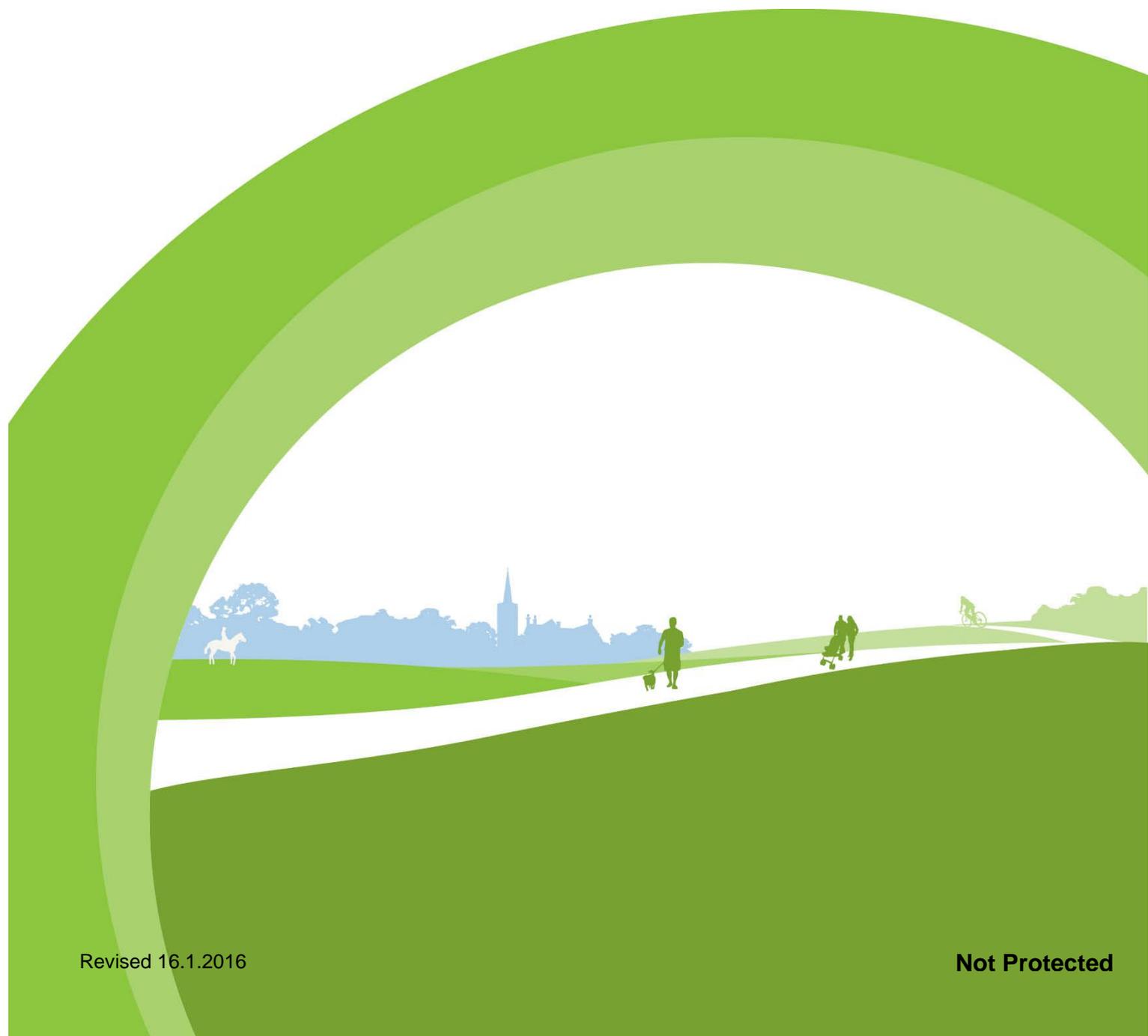


# Applications Policy

Public Path Orders, Definitive Map Modification Orders,  
and Town & Country Planning Act 1990 Orders



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and Town & Country Planning Act 1990 Orders

## Contents:

1. Executive Summary .....	2
2. Introduction .....	3
3. What are public rights of way? .....	4
4. Legislation.....	5
5. Public Path Orders.....	9
6. Special Public Path Orders .....	19
7. Applications to the Magistrate’s Court .....	22
8. Definitive Map Modification Orders .....	25
9. Town & Country Planning Act 1990 .....	28
10. Temporary Closures .....	30
11. Complaints and Mediation .....	32

**Nothing in this policy should be construed as limiting or preventing the implementation of any reasonable enforcement action or legal proceedings which the Council considers appropriate where a public right of way is wilfully obstructed.**

## 1. Executive Summary

- 1.1. Public rights of way are minor highways which are legally recognised and recorded on the Council’s Definitive Map and Statement. Some have been created by statutory processes or by dedication. Members of the public, land owners, and organisations can apply to modify the Map and Statement if they consider it is incorrect, or if they wish to alter the route of a right of way for a variety of reasons including: land management, development, safety, security, and conservation. Alterations to the Definitive Map and Statement are done by the making and confirming of legal orders which are subject to public scrutiny.
- 1.2. The Council, in its duty to keep the Definitive Map and Statement up to date and as a means of efficiently managing the public rights of way network, can also change the Definitive Map and Statement using legal orders.
- 1.3. In addition to making permanent orders affecting the Definitive Map and Statement the Council can make short-term temporary orders to allow works to be undertaken on or adjacent to public rights of way, or for longer lasting temporary orders to facilitate mineral extraction works.

This policy describes how the Countryside Access Team will deal with all aspects of applications for both permanent and temporary orders affecting public rights of way as well as the processes for Council-generated orders that are not the result of an application.

## 2. Introduction

- 2.1. The Countryside Access Team has identified the period following the creation of the new unitary authority as the opportune time to review a number of policies, guidance notes and working practices used within the team. The Bedfordshire County Council “legacy” policies are out of date and not aligned with our Outdoor Access philosophy, whilst legislation and working practices are overdue a revision. This policy is one of a coherent suite of policies and practices which link into the themes within the Outdoor Access Improvement Plan<sup>1</sup> and are founded on the core values of openness and least restrictive access to the network.
- 2.2. The Definitive Map and Statement is Central Bedfordshire Council’s legal record of public rights of way which comprise the following: footpaths, bridleways, restricted byways, and byways open to all traffic (“BOATs”)<sup>2</sup>. Members of the public have the right to use these routes when they wish and should expect to be able to use them freely and without interruption or obstruction.
- 2.3. The process of recording public rights of way and producing the Definitive Map and Statement started in the early 1950s. The last 60 years has seen Bedfordshire’s landscape changed by the construction of housing and industrial estates, motorways and bypasses, and the excavation of brick and gravel pits. Even agricultural land is changing with the increasing subdivision of fields into paddocks for horses.
- 2.4. Not all changes to the landscape have been reflected in changes to the Definitive Map and Statement. Landowners may be faced with the discovery that a right of way crosses their garden or paddock. This right of way may have been evident when the land was purchased, or may have only been discovered through a local land search when the property was put up for sale. Additionally, rights of way are being added to the Definitive Map and Statement when the Council is made aware of old or unrecorded public paths, including paths based on long public use.
- 2.5. Central Bedfordshire Council has a duty to ensure the Definitive Map and Statement is kept up to date and accurate. Under the Wildlife and Countryside Act 1980 members of the public, organisations and landowners have a right to apply for the Map and Statement to be corrected if they consider a path is incorrectly shown on, or omitted from the map.

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<sup>1</sup> At the time of writing the Outdoor Access Improvement Plan is being re-written.

<sup>2</sup> Cycle tracks and cycle ways are not recorded on the Definitive Map and Statement and are excluded from this policy.

- 2.6. Land owners and members of the public may also apply to change the map where a path is recorded correctly, but where the applicant would like it moved or extinguished, or a new path created. Additionally, where developers find that a public right of way needs to be moved for development to take place they can apply to us to do this.
- 2.7. The Council also allows people to apply to temporarily close a public right of way if activities they are undertaking, such as construction or tree felling, would pose a risk to users of the path.
- 2.8. This policy will be subject to periodic review and amendment by the Rights of Way Team Leader.

### 3. What are public rights of way?

- 3.1. Public rights of way are legally recognised and protected routes that allow members of the public to pass and re-pass along them without permission, interruption, or obstruction at any time within the constraints of the route's status. These are:

- Public footpaths – for walkers only.

A person may take a pushchair or dog with them. Although the dog does not have to be on a leash, it should not be allowed to stray off the path or to harass wildlife or livestock.

It is normally a civil wrong to push or ride a bicycle or a lead or ride a horse on a footpath; legal action could be taken by the landowner for trespass or nuisance caused by the user.

- Public bridleways – for walkers, horse riders<sup>3</sup> and pedal cyclists. Cyclists must give way to walkers and horse riders.
- Restricted byways – these may be used by walkers, cyclists, horse riders and carriage drivers. There is no public right of way for cars or motorcycles.
- Byways open to all traffic (BOATs) – these routes are available for use by walkers, horse riders, pedal cyclists, horse drawn carriages, motorcyclists and motor vehicles.

Any vehicle using a BOAT must be licensed and insured, properly taxed, fit for use on public roads, and used in an appropriate manner. In some areas, use may be restricted or prohibited by a permanent or seasonal Traffic Regulation Order. Use of motorcycles and motor vehicles anywhere apart from on a public road or BOAT could constitute a criminal offence unless use is with lawful authority.

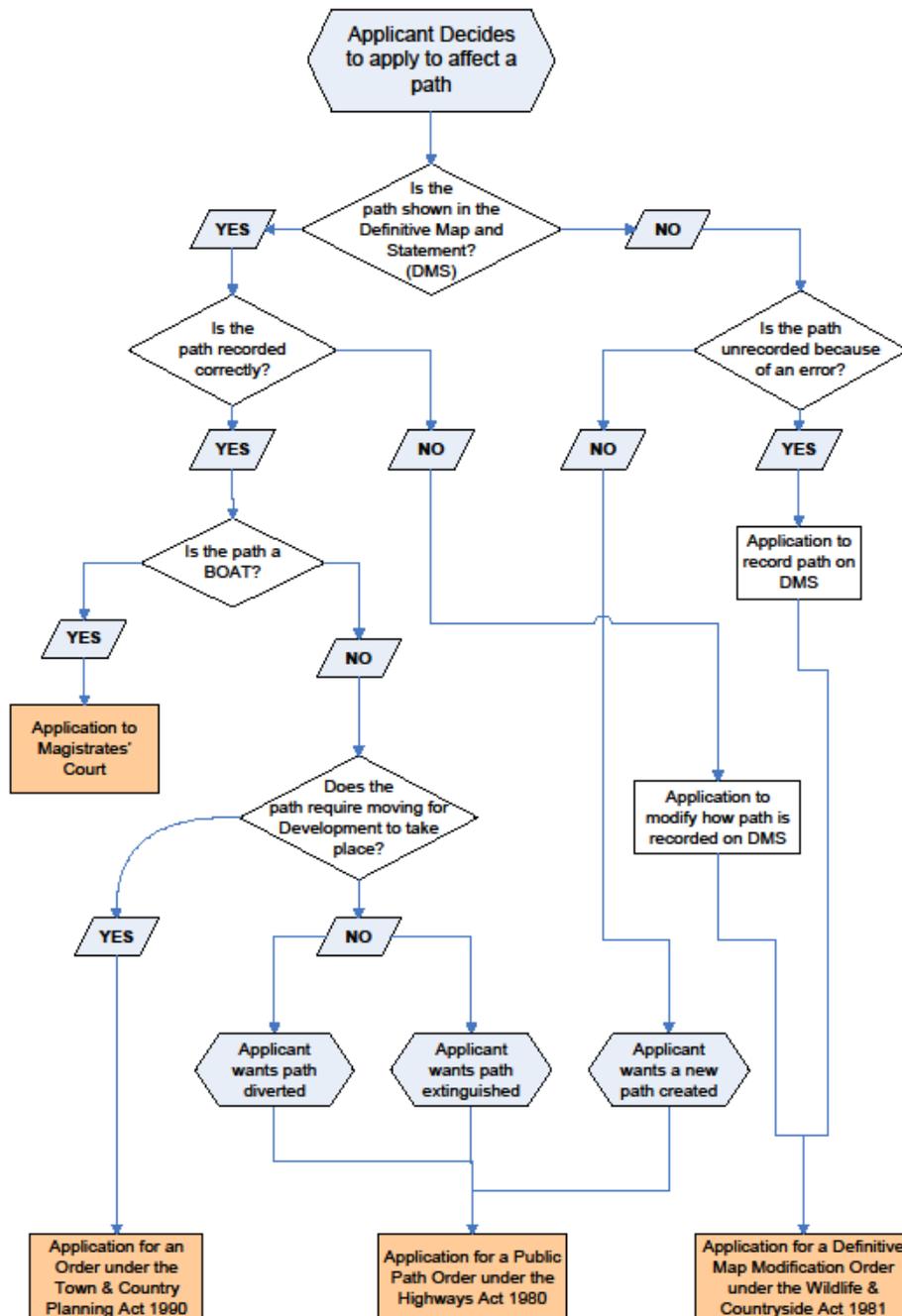
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<sup>3</sup> Currently the law does not recognise llamas as an animal with a legitimate right to use a bridleway. Similarly, the law is likely to consider “scootering” as an activity that cannot take place legitimately on a bridleway but only on a restricted byway or BOAT.

## 4. Legislation

### What type of application should be made?

- 4.1. The legislation used to affect public rights of way and/or modify the Definitive Map and Statement will depend on: whether development is due to take place; whether the right of way is acknowledged to be correctly recorded; and, ultimately, what the applicant wishes to happen to the path. The choices are illustrated in the flow chart below.



*Flow chart to aid choice of application.*

## **Wildlife and Countryside Act 1981**

- 4.2. The Definitive Map and Statement is a legal document. The information it depicts is regulated by the Wildlife and Countryside Act 1981. The rights of way shown upon the map are legally conclusive as to the existence of those rights, though without prejudice to there being any other public rights which are not recorded.
- 4.3. The Wildlife and Countryside Act 1981 places a duty on Central Bedfordshire Council to maintain the Definitive Map and Statement and to correct any mistakes as soon as is reasonably practicable. Members of the public, organisations, and landowners are able to apply to modify the Definitive Map and Statement to correct any errors or omissions. Applications must be based on evidence showing that a route does, or does not, exist and not on other issues relating to, for example, privacy, security, nuisance, or safety. There is no charge for applications to modify the Definitive Map and Statement. What happens when an application is received, and once an order is made are shown in the flow charts on pages 7 and 8.

## **Highways Act 1980**

- 4.4. The Highways Act 1980 gives Central Bedfordshire Council the power to make Public Path Orders to create, divert, and extinguish footpaths, bridleways, and restricted byways. There are a number of legislative tests that any order must satisfy in order for it to be confirmed and thus take effect.
- 4.5. The Council can also apply to the Magistrates' Court to divert or extinguish a byway open to all traffic.
- 4.6. Orders made under the Highways Act 1980 are discretionary in nature and, as such, the Council does not have to make an order, or apply to the Magistrates' Court, if it does not consider the application meets the legislative tests or is expedient as outlined below. Furthermore, the Council may ask the applicant to pay part or all of the costs<sup>4</sup> associated with a confirmed order.

## **Town & Country Planning Act 1990**

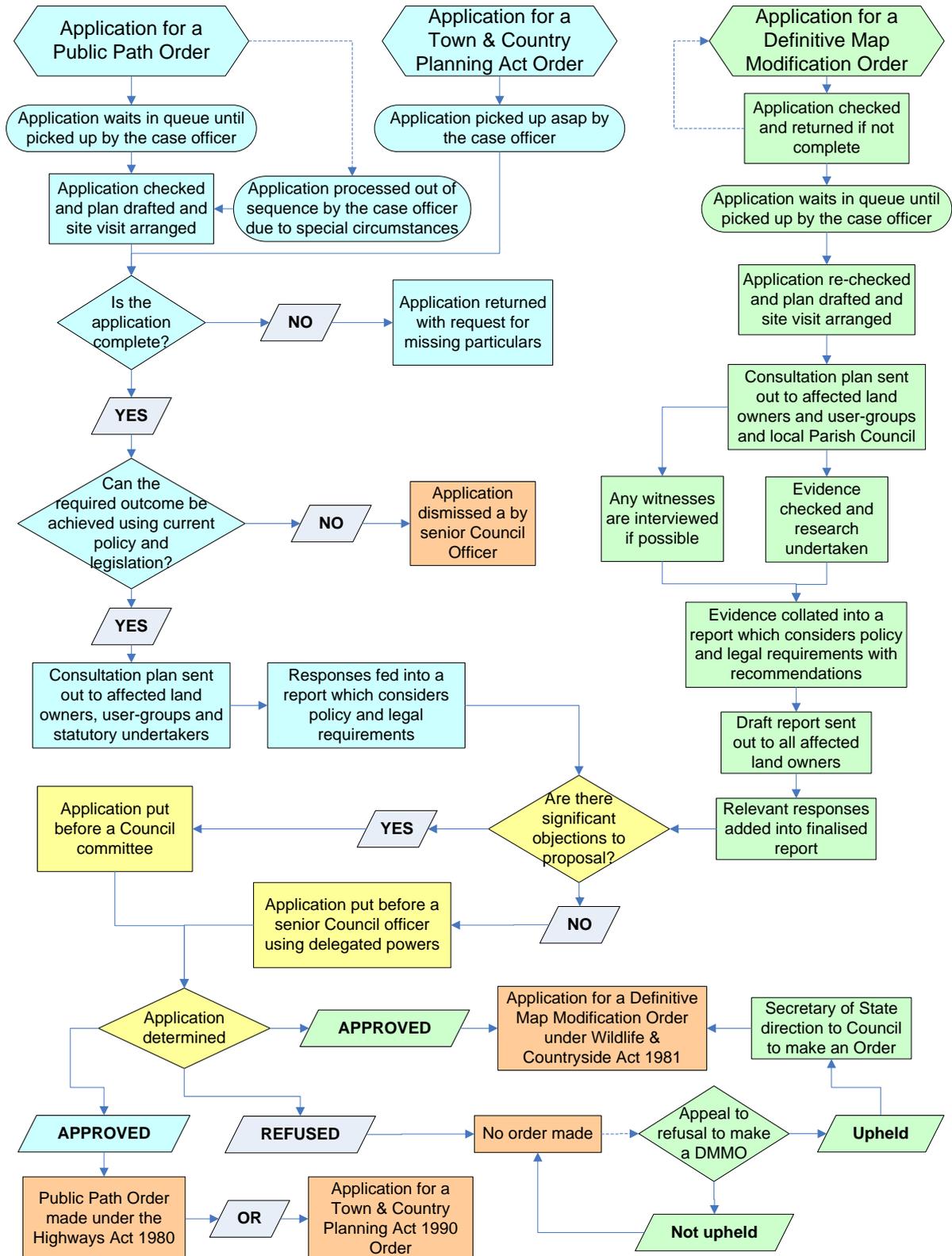
- 4.7. The Town & Country Planning Act 1990 ("TCPA") gives Central Bedfordshire Council the power to extinguish a footpath, bridleway, or restricted byway and, where deemed necessary, to provide an alternative route, or to upgrade an alternative highway so that development may take place over a right of way.
- 4.8. An application under the TCPA to move a path can only be processed once planning permission has been granted. The granting of planning permission does not necessarily mean that the Council will approve the making of a TCPA Order or Public Path Order. The Council will ask the applicant to pay all of the costs associated with any order made.

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<sup>4</sup> The power for local authorities to charge applicants for Public Path Orders is given by the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended).

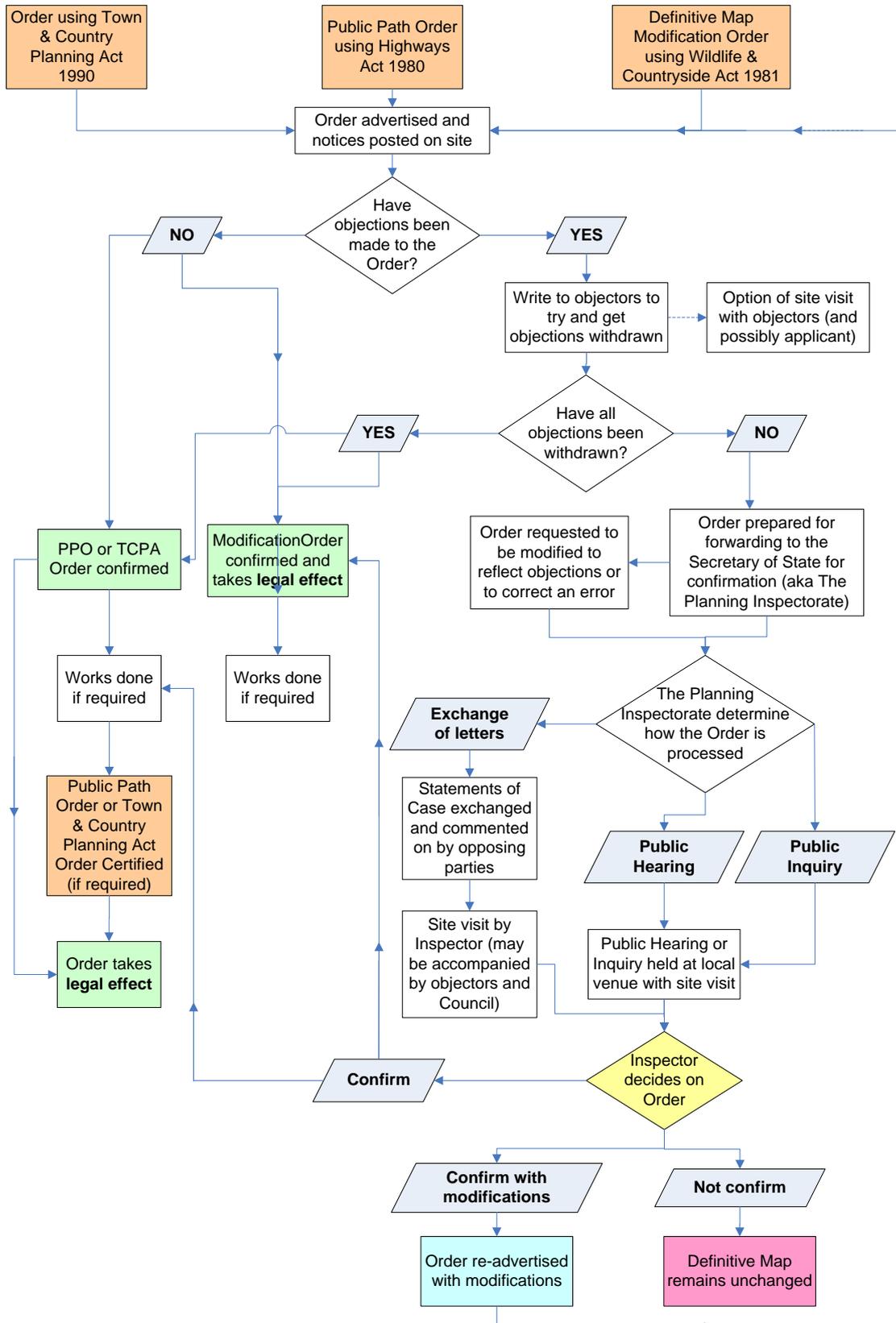
## Processing applications and Orders

4.9. Once an application has been received it is processed by the case officer as illustrated in the flow chart below.



Flow chart showing how an order is processed once received

4.10. Once a Council committee<sup>5</sup> or senior Council officer<sup>6</sup> determines that an order should be made, the following flow chart illustrates the process.



Flow chart showing what happens to an order once it is made.

<sup>5</sup> Currently the Development Management Committee.

<sup>6</sup> Currently the Head of Transport Strategy and Countryside Access under delegated powers.

## 5. Public Path Orders

- 5.1. Public Path Orders (“PPOs”) seek to change the existing public rights of way network by extinguishing or diverting existing paths or by creating new paths. The legislation used to do this is contained within the Highways Act 1980 specifically:
- Section 26 - the creation of a new footpath, bridleway or restricted byway.
  - Section 118 - the extinguishment of an existing footpath, bridleway or restricted byway.
  - Section 119 - the diversion of an existing footpath, bridleway or restricted byway.
  - Section 116 - An application can also be made to the Magistrates’ Court to extinguish<sup>7</sup> or divert a public right of way where vehicular rights are involved.

### Applications

- 5.2. The Council has the discretion as to whether to make a Public Path Order following an application to do so by a member of the public, organisation, or landowner. For a Public Path Order application to be successful the proposal must meet all the legislative tests and be considered appropriate by the Council and not place an undue burden on any third party. If the Council decides not to make an order, there is no right of appeal.
- 5.3. The Definitive Map Officer (with or without the area’s Rights of Way Officer) is available for a pre-application site visit. This ensures that applicants are aware of the legislative requirements of their application, the difficulties and cost implications of what they are trying to achieve, and what the likely objections to an order would address if one were made.
- 5.4. Members of the public can apply to create, extinguish, or divert public footpaths, bridleways and restricted byways. Additionally, members of the public can also request that the Council applies to the Magistrates’ Court to extinguish or divert a BOAT<sup>8</sup>.
- 5.5. Duly made applications will be added to the Council’s Register of Public Path Applications which is a publicly available document held both as a paper copy<sup>9</sup> and on the Council’s website<sup>10</sup>. Applicants’ details will be published unless there are compelling reasons to withhold these. Limited personal data will be incorporated into a report put to either the relevant Council committee or senior Council officer to enable a Public Path Order application to be determined. This report is in the public domain and may contain limited

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<sup>7</sup> Part of the width can also be extinguished in order to narrow a BOAT.

<sup>8</sup> See Section 7 Applications to the Magistrate’s Court.

<sup>9</sup> Held at the Countryside Access Team’s office in Technology House, 239 Ampthill Road, Bedford.

<sup>10</sup> [www.centralbedfordshire.gov.uk/countryside](http://www.centralbedfordshire.gov.uk/countryside)

personal details of the applicant, users, affected land owners or tenants, and the responses from any consultee.

## Widths of new routes

- 5.6. The following applies to **applications** received by the Council.
- 5.7. New routes of diverted paths and newly created paths must have a width recorded within the order to comply with legislation<sup>11</sup> and government guidance<sup>12</sup>. The position of the stated width should be identifiable on the ground, where possible by reference to landmarks on the ground which are likely to endure. Where the new route runs along an existing track, or between other features, such as parallel hedgerows, fences or walls, the normal presumption will be that the recorded width is equal to the width physically available on the ground.
- 5.8. The width of the section(s) of new path will be as per the table below, 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 width<sup>13</sup>. 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.
- 5.9. The following table gives minimum widths for new or diverted paths:

Path status	Width
Footpath	2.0 m
Bridleway	4.0 m
Restricted byway / BOAT	5.0 m

## Physically restricted routes

- 5.10. 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.

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

<sup>11</sup> Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No. 12

<sup>12</sup> DEFRA Circular 1/09

<sup>13</sup> If there is no recorded width, the width to be used will be the width available for use by the public.

- 5.11. 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.
- 5.12. The future erection or construction of fencing or other structures cannot pre-empt the imposition of a narrower (restricted) path width. The acceptability, or otherwise, of minimum restricted widths should be assessed carefully and only implemented if those widths are felt to be reasonable in all the circumstances of the case. Where there are localised intrusions and/or short lengths over which the path would be less than 1 metre wide this may be acceptable depending on the circumstances.
- 5.13. Where a wholly new path to be created (i.e. not one associated with a diversion or concurrent creation-extinguishment) provides a significant network benefit, the Council may consider a narrower route than as stipulated above at Section 5.9.

### **Council-generated orders.**

- 5.14. The Council may decide to make a Public Path Order without receiving an application in order to fulfil one or more of its objectives. Such objectives may include:
- Making an order to provide a useable alternative route where enforcement action is considered unreasonable or not practicable by the Council<sup>14</sup>;
  - For the effective management of the rights of way network;
  - To enhance public access where a need has been identified;
  - For reasons of safety, crime, and animal and environmental welfare;
  - To rectify an acknowledged error of this or another authority.
- 5.15. Such an order is described within this policy as a “Council-generated order”.
- 5.16. Council-generated orders are likely to be made to resolve issues relating to long-standing obstructions or gaps in the network. As such the widths and routes available to remedy the situation are likely to be limited by existing buildings and structures, and by the use of the land over which a new route may be placed. Moreover, the nature of a Council-generated proposal is likely to require some degree of compromise between landowner and Council in order to secure a mutually satisfactory agreement. Such compromises may include the provision of paths with widths less than the minima required for applications as stipulated above.
- 5.17. Any width decrease below the application minimum will be considered on a case-by-case basis by the Case Officer and only sanctioned if the detriment to the users is compensated by some other factor, or can be considered reasonable taking into account all the circumstances - including the needs and expectations of the public and the objective of the scheme.

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<sup>14</sup> See the Countryside Access Team’s **Rights of Way Enforcement Policy**.

## Fencing of new routes

- 5.18. Where the applicant notifies the Council of their intention to fence the route the Council will seek to secure a width in excess of the minimum width unless satisfied that the style of fencing to be used is unlikely to intimidate or deter users of the path.
- 5.19. Where a new path will run alongside an existing hedge, the position of the path will be set out from the hedge by a distance appropriate<sup>15</sup> for the growth style of the vegetation to reduce any future maintenance liability of the landowner or Council. This distance will be measured from the centre line of the hedge.
- 5.20. Where a path is enclosed by hedging or fencing without the consent of the Highway Authority, the maintenance of the surface of the path and clearance of vegetation will, under common law, become the responsibility of the owner/occupier of the land.

## Surfacing of new routes

- 5.21. The surface required for a new path will be determined by the Case Officer who will take into consideration the path's location, environment, and proposed potential level and type of use. This may require that the surface of the new path be improved beyond the condition of the path being replaced or what is present on the line of the new path.

## Structures on new routes

- 5.22. Any structures required on the new route must comply with the Council's policy on structures – **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way**<sup>16</sup> and with its **Rights of Way Enforcement Policy**.

## Open paths

- 5.23. The requirement that public footpaths and bridleways are available for public use is a general duty of both the landowner<sup>17</sup> and Central Bedfordshire Council<sup>18</sup>. The execution of the Council's duty, however, must be reasonable and proportionate<sup>19</sup>.
- 5.24. The presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified). Certification is the process by which the Council inspects and accepts that the

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<sup>15</sup> This distance is likely to range from 1.0 to 3.0 metres.

<sup>16</sup> At the time of writing, both the Council's **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way**<sup>16</sup> and the **Rights of Way Enforcement Policy** were in the process of being reviewed.

<sup>17</sup> Highways Act 1980, Section 137 *et. seq.*

<sup>18</sup> Highways Act 1980, Section 130.

<sup>19</sup> See Central Bedfordshire Council's **Rights of Way Enforcement Policy**.

works on a newly laid out path complies with the requirements of a public right of way. The extinguishment part of many diversion orders only has legal effect once the new alternative route has been certified.

- 5.25. Where the legal line of a path is obstructed, the applicant will have to make a case in writing why the legal line of a path cannot be made open and available for public use. The Rights of Way Team Leader may, if satisfied by the reasons given, temporarily waive the requirement to have an open path where he deems it appropriate, having regard to all the circumstances of the particular case.
- 5.26. Where an application seeks to extinguish a path, the Rights of Way Team Leader may require that the path be monitored for a period of time to assess whether it is used by the public and to what extent. This will be determined on a case by case basis. Where the application relates to a route that has been unavailable for public use because of obstructions that cannot be removed, the Rights of Way Team Leader may require that a suitable alternative route be provided so that a comparable level of use may be ascertained.
- 5.27. A suitable alternative route means one on an existing right of way or permissive path of equal or higher status, or on land in the same ownership as the application path along a route that does not impede the passage of the public entitled to use the application path, and which is substantially as convenient for members of the public to use. Where an alternative route is proposed on land in a different ownership the applicant would have to reach agreement with, and compensate, the affected landowner.
- 5.28. The duration of the assessment period will be determined by the Case Officer on a case-by-case basis and will generally be between one month and one year. The applicant will be required to pay any reasonable costs expended by the Council in ascertaining the level of use of the route. The Case Officer has discretion to waive these requirements if a suitable alternative right of way of equal or higher status exists nearby.
- 5.29. Keeping paths open and available for public use is a general and on-going duty of the Council. Whilst we will positively encourage applicants to make a route available for public use, we would not refuse to process an application, or refuse to make an order, solely on the basis that the applicant has not made the existing path(s) available for public use.
- 5.30. The decision as to whether enforcement action is appropriate, and whether an application to divert or to extinguish is appropriate, should be made on the merits of each individual case. Where an application to divert or extinguish a path is received after enforcement proceedings have begun, the Rights of Way Team Leader has discretion as to whether to continue with the enforcement process or to allow the application to be processed on the condition that a suitable alternative route is provided in the interim. This section should be read in conjunction with Central Bedfordshire Council's **Rights of Way Enforcement Policy**.

## Ownership of land

- 5.31. An applicant must confirm that they own the land affected by their application. Where the Council requires proof of Title, this will be provided at the applicant's own expense.
- 5.32. Where a path is to be created or diverted onto land which is not in the ownership of the applicant, the applicant **must** obtain and supply written consent from the owner(s) of the land over which the new path is to be created. Where written consent is not obtained or where the land owner objects to the imposition of the new path, the applicant will be required to revise their application so that any new path remains on land within their own ownership.
- 5.33. Where the owner of the land over which the new path is to be created consents to the application, this is without prejudice to their right to claim compensation for the new path under Section 28 of the Highways Act 1980. **The applicant will be required to defray all compensation costs<sup>20</sup> arising from their application.**
- 5.34. In cases where the owner of the land over which the new path is to be created does not consent to the application, and where there is no alternative route available over land owned by the applicant as required by Section 5.32 above, the Case Officer, in consultation with the Rights of Way Team Leader, will determine whether the application sufficiently enhances the local rights of way network or is of strategic importance to merit the imposition of a new path onto an unwilling recipient. If the application does not meet these criteria, the application will be refused and will be returned under Section 5.41 below. Where such an application is progressed the applicant will be expected to meet all compensation costs arising.
- 5.35. In Council-generated schemes to resolve network anomalies, the Council will, where possible, keep the line of any new path on land within the same ownership as the original path unless there are sound practical or legal reasons not to, or if the imposition of the path onto an adjoining land owner provides a significant network benefit or is of strategic importance.

## Order of processing

- 5.36. Applications received from members of the public, landowners, and organisations will be dealt with in strict chronological order of receipt unless they meet one or more of the following criteria<sup>21</sup>, when it will be at the discretion of the Case Officer and Rights of Way Team Leader as to whether the application will be processed out of sequence:
- Where the proposal would result in a recreational benefit to the public;
  - Where the proposal would resolve a Definitive Map anomaly;

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<sup>20</sup> See Sections 5.58 - 5.62 for more details.

<sup>21</sup> This list is an amalgamation of exceptions contained in older policies and may be updated when reviewed.

- Where the proposal would rectify an acknowledged error of this or another local authority;
- Where the proposal is in the interests of the efficient management of the public rights of way network;
- Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan;
- An application would resolve issues relating to demonstrable<sup>22</sup> criminal or anti-social behaviour of a persistent nature;
- An application is in close proximity to another application - in which case both applications will be processed simultaneously to reduce Council administration;
- Where determination of a public path order application is deemed to be a necessary pre-requisite to enforcement action being taken against the applicant;
- Where an application is associated with development for which planning consent has been given<sup>23</sup>. This relates to applications made under the Town and Country Planning Act or Highways Act;
- Where an application is received from Network Rail or the Highways Agency, or one of their agents.

5.37. An application to extinguish a path will be deferred until the end of the monitoring period in cases where the Rights of Way Team Leader has required that the level of use of a path be assessed prior to the application being determined.

5.38. Council-generated proposals are not subject to the requirement to be processed in chronological order.

### **Determination of applications**

5.39. When an application is received an officer will examine the application to assess whether the proposed network changes meet the relevant tests in light of current case law, Government Guidance and Council policy. If the application is likely to meet these criteria then the officer will write to the applicant to notify them that the application is suitable and will be put in the queue to be dealt with either as a standard application or as a potential Council-generated scheme depending on the circumstances.

5.40. The acceptance of an order for processing does not guarantee that an order will ultimately be made or confirmed either by the Council or by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs.

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<sup>22</sup> Evidence of criminal activity or ASB must be supplied by the Police. The application must be supported by the Police and the local town or parish council

<sup>23</sup> The granting of Planning Consent does not automatically mean that an application to divert or extinguish a public right of way will be approved or any subsequent Order confirmed.

5.41. Where an application is considered by the officer to fail the relevant legislative tests in light of current case law, Government Guidance, or Council policy, the officer will consult with the Rights of Way Team Leader and produce a report detailing the reasons why the application fails. The report will be presented to the Head of Service for Transport Strategy and Countryside Access with a recommendation that the application be immediately refused and returned to the applicant. If the Head of Service for Transport Strategy and Countryside Access accepts the recommendation, the application will be returned forthwith with a copy of the refusal report. If the Head of Service considers that the application should be accepted, the officer will contact the applicant as in Section 5.39 above.

5.42. Members of the public may apply for a public right of way to be created, diverted or extinguished - the precise details of the proposal being dependent on the applicant's particular needs and wants. Subject to the initial approval of the application, the Case Officer will prepare and present a report either to a Council committee, or to a senior Council officer acting under delegated powers<sup>24</sup>, who will determine whether or not to make an order. Applications for public path orders will be determined according to the following criteria:

- The scheme must meet the relevant tests of the Act for an order to be made;
- The scheme should provide an overall positive benefit or enhancement to the local public rights of way network.

5.43. The presumption shall be that if the application meets the tests of the Act and does not negatively impact on the local public rights of way network, then the Council shall agree to make the order requested, unless there are coherent and reasonable grounds for refusing the application. Such grounds may include, but are not limited to, the following:

- Where the circumstances of the order would be such that the Council would be required to take on a disproportionately greater maintenance liability in consequence of making and confirming the order than had previously been the case;
- Where the detrimental effect of the proposal on other landowners/occupiers is disproportionate to the benefit gained by the applicant when all factors are taken into consideration;
- Where the order requested would conflict with other objectives or duties of the Council, and it is felt that these objectives and/or duties outweigh the benefits to the applicant.

5.44. If the committee or senior officer approves the application, the applicant will be notified and an order will be subsequently made. If the committee or senior officer decides to refuse the application no order will be made. There is no

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<sup>24</sup> Central Bedfordshire Council's Constitution (H3 at Section 4.2.148.) authorises the Assistant Director - Planning "... To carry out the functions of the Council in respect of public rights of way..." where no significant objection has been made. This has been delegated down to the Head of Service for Transport Strategy and Countryside Access (under H3 at Section 3.1.2.).

right of appeal against this decision although the applicant may seek judicial review of the Council's decision in the High Court.

- 5.45. Where an officer is recommending that an application should be refused, the Council will not consider a substantial modification of the application if this is likely to also result in refusal. Any such modification would have to form a separate application to be processed separately.

### **Costs of Public Path Order applications**

- 5.46. Applicants are required<sup>25</sup> to reimburse the Council for costs relating to the Council's reasonable administration relating to the application, any legal or other professional fees or services, any costs incurred by advertising any orders made, any costs associated with bringing the new route up to a suitable standard, and any costs associated with claims for compensation under Section 28 of the Highways Act 1980.
- 5.47. Council administration associated with processing an application may include the following: identifying consultees, affected landowners, and third parties; drafting consultations; drafting plans and reports; attending committee and other relevant meetings; site visits<sup>26</sup>; drafting of legal orders; preparation of notices and press advertisements; and responding to queries relating to the consultations and advertised orders. Administration charges are calculated as being the corporate recharge rate of a Council Officer on the lowest rung of pay scale CBG9. Charges are per officer/hour (or part thereof).
- 5.48. If the Council decides not to approve the application there is no charge for any administration already carried out.
- 5.49. If the Council approves the application and decides to make an order, the applicant will be invoiced for all administrative tasks up to the point the order is made plus the costs of advertising the making of any order. Invoices will be sent out once an order has been made.
- 5.50. If the Council decides not to confirm an unopposed order, or not to forward an opposed order to the Secretary of State for the Environment, Food and Rural Affairs for confirmation without the consent of the applicant, any costs already paid will be refunded with the exception of any advertising costs.
- 5.51. If the applicant decides not to continue with the application, the applicant will be charged any administrative and advertising costs incurred by the Council up to that point in time. If an order has been made it will be up to the discretion of the Rights of Way Team Leader whether to seek confirmation of the order or to abandon it.
- 5.52. There is no charge for any Council administration associated with dealing with objections to orders and securing their withdrawal and/or the forwarding of an opposed order to the Secretary of State for the Environment, Food and Rural

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<sup>25</sup> The power for local authorities to charge applicants for Public Path Orders is given by the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended).

<sup>26</sup> Site visits will also include charges for mileage at the rate claimed by the officer in question.

Affairs for confirmation. There is also no charge for any administration and costs associated with written representations, public hearings, public inquiries, or any legal or other professional advice sought by the Council once an order has been made.

- 5.53. If an opposed order is forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation and is subsequently not confirmed there is **no refund** on any charges already paid.
- 5.54. Applicants will be invoiced for any administration involved in advertising the confirmation of any order made once it has been advertised.
- 5.55. If an order requires certification a separate invoice for the administration, site inspection and advertising of the certificate will be sent out after the order has been certified.
- 5.56. The Council reserves the right not to confirm or certify an unopposed order, or not to forward an opposed order to the Secretary of State for confirmation, or not to certify an opposed order confirmed by the Secretary of State, until and unless all outstanding fees have been paid in full.
- 5.57. Further details relating to the costs of applications are set out in the accompanying document *Application for a Public Path Order to change the Public Rights of Way Network - Guidance on Costs*.

## **Compensation**

- 5.58. 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 his enjoyment of the land in consequence of the coming into operation of a confirmed Public Path Order.
- 5.59. **The cost of any compensation will be payable by the applicant.**
- 5.60. The reasonable costs of any valuation or legal advice obtained by 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.
- 5.61. 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.
- 5.62. 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.

## **Exemption from certain charges**

5.63. Where an application is received which would satisfy one or more of the following criteria:

- Where the proposal would result in a recreational benefit to the public.
- Where the proposal would resolve a Definitive Map anomaly.
- Where the proposal is in the interests of the efficient management of the rights of way network.
- Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan.

and is considered by the Case Officer to provide a significant improvement to the public rights of way network, the Council may waive any administration costs that would have otherwise been incurred by the applicant. The applicant will still be liable for any advertising costs, as well as costs of any works or compensation.

## **Adoption of applications as a Council-generated proposal**

5.64. An application may alternatively be adopted by the Council as a Council-generated scheme if it meets one or more of the above criteria and can be further enhanced to provide additional benefits or to meet other criteria. The decision to adopt an application is at the discretion of the Case Officer. In such circumstances the Council, in consultation with the applicant, will specify the alignment, surfacing, and width of any new route and particulars of any structures which are required.

5.65. Where an application is adopted as a Council-generated scheme, it will be removed from the list of applications and processed as a Council-generated scheme as the officer's case-load allows. An application which is dealt with in this way will not incur any charges for administration, advertising, works or compensation which would otherwise have been payable by the applicant had the scheme been processed as an ordinary application.

5.66. Where an application is received which would rectify an acknowledged error of this or another local authority the application will be adopted as a Council-generated scheme unless it is significantly different to a proposal that the Council itself would have proposed to rectify the error.

## **6. Special Public Path Orders**

### **Rail Crossing Orders (ss.118A & 119A Highways Act 1980)**

6.1. The Council will consider applications to extinguish or divert public paths which cross railway lines where is a demonstrable risk to public safety.

- 6.2. Applications will only be accepted from Network Rail (or its successor bodies and agents)<sup>27</sup> or following representations from a local town or parish council.
- 6.3. Decisions on whether or not to make orders will be referred to the appropriate Council committee or, where applicable, the appropriate senior Council officer. We shall seek to determine the application within four months of receipt<sup>28</sup>.
- 6.4. Charges and widths relating to Rail Crossing Orders will be as set out for an ordinary Public Path Order application.

### **Special Diversion and Extinguishment Orders in the interest of crime prevention (ss.118B & 119B Highways Act 1980)**

- 6.5. Sections 118B and 119B of the Highways Act 1980 permits the Council to make an order to extinguish or divert public paths in the interests of crime prevention. This is a two stage process.
- 6.6. First the Council has to make a detailed submission to the Secretary of State for Environment, Food, and Rural Affairs to make a Crime Prevention (Designated Areas) Order for the area in question. The submission must demonstrate to the Secretary of State that the area is sufficiently vulnerable to crime<sup>29</sup> directly arising from the presence of public rights of way to justify the designation applied for and that the rights of way in the area are the cause of the area's persistent crime problem. Furthermore the Council must show that realistic alternative options to tackle the crime problem have been properly evaluated prior to the application being made.
- 6.7. For the Council to consider a request for submission to the Secretary of State for an area to be included in a designation order, the request must be submitted, or formally endorsed, by one or more of:
  - The Town or Parish Council
  - The Police
  - The local Ward Member of Central Bedfordshire Council.
- 6.8. Requests from other sources will be forwarded to the town or parish council for their endorsement or otherwise.

