

**DOCUMENTS SUBMITTED BY ESSEX COUNTY COUNCIL
TO THE PLANNING INSPECTORATE
(Electronic Submission)**

**IN THE MATTER OF THE DETERMINATION TO CONFIRM
PUBLIC PATH EXTINGUISHMENT ORDER 2026
FOOTPATH 7 HELIONS BUMPSTEAD
IN THE DISTRICT OF BRAINTREE
SECTION 118 – HIGHWAYS ACT 1980**

DOCUMENTS REQUIRED BY THE PLANNING INSPECTORATE

1. Electronically sealed Order (there is no paper form of this order) and associated plan
2. Statement of the grounds on which it is considered the order should be confirmed
3. OMA's submission letter
4. Representations (inc. objection) to the Informal and Formal Consultations and comments
5. Statement containing the OMA's comments on the objections
6. Copy of the notice publicising the order together with a copy of the advertisement voucher copy
7. Certificate that notices have been published, served and posted on site and at the local offices
8. Certificate that the necessary consultations have been carried out
9. Name and address of every person notified
10. Undertaking that if confirmed, notice will be duly published and served; or if not confirmed notice will be duly served
11. Location map to enable the Inspector to identify the site
12. Written permission from the landowners allowing Inspector access to the land
13. Name and address of the applicants
14. Confirmation that the OMA is supporting the Order
15. Details of the time and place where documents relating to the order will be made available for public inspection
16. Health and Safety questionnaire document
17. Extract from the Definitive Map and Statement
18. Confirmation of no relevant provision within the Essex County council Rights of Way Improvement Plan (ROWIP)
19. PROW Officer's statement
20. DEFRA Presumptions Guidance

1. Electronically sealed Order and plan

See submitted PDF file:

1-Copy of Made Order inc. plan.pdf

2. Statement of the grounds on which it is considered the Order should be confirmed

This statement explains why in the opinion of Essex County Council (ECC) as the Order Making Authority (OMA) the Order meets the relevant criteria as set out in Section 118 of the Highways Act 1980 and why the extinguishment is expedient on the grounds stated. Please also see Document 19.PROW Officer's statement.

Footpath 7 Helions Bumpstead (PUBLIC PATH EXTINGUISHMENT ORDER 2026).

The applicants, who are also one of the landowners/householders, applied for an extinguishment of the above footpath. The other relevant landowners, who are similarly affected, consented to this proposed change.

The relevant statutory tests were examined in detail and categorical evidence for their applicability was sought by the County Council before agreeing to proceed with the making of the Extinguishment Order. Concerning the main criteria when considering a public path extinguishment:

Before making any extinguishment Order, it must appear to the Council expedient to stop up the path or way on the ground that it is not needed for public use.

Before then confirming any Order, the Council must be satisfied that it is expedient to do so: - a) Having regard to the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and b) Having regard to the effect which the extinguishment of path would have as respects land served by it taking into account the compensations provisions

(a) Whether the path or way to which the public path extinguishment order relates is needed for public use

Footpath 7 runs in an east, north easterly then south easterly direction between Camps Road (a 40mph speed limit road with grass verge provision) and Drapers Lane (a no through road also with grass verge provision). It passes through a small, wooded area belonging to the applicants, the corners of three gardens (2 Drapers Green, The Cottage, Woodleys), and a paddock field. There are no direct PROW connections to Footpath 7 (see 1-Copy of Made Order inc. plan.pdf). The applicants believe that the footpath has not been used by the public for 20-25 years and the OMA have no evidence to dispute that. The footpath would not, in the view of the OMA, fulfil a useful function as anyone using it would by necessity have had to have used the grass verges associated with the aforementioned carriageways

to reach it and it provides no direct links to other PROW. The distance of the legal PROW route and the alternative verge walking are so close as to be effectively identical. Crashmapdata.co.uk and the Highway Authority's own records indicate no collision data for the last 10 and 5 years respectively on the respective section of Camps Road, the verge of which is comparable to the footpath route, or on any of Drapers Lane. It is also noted that the Essex Ramblers own defect raising and recording tool <https://essexareahub.co.uk/ppa-25> (at the time of writing) shows no issues recorded by them for Footpath 7 Helions Bumpstead, suggesting that their members had made no attempts to use this footpath.

(b) Having regard to the effect which the extinguishment of path would have as respects land served by it taking into account the compensations provisions

The issue of compensation is not applicable as the applicant and the consenting third party landowners are all owners of land over which the Footpath 7 proposed extinguishment order runs. They would all be negatively affected by the reinstatement of Footpath 7 where it passes through their woodland, gardens and paddock land respectively.

In summary:

The historic unavailability of this footpath, low level of interest in its reinstatement and low number of enquires made about it (4 since 2018), provision of alternative highway verge access, support by the Ramblers Essