

Extinguishing Public Rights of Way

Highways Act 1980 Section 118

Please read this information carefully before completing the attached application form, as incorrect or incomplete information can cause delay or additional costs. You should discuss any proposals with the County Council's Rights of Way Officer on site to ensure your application is realistic as the grounds for extinguishing public rights of way are extremely limited. You should seek advice by telephoning the Access and Rights of Way Section on 03000 265342.

Also note that there is no guarantee that an application will succeed and normally extinguishments will be controversial, attracting objections. Before considering an application the Council will expect for the path to be open and to remain so until an Order has been made and confirmed.

The County Council is currently receiving an influx of Definitive Map Modification Order applications prompted by the 'cut-off' date of 01 January 2026, introduced by the Countryside and Rights of Way Act 2000, based on historical documentary evidence under Wildlife and Countryside Act 1981 Section 53 and Schedule 14. Applicants should be aware of the possibility that additional and/or higher rights may exist over their land and a confirmed extinguishment order would only affect the existing rights, not any rights added to the Definitive Map at a later date under the 1981 Act. Please contact the Rights of Way Officer if you have any concerns.

Highway legislation

When considering an application under section 118 of the Highways Act 1980 the County Council has to take certain factors into account. In summary it has to be satisfied that it is expedient to close the path on the grounds that it is no longer needed for public use and must take into account how likely a path is to be used if the path were to be kept open. Section 118 is described in further detail at the end of these notes.

Costs

On receipt of a properly submitted application, we will write to you detailing the likely cost of the extinguishment and ask you to sign a declaration that you agree to pay these costs and any compensation that may become due. If you are applying to extinguish any part of a path over someone else's land or over which someone else has a private right of way we will expect you to provide a written agreement from the other parties. You should be aware that if an order is confirmed there is a right to claim compensation from you where a person with an interest in the land is affected detrimentally. However, in such circumstances you may wish to come to your own agreement with the other party.

The County Council will normally expect you to pay for the full costs of an extinguishment which on average amounts to approximately £2500. However, if you are applying for more than one path the costs will be greater. The costs are split into 2 payments, the first payment is payable once the Order is Made and advertised, the 2nd is payable once the Order has been Confirmed. These costs include the administration of the extinguishment as well as two newspaper adverts which are required by legislation. Regulations about costs mean that if your application has to be forwarded to the Secretary of State you will not be required to pay any additional costs, even if the matter is heard at a public inquiry.

Initial consultation

We will then consult the Parish Council in the area and organisations prescribed by specific regulations (DOE Circular 1/09 -Ramblers' Association, British Horse Society, Byways and Bridleways Trust, etc). We will ask them to reply within one month. Where no objections are received we will present the proposals to the Council's Director of Regeneration, Economy & Growth and ask to approve the making of an extinguishment order.

We must deal with the proposals differently where objections are lodged, whatever the nature of the objection. Where appropriate we will try to negotiate the withdrawal of objections but if we are left with an objection at this stage we must present the proposals to the Council's Highways Committee. This is a group of Councillors who will meet especially to consider the application. They will visit the site and they will hold a meeting locally to the path. All parties can make representations to the Committee. The Committee will either approve the making of an extinguishment order or decide to reject the proposal. If they reject the proposal then there is no right of appeal against their decision other than by way of a judicial review.

The extinguishment order

An extinguishment order will be made and is subject to strict rules. It must be advertised at each end of the path/s affected and in the local press, stating the effect of the order and inviting representations within a period of not less than 28 days. It will be served on all owners and occupiers of the land affected, the parish council and path users organisations. If any objections are lodged we call this an opposed order whereas if no objections are lodged it is unopposed.

The Council may confirm an unopposed order and the closure will normally become operative at 28 days after the order is confirmed. This is publicised in the same way as the order, although the site notices must remain for 42 days. It is possible for someone to contest a confirmed order but this has to be to the High Court and would be for a procedural or technical reason. No such challenge has ever been made to an extinguishment order in County Durham.

If the order is opposed we will try to seek the withdrawal of the objections. However, often they are the same objectors as at the consultation stage and negotiation will have already been attempted. Whatever the objection we must send the order to the Secretary of State for the Environment, Food and Rural Affairs who will appoint an independent inspector to consider the proposal. The inspector will normally decide to deal with the matter either by an exchange of written representations between the Council, applicant and objector or at a public inquiry at which all the parties can make their case.

Time scales

The average time for an unopposed order to be completed is between 6 and 12 months. Where an order is opposed it is likely to take about 2 years.

Initial consultation

It is important that you provide us with as much information as possible so feel free to provide further information on separate sheets of paper. You should clearly and in detail give reasons for your application including why you think the path is not needed for public use. This is essential for when we are consulting and at a later stage eg if we have to present the case to the Highways Committee or Secretary of State. Although you will always be given an opportunity to present your case we will have to put your case forward for you as well.

Please ensure that you provide us with the correct information about landownership and occupancy including any consents. This is crucial and misinformation has invalidated some orders in the past with additional costs having to be charged to applicants.

Completed application forms should be returned to the Access and Rights of Way Section, Durham County Council, County Hall, Durham, DH1 5UQ.

Section 118 of the Highways Act 1980

Section 118 of the Highways Act 1980 is the relevant legislation under which we consider your application. This gives the County Council a discretionary power to make an Extinguishment Order, on the grounds that it is not needed for public use. A Council may not confirm an extinguishment order unless satisfied that it is expedient to do so having regard to the extent (if any) which it appears that the path would apart from the order be likely to be used by the public and having regard the effect the order would have on land served by the path. For all the above purposes any circumstances obstructing or frustrating use of the way shall be disregarded.

Procedure for public path orders

