[Applications Policy Sect. 5.51]

Please note: If the Secretary of State decides not to confirm an opposed Order - the administration and advertising charge will not be refunded. If you have paid towards works or compensation – this will be refunded.

[Applications Policy Sect. 5.53]

Where an order is made under S.257 of the Town and Country Planning Act 1990 (as amended by S.12 of the Growth and Infrastructure Act 2013) prior to planning consent being granted, the non-granting of consent will not automatically trigger a refund in any administration costs already charged.

[Applications Policy Sect. 9.18]

“Applicants are not entitled to a refund other than under the following conditions:

- (i) Where the authority fails to confirm an unopposed order

⁴ An invoice will be sent out initially with reminders at 28 and 42 days. If payment is not received following the deadline set in the second reminder the Council will either pass the debt on to a debt collection agency or will seek a County Court Judgment and court order. A Land Charge could also be lodged against the property.

- (ii) In the case of unopposed orders the authority fails to submit the order for confirmation to the Secretary of State without the agreement of the person who requested the order
- (iii) Where proceedings preliminary to the confirmation of a public path creation order are not taken concurrently with proceedings for a public path extinguishment order.
- (iv) Where the order cannot be confirmed because it has been invalidly made”

Department of the Environment Circular 1/09

GUIDANCE ON WIDTHS

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The following table gives minimum widths for the section(s) of new or diverted paths; this is irrespective of whether a diverted route had previously had a narrower or no recorded width. Only in exceptional circumstances will a path be diverted with a lesser width than its recorded width⁵. The widths recorded below are minimum widths. Where appropriate the Council will seek to secure agreement for a width in excess of the stated minimum.

Path status	Minimum width
Footpath	2.0 m
Bridleway	4.0 m
Restricted byway or BOAT	5.0 m

[Applications Policy Sect. 5.7-5.9]

For applications submitted in relation to development proposals please read the associated ***Rights of Way Standards and Guidance for Development*** document.

Where a new path would run along an existing track or between other features, such as parallel hedgerows, fences or walls, the width should normally be equal to the width physically available on the ground.

Physically Restricted Routes

A new route may be physically restricted where part or all of it uses a pre-existing alleyway, or where there are other significant features or structures which physically prevent the allocation of a greater width. Paths should conform to the general policy where possible. However, where a new path would unavoidably be physically restricted, the following minima will apply for as short as length as possible.

⁵ If there is no recorded width, the width to be used will be the width available for use by the public.

Path status	Physically restricted minimum width
Footpath	1.0 m
Bridleway	2.0 m
Restricted byway or BOAT	3.0 m

[Applications Policy Sect. 5.10]

The acceptance of a width less than the standard minimum width for as short a length as possible will be at the discretion of the Case Officer.

Declaration

Please read, and familiarise yourself, with the declaration in Section 6 of the application form. False declarations may jeopardise or delay your application. If you have any queries please contact Adam Maciejewski (details below).

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Further Information

For more information regarding public path order applications, charges, and policies please contact Adam Maciejewski, the Senior Definitive Map Officer, at the following address:

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