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<sup>27</sup> Where a rail operator has applied for an extinguishment or diversion order, the Secretary of State for Transport may, within two years from the date of the application, by Order made under Section 48 of the Transport and Works Act 1992, require the rail operator to construct a tunnel or bridge to carry the right of way across the railway.

<sup>28</sup> Where the Council has neither confirmed an order, nor forwarded it to the Secretary of State within 6 months of receiving an application, the rail operator may apply for the Secretary of State to confirm the order without consultation with the Council.

<sup>29</sup> Crimes such as: robbery, burglary and vehicle crime along with arson, assault/robbery, and drug-dealing/taking. Less serious crimes such as vandalism, graffiti, and anti-social behaviour in isolation are unlikely to result in an area being designated. Defra Circular on *Crime Prevention on Public Rights of Way – Designation of Areas*. February 2003.

- 6.9. Requests submitted from those listed above will be referred to the appropriate Council committee for a decision as to whether to make a submission for an area to be included in a Crime Designation Order, or to refuse the request.
- 6.10. Applications for Special Orders for crime prevention will be adopted by the Council and processed as a Council-generated scheme.
- 6.11. The decision to make a Special Order in an area which has been designated will be referred to the appropriate Council committee or, where applicable, the appropriate senior Council officer, after undertaking a full consultation including Bedfordshire Police.

### **Special Diversion and Extinguishment Orders for School Security (ss.118C & 119C Highways Act 1980)**

- 6.12. The Council will consider applications to extinguish or divert public paths through school premises to protect pupils or staff from violence, harassment, or alarm and distress caused by unlawful activity.
- 6.13. Applications for orders to divert or stop up paths in the interests of school security will only be accepted from the Local Education Authority (for state schools) or from the proprietors<sup>30</sup> or their agents for public and independent schools.
- 6.14. Decisions on whether or not to make orders will be referred to the appropriate Council committee or, where applicable, the appropriate senior Council officer after undertaking a full consultation including Bedfordshire Police. We shall seek to determine the application within four months of receipt.
- 6.15. Charges and widths relating to Special Orders for school security will be as set out for an ordinary Public Path Order application - with the exception that LEA originated applications will be adopted by the Council and processed as Council-generated schemes.

### **SSSI Special Diversion Orders (ss.119D & E Highways Act 1980)**

- 6.16. The Council will consider applications to divert public paths and BOATs which cross or abut Sites of Special Scientific Interest ("SSSI") where there is a likely risk to the fauna, flora or the geological or physiographic features for which the SSSI is established.
- 6.17. Applications will only be accepted from the relevant conservation body for the SSSI in question and must be made in accordance with the relevant sections of the 1980 Act.

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<sup>30</sup> Sections 118C and 119C are awaiting insertion into the Highways Act 1980 by the Countryside Act 2000. Once these sections are inserted they will give school proprietors the right to apply for a special extinguishment or special diversion order under Sections 118B or 119B respectively.

- 6.18. Decisions on whether or not to make orders will be referred to the appropriate Council committee or, where applicable, the appropriate senior Council officer. We shall seek to determine the application within four months of receipt.
- 6.19. The Council may seek to either mitigate or moderate effects of the right of way on the SSSI by means of a Traffic Regulation Order instead of by the making of a Special Diversion Order<sup>31</sup>.
- 6.20. Charges and widths relating to an SSSI Special Diversion Order will be as set out for an ordinary Public Path Order application.

### **Applications for Extinguishment and Diversion Orders under ss.118ZA & 119ZA (Highways Act 1980)**

- 6.21. The Countryside and Rights of Way Act 2000 made special provisions to insert Sections 118ZA and 119ZA into the Highways Act 1980. These sections are awaiting insertion by Commencement Order and will give “... *The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses...*” the right to apply for an order to extinguish or divert a footpath or bridleway that crosses the qualifying land.
- 6.22. This section of the **Applications Policy** will be amended to incorporate the new legislation once it, and any associated Regulations, have been commenced.

## **7. Applications to the Magistrate’s Court**

- 7.1. Section 116 of the Highways Act 1980 allows the Council, as Highway Authority, to apply to the Magistrates’ Court for an order extinguishing any road, byway open to all traffic (“BOAT”), bridleway or footpath if it is considered unnecessary. An application for a court order under Section 116 may also seek to divert any highway onto a nearer or more commodious route. Section 116 is the only mechanism the Council has to divert or extinguish public mechanically-propelled vehicular rights and so must be used if a road or BOAT, is involved. Section 116 allows for lesser rights (e.g. pedestrian or equestrian/cycle) to be retained if required.
- 7.2. A member of the public may request that a public footpath or bridleway be diverted or extinguished by submitting the generic public path order application form. Unless the applicant explicitly requests that the matter be dealt with by means of an application to the Magistrates’ Court<sup>32</sup>, the application will be treated as a request for an order under Sections 26, 118, and 119 of the 1980 Act as appropriate. If the application explicitly requests that an application be made to the Magistrates’ Court, then it must be determined on its merits and in accordance with this policy.

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<sup>31</sup> This discretion is provided by Section 119E(3) of the Highways Act 1980.

<sup>32</sup> Section 117 of the 1980 Act allows members of the public to request that the Council take a case to the Magistrates’ Court.

- 7.3. Government guidance, as embodied in the Department for the Environment, Food and Rural Affairs Rights of Way Circular 1/09, is: “... *There may be specific circumstances where it is appropriate to use the magistrates' court procedure under section 116 of the 1980 Act. It is considered, however, that authorities should make use of the other powers available to extinguish or divert rights of way unless there are good reasons for not doing so....*”. In light of this guidance, the Council's position is that there is a presumption in favour of using Sections 26, 118, and 119 of the 1980 Act in preference to Section 116 for footpaths, bridleways and restricted byways. For this presumption to be overturned, an application must meet one or more of the criteria detailed in Section 7.6 below and be supported by the Council.
- 7.4. Applications to the Magistrates' Court will, however, be considered at any time where a BOAT is involved. It will remain at the Council's discretion whether any other paths associated with the application are sent to the Magistrates' Court, or dealt with by means of other powers under the 1980 Act for diversions and extinguishments.
- 7.5. A common reason for a member of the public to request that we make an application to the Magistrates' Court is that a council has already tried unsuccessfully to achieve the outcome the applicant wishes by means of an order under Sections 118 or 119 of the 1980 Act. The Council will **not** make an application to the Magistrates' Court if a similar application for a Public Path Order has been refused by the Council; or a Public Path Order made as the result of an application for the same, or very substantially similar, outcome has been abandoned or not confirmed within the last five years. The exception to this is if there have been significant changes to the circumstances to permit the Council to make a Council-generated application to the Magistrates' Court.
- 7.6. An application made by a member of the public requesting that the Council apply to the Magistrates' Court will only be considered if it meets one or more of the following criteria:
- Where the proposal would result in a recreational benefit to the public;
  - Where the proposal would resolve a Definitive Map anomaly;
  - Where the proposal would rectify an acknowledged error of this or another local authority;
  - Where the proposal is in the interests of the efficient management of the rights of way network;
  - Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan;
- 7.7. The application **must** be approved by and supported by the Council.
- 7.8. The application **must** also receive written consent from:
- All affected and adjoining land owners and occupiers;

- Anybody with a legal interest<sup>33</sup> in the land, including any statutory undertaker with equipment under, along or over the affected path;
- The local town or parish council or meeting.

7.9. If the consent of all of the above parties cannot be supplied in writing, the application will be refused.

7.10. The decision to apply to the Magistrates' Court will be taken by the Rights of Way Team Leader in consultation with the following: the relevant Portfolio Holder of the Council, the local Ward Members of the Council, the chairman of the relevant Council committee, the relevant Assistant Director, and the local town or parish council.

7.11. Applications from members of the public for a Magistrates' Court order will be processed and charged for in a similar manner to other ordinary Public Path Order applications as described above, and in Section 117 of the 1980 Act and detailed in the accompanying document *Application for a Public Path Order to change the Public Rights of Way Network - Guidance on Costs*.

**7.12. The applicant will be liable for all costs including administrative charges, legal fees, and court costs irrespective of the outcome.**

### **Council-generated applications**

7.13. The Council may apply to the Magistrates' Court directly for an order concerning any public right of way where it considers that a Council-generated proposal meets one or more of the criteria detailed in Section 7.6 above and either:

- The use of alternative powers under the Highways Act 1980 is not suitable; or
- An order using these powers has already been made and subsequently not confirmed by either the order making authority or the Secretary of State for the Environment, Food and Rural Affairs.

7.14. A Council-generated application to the Magistrates' Court must be consented to by all the affected owners and occupiers and any other party with a legal interest over the land and the local town or parish council or meeting. Consent must be given in writing.

7.15. A Council-generated application will only be approved by the Rights of Way Team Leader after consultation with the following: the relevant Portfolio Holder of the Council, the local Ward Members of the Council, the chairman of the relevant Council committee, the relevant Assistant Director, and the local town or parish council.

