

An unopposed order

If at the end of the 28 day objection period no objections have been received, the District Council can confirm the Order as it stands. Notices are again posted on the path and in the press to this effect. The applicant is at this point informed that the order has been confirmed

At this stage, the order can only be challenged by applying to the High Court within six weeks to quash the Order if they believe that the legal requirements of the Act have not been complied with. If no application has been made to the High Court by the end of this period, the Order is unchangeable.

The Authority will then, on completion of any necessary works by the applicant, certify the work as satisfactory and the Diversion Order then comes into operation.

The Lincolnshire County Council will then make the necessary Order to amend the Definitive Map to show the changes.

An opposed order

If objections are received to an Order within the specified time limit and are not withdrawn within two months after the expiration of the objection period, the District Council may refer the Order to the Secretary of State for the Environment. The Secretary of State will decide the matter, either by

holding a Public Inquiry or by appointing a person to hear the representations of the objector(s). The Secretary of State then decides on the basis of the reports submitted to him at the Inquiry or by hearing representations whether to confirm with or without modification.

Public Inquiries can take several months to arrange and complete, and it can take up to a year or more before an order can be decided. It is therefore considered "time well spent" to try to resolve any problems at an early stage of the design of the development with a view to avoid the need for an Inquiry later.

Remember ...

Legally the path remains on the existing line until the completion certificate is issued, therefore the line of the path should not be obstructed for any reason. This could delay development for which planning permission has been given.

Useful contacts

East Lindsey District Council, Tel: 01507 601111

Lincolnshire County Council

Email: countryside_access@lincolnshire.gov.uk

'Covering The Costs'

Guidance Notes On Footpath Diversion Orders



Charges

East Lindsey District Council has decided to make a standard charge of £3,500. These charges reflect the costs of processing the application and for advertisements in the local press, and will be payable at the time an application is made.

Please make a cheque payable to East Lindsey District Council for £3,500 to accompany the application form.

Refunds

The Council will only refund a charge where:

- They fail to confirm an unopposed order;
- Having received representations or objections which have been made and not withdrawn, the Authority fails to submit the Order to the Secretary of State for confirmation, without the agreement of the person requesting the order;
- The Order requested was an Order made under Section 26 of the 1980 Act and proceedings preliminary to the confirmation of an Order made under section 118 of the 1980 Act; or
- The Public Path Order is not confirmed by the Authority or on submission to the Secretary of State, by him, on the ground that it was invalidly made.

It is up to the applicant to make an application for refund of charges.

Waivers

The power to charge is discretionary, but the Secretary of State expects Authorities to use this power to recover costs, and applicants should expect to bear the cost of making an Order.

However, Authorities have the discretion not to charge, or to charge only part of the cost. They will only do this in very exceptional circumstances, such as financial hardship or potential benefit to Rights of Way users.

The Authority will judge each case on its merits in the light of local circumstances, in the absence of any standard definition of hardship or rules to determine the benefits to Rights of Way users.

Procedures for making an order

If you wish to divert or extinguish a Public Footpath following the granting of planning permission, before an application is made to the District Council it must be satisfied that you really need to divert or make any alteration to the path, and that it is justified.

- **FIRST STAGE:** On receipt of an application and the appropriate payment, as well as examining the proposal itself, the Council consults with other organisations such as Parish Councils, The Ramblers Association and Lincolnshire Field Paths Association, as well as statutory Undertakers. Any suggested amendments to the proposal, or objections, are discussed with the parties concerned as well as the applicant, including any necessary works.
- **SECOND STAGE:** When agreement has, as far as possible, been reached, the proposal is detailed in a report and is considered by a senior manager. If it is authorised, an Order is legally drawn up.
- **THIRD STAGE:** A notice and copy of the Order is sent to the applicant and all consultees. At the same time, the notice is advertised in a local newspaper and details posted on site. The notice informs the public that they can inspect the Order and states that objections can be made to the Order within 28 days.

After the Expiration of the official 28 day objection period permitted by the Order, two months are allowed by the District Council to negotiate withdrawal of any objections.