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<sup>33</sup> Including any mortgage company or bank and those parties with sporting or other rights.

## 8. Definitive Map Modification Orders

- 8.1. Members of the public, organisations, and landowners are able to apply under Section 53(5) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to correct any errors or omissions. Applications must be based on evidence showing that a route does, or does not, exist and not on other issues such as: privacy, security, nuisance, or safety.

### Evidence to be submitted

- 8.2. Applicants must provide sufficient evidence to demonstrate that a right of way not shown on the map can either be reasonably alleged to subsist, or can be shown to subsist on the balance of probability. Alternatively, applicants must provide sufficient evidence to demonstrate that, on the balance of probability, a right of way ought to be shown on the map with a different status.
- 8.3. Where an applicant contends that a right of way ought to be downgraded or deleted altogether, they must provide compelling evidence to demonstrate, on the balance of probability, that the Definitive Map is wrong.
- 8.4. Evidence must be in the form of either an original document or copies/photographs of original documents with their location and reference numbers clearly marked. User evidence must use the Council's standard forms and each form must be accompanied by a map to a suitable scale illustrating the route in question.

### Forms to be completed

- 8.5. Applicants must complete three forms (known as Forms 1, 2, and 3), and an application map of appropriate scale to the satisfaction of the Case Officer.
- **Form 1** is the notice of an application for a modification order which must be served on **every** landowner and occupier whose land is affected by the application<sup>34</sup>. The notice must be served on each landowner and occupier either in person or by means of recorded delivery mail. Applicants must carry out reasonable inquiries<sup>35</sup> to identify all the landowners and occupiers affected by their application. Where an applicant cannot ascertain the owner of land affected by their application they must provide written responses from the local town or parish council and Land Registry to demonstrate that they have made reasonable inquiries. The Council will then grant permission for notices to be erected on the land<sup>36</sup>. If the applicant owns all the land affected it is not necessary to complete this form; the applicant should instead submit a written statement to this effect with Form 3.
  - **FORM 2** is the application for a modification order which must be completed by the applicant and returned to the Countryside Access Team. The applicant must send with the form **all** the evidence that they wish to

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<sup>34</sup> Wildlife and Countryside Act 1981 Schedule 14, Section 2(1) and Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No. 12.

<sup>35</sup> This will include contacting the local town or parish council and the Land Registry.

<sup>36</sup> Wildlife and Countryside Act 1981 Schedule 14, Section 2(2).

use in support of their application. It is important to do so as only this information will be used by the Secretary of State in determining an appeal against the Council's decision not to make a modification order. Where the evidence relates to documents not in the applicant's possession, these should be sent as photocopies or photographs and should clearly identify the source of the original document and any archive reference number.

- **FORM 3** is the Certificate of Service of notice of an application for a modification order. This must be completed by the applicant and returned to the Countryside Access Team together with a list of the names and addresses of all the landowners and occupiers who have been served with FORM 1. If the applicant occupies **and** owns all the land a statement to this effect should be included with the form.
- The **map** accompanying the application **must** be at a scale of not less than 1:25,000 and must clearly show the way(s) that is/are the subject of the application. The map should be annotated to show the start and end of the way(s) as well as the locations of any features identified within the application.

8.6. Duly made applications will be added to the Council's Section 53B Register of Modification Applications which is a publicly available document held both as a paper copy<sup>37</sup> and on the Council's website<sup>38</sup>, see Section 8.13 below. Applicants' details will be published unless there are compelling reasons to withhold these.

### Order of processing

8.7. Upon receipt of a satisfactory application, the Case Officer will acknowledge the application as "duly made". The Council aims to begin processing the application within one year of receipt. Applications will be dealt with in strict chronological order of receipt unless they meet one or more of the following criteria:

- An earlier application is in the same parish or geographical area.
- The application affects another active case.
- The application would affect development or potential development for which a planning application has been, or is about to be submitted.
- The application meets a high priority objective under the Anomalies Resolution Programme or Outdoor Access Improvement Plan.

### Open paths

8.8. Where an application to delete a path relates to a route that has been unavailable for public use because of permanent or long-lived obstructions<sup>39</sup>, the applicant may enter into a formal permissive path agreement with this Council to provide a suitable alternative route where possible whilst the

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<sup>37</sup> Held at the Countryside Access Team's offices at Technology House, 239 Amphill Road, Bedford.

<sup>38</sup> [www.centralbedfordshire.gov.uk/countryside](http://www.centralbedfordshire.gov.uk/countryside)

<sup>39</sup> See the Definitions section in the Council's **Rights of Way Enforcement Policy**.

Definitive Map Modification Order application is being determined<sup>40</sup>. The alternative route should keep as close to the definitive line of the path where possible and should conform to all the requirements of a public right of way.

- 8.9. The applicant must make every effort to remove any temporary obstructions preventing use of the legal line of the path. The Case Officer may, however, temporarily waive this requirement where he or she deems it appropriate having regard to all the circumstances of the particular case.

### **Determination of applications**

- 8.10. Applications will be referred to the appropriate Council committee or, where applicable, the appropriate senior Council officer, who will decide whether or not the Council should make a Definitive Map Modification Order. If an application is refused, we will inform the applicant as soon as possible and provide them with details of why the application was refused and how they can appeal<sup>41</sup> to the Secretary of State for the Environment, Food and Rural Affairs against the decision.
- 8.11. Where an applicant has appealed successfully to the Secretary of State for the Environment, Food and Rural Affairs against an order being refused, the Council will make any modification order so directed. However, if the Secretary of State's direction has been made without any new evidence being adduced, the Case Officer has the discretion to either formally object to the modification order on behalf of the Council, or to arrange for the Council to take a neutral stance on the modification order.
- 8.12. There are no charges relating to an application for a Definitive Map Modification Order as this is a statutory duty of the Council.

### **Register of Modification Applications and disclosure of evidence**

- 8.13. Section 53B of the 1981 Act requires the Council to keep and maintain a public register of applications to modify the Definitive Map and Statement. This register is kept in paper form at the offices of the Countryside Access Team and online as part of the Council's web-site.
- 8.14. Details held in the register include the applicant's name and address, details of the path to be modified, land affected by the application, and a summary of the evidence supplied as part of the application.
- 8.15. Personal details can, in exceptional circumstances, be removed from the register if the inclusion of this information is likely to result in unwarranted damage or distress to the applicant or another person<sup>42</sup>.

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<sup>40</sup> Until a Definitive Map Modification Order is Confirmed the map is conclusive legal evidence of the existence of a right of way shown upon it.

<sup>41</sup> The evidence considered by the Secretary of State during an appeal will be that supplied as part of the original application. Any evidence subsequently provided may not be considered at the appeal stage.

<sup>42</sup> Public Rights of Way Regulations 2005 Section 2(3).

- 8.16. Prior to the making of a Modification Order, any evidence connected with an application to modify the Definitive Map and Statement will be made available for viewing/copying **only** to the owners and occupiers of the land affected by the application. This disclosure specifically **excludes all** personal data<sup>43</sup> contained within any user evidence form or statement.
- 8.17. Evidence, including compiled user evidence, will be incorporated into a report to either the relevant Council committee or senior officer to enable a modification order application to be determined. This report is in the public domain and may contain limited personal details of the applicant, users, affected land owners or tenants, and the responses from any consultee.
- 8.18. Once the Council makes a Modification Order, Schedule 15(3)(8) of the Wildlife and Countryside Act 1981 permits anybody to view and take copies of any of the evidence (including personal data<sup>44</sup> within user evidence forms and statements) used by the Council in deciding to make that order. This information must be provided within 14 days of a request to do so.

## 9. Town & Country Planning Act 1990

- 9.1. The Town & Country Planning Act 1990 empowers a local Planning Authority to grant planning permission for development within its area. Development includes a wide range of activities from recording a change of use of a building or plot of land through construction of new buildings to large-scale mineral extraction.
- 9.2. Applications to alter the public rights of way network for development purposes will be only accepted from somebody who holds a valid planning permission<sup>45</sup> granted by the planning authority for the area. Applications must be submitted with full and final plans of any proposed development. Applications submitted without fully detailed plans of the development to be undertaken will be returned to the applicant.
- 9.3. An application under Section 257 of the Town & Country Planning Act 1990 may seek to extinguish an existing public right of way and to provide an alternative replacement highway, or to improve an existing highway for use as an alternative route. Alternatively, an application may be made under the Highways Act 1980 to make a PPO to extinguish or divert a footpath, bridleway, or restricted byway as described in Section 5 above. Any application should incorporate the guidance given in the Council's advice note for developers entitled **Development and Public Rights of Way**.
- 9.4. An application may be made under Section 261 of the Town & Country Planning Act 1990 to temporarily stop-up or divert public footpaths, bridleways and restricted byways for the purposes of mineral extraction. An application must specify a date by which the land will be restored so that the original line

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<sup>43</sup> As defined by Section 1 of the Data Protection Act 1998.

<sup>44</sup> This excludes e-mail and telephone contact details

<sup>45</sup> Planning permission must be either Full or Reserved with the final layout and access clearly detailed. An application with Outline planning permission will not normally be accepted.

of the right of way can reinstated to a condition not substantially less convenient to the public than the original right of way.

- 9.5. The new routes of public rights of way created under either Section 257 or 261 of the Town & Country Planning Act 1990 must meet the standards set out within this policy for widths, structures and surfacing.

### **Determination of applications**

- 9.6. Duly made applications will be added to the Council's Register of Public Path Applications which is a publicly available document held both as a paper copy<sup>46</sup> and on the Council's website. Applicants' details will be published unless there are compelling reasons to withhold these.
- 9.7. Applications for orders relating to development and mineral extraction will be dealt with in strict chronological order of receipt. We will seek to determine an application within six months.
- 9.8. The granting of planning permission for development does not automatically mean that the Council will approve an application to divert or extinguish a public right of way - irrespective of the merits of the development<sup>47</sup>. Decisions on whether or not to make orders will be referred to the appropriate Council committee or, where applicable, the senior Council officer.
- 9.9. Applications will only be confirmed if they meet the legislative tests of the relevant sections of the Highways Act 1980 or the Town & Country Planning Act 1990<sup>48</sup>.
- 9.10. No development can take place along, over or across a public right of way until any order to divert or extinguish the public right of way is confirmed. Any works adjacent to the right of way may proceed but will require the applicant to secure the safety of users of the right of way or, if this is not possible, to apply for a Temporary Path Closure.

### **Widths of new routes**

- 9.11. New routes of diverted paths and newly created paths must have a width recorded within the order to comply with legislation<sup>49</sup> and government guidance<sup>50</sup>. The position of the stated width should be identifiable on the ground, where possible by reference to landmarks on the ground which are likely to endure - be these existing features or ones to be constructed in accordance with the planning permission granted. Where the new route runs along either an existing or proposed track, or between other features, such as

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<sup>46</sup> Held at the Countryside Access Team's offices at Technology House, 239 Amptill Road, Bedford.

<sup>47</sup> Defra Rights of Way Circular 1/09 S.7.11

<sup>48</sup> The relevant legislative test of Section 257 of the Town & Country Planning Act 1990 is that a footpath, bridleway or restricted byway may be stopped up or diverted if the Council is satisfied that it is **necessary** to do so in order for development to take place.

<sup>49</sup> Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No. 12.

<sup>50</sup> DEFRA Rights of Way Circular 1/09 S.4.16.

parallel hedgerows, fences or walls, the width physically available on the ground must equal, or exceed, the legally recorded width.

9.12. The following table gives minimum widths for new or diverted paths, or other routes to be improved to be used as alternative routes. Where appropriate, the Council will seek to secure agreement for an increased width.

Path status	Minimum Width
Footpath	2.0 m
Bridleway	4.0 m
Restricted byway/BOAT	5.0 m

9.13. A new route may be physically restricted where part or all of it uses a pre-existing alleyway, or where there are other significant structures which physically prevent the allocation of a greater width. Paths should conform to the general policy where possible.

9.14. The future erection or construction of fencing, hedging or other structures cannot pre-empt the imposition of a narrower (restricted) path width - and where this is proposed across land cleared for developed, the new route must be provided with a greater width than the minimum specified.

9.15. The acceptability, or otherwise, of minimum restricted widths should be assessed carefully and only implemented if those widths are felt to be reasonable in all the circumstances of the case. The imposition of localised intrusions and/or short lengths over which the path would be less than 1 metre wide will be approved only in exceptional circumstances.

## Charges

9.16. Applicants will be required to pay for any Council administration<sup>51</sup> relating to their application plus the costs of advertising any orders, and any works required to set out any new route. These charges are described in more detail in the accompanying document *Application for a Public Path Order to change the Public Rights of Way Network - Guidance on Costs*.

## 10. Temporary Closures

10.1. Central Bedfordshire Council is empowered by Section 14 of the Road Traffic Regulation Act 1984 (“RTRA”) to make a Traffic Regulation Order (“TRO”) to restrict or prohibit use of a public right of way. This power can be used where:

- Works are proposed on or adjacent to the legal line, are likely to endanger users, or

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<sup>51</sup> Council administration may include: identifying landowners and third parties; drafting consultations, plans, and reports; attending meetings; site visits; drafting of legal orders; preparation of notices and press advertisements; and responding to queries relating to the application.

- Where there has been serious damage to the path's surface.

10.2. Orders can be broken down into;

- Temporary orders up to 6 months
- Extensions to temporary orders agreed by the Secretary of State
- Emergency Notices

10.3. The area's Rights of Way Officer will process these orders with administrative support. Charges to the applicant therefore cover the full cost of advertising, plus an administration fee. The officer (in conjunction with Rights of Way Team Leader if necessary) decides whether an order/notice should be made and the level of charges. Officers can waive some or all of the costs, if the scheme is considered an exemption as set out elsewhere in this policy, e.g. if it achieves efficient management of the path network or a recreational benefit occurs.

### **Temporary orders**

10.4. Applications must be made in writing or by e-mail and must give at least 4 weeks notice of the planned works start date. Any shorter notice allows the officer to raise the level of charges.

10.5. Orders are advertised twice; at least 7 days before making the order and then again within 14 days of the order being made. Site notices must contain a statement of the effect of the order and give details of the alternative route to be followed. A map showing this route may also be erected. The officer must check that the notices remain in place and are visible all the way throughout the period of works. There is no specified procedure for objections but this should not stop anyone aggrieved by the first notice making representations to this Council. Orders last for 6 months or until the works are completed if sooner. Officers must ensure all affected path[s] are available to users as soon as technically possible.

### **Extensions beyond 6 months**

10.6. If the applicant gives at least 4 weeks notice that the works will go beyond 6 months, this Council can make a request to the Secretary of State for an extension. If agreed, the order may then continue as long as is considered necessary – generally up to a maximum of 24 months<sup>52</sup>. There is no requirement to advertise the application to the Secretary of State, however we do advertise the extension notice if granted.

10.7. If an extension is not agreed by the Secretary of State then the legal line must be made available at the end of the original 6 month period, this Council taking enforcement action if necessary.

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<sup>52</sup> Extensions beyond 24 months are possible, but would require compelling reasons to do so.

## **Emergency notices under Section 14(2) of the RTRA 1984**

- 10.8. Such notices usually apply where there is danger to the public or there has been serious damage to the right of way such as flooding. Officers will endeavour to erect emergency notices within three working days. Emergency notices may last up to 21 days and can become a temporary order without the need to advertise twice but applicants need to apply for both at the same time. However, the process should not be considered as an alternative to a temporary order if an applicant makes initial contact wishing to start work immediately but there is no danger to the public.

## **Non emergency works undertaken without 4 weeks notice**

- 10.9. Where non-emergency works disturbing the surface of a public right of way or endangering users of the path are undertaken without giving the required 4 weeks notice, the Council will consider whether it is appropriate to implement an emergency closure with an increased charge, or to seek the cessation of all works affecting the right of way for 4 weeks until a temporary order can be implemented.

## **Scale of Charges**

- 10.10. The charges covering administration for a single path closure are set out within the **Application for a Temporary Traffic Regulation Order for Public Rights of Way** available on the Council's web site. This does not include the total cost of advertising. VAT is only applied to the advertising element.
- 10.11. Extra administration charges will be made for schemes involving more than one path. It will be 10% for each additional path of a connecting network but where applications involve a number of separate paths they will be charged individually. This Council will invoice for charges at appropriate times in the process.

## **11. Complaints and Mediation**

- 11.1. The Council's general complaints policy applies to situations where the Council or its officers have failed to provide a service. The failure of an application to achieve the desired outcome does not constitute a failure of service.

## **An application for a Definitive Map Modification Order**

- 11.2. Where a Definitive Map Modification Order application has not been approved, or approved in full, the proper channel for recourse is to appeal the decision to the Planning Inspectorate and ask the Secretary of State for the Environment, Food and Rural Affairs to direct Central Bedfordshire Council to make the requested Definitive Map Modification Order.

Rights of Way Section  
**The Planning Inspectorate**

Room 4/05 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Tel: 0117 372 8064  
Email: [RightsOfWay@pins.gsi.gov.uk](mailto:RightsOfWay@pins.gsi.gov.uk)  
Web: [www.planningportal.gov.uk/planning/countryside/schedule14](http://www.planningportal.gov.uk/planning/countryside/schedule14)

### **An application for a Public Path Order or Town & Country Planning Act 1990 Order**

11.3. Where an application for either a Public Path Order or a Town & Country Planning Act 1990 Order has been refused there is no right to appeal. If an applicant thinks that their application has been unjustly prejudiced or refused on irrelevant grounds then they may either apply to the Local Government Ombudsman or to the Crown Court.

**The Local Government Ombudsman**  
PO Box 4771  
Coventry  
CV4 0EH

Tel: 0300 061 0614  
Fax: 024 7682 0001  
E-mail: [advice@lgo.org.uk](mailto:advice@lgo.org.uk)



## Contact us...

Për Informacion Per Informazione Za Informacije नगरवारी लयी  
المعلومات معلومات کے لئی তথ্যের জন্য Za Informacja برای اطلاع

by telephone: 0300 300 8000

by email: [customer.services@centralbedfordshire.gov.uk](mailto:customer.services@centralbedfordshire.gov.uk)

on the web: [www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk)

Write to Central Bedfordshire Council, Priory House,  
Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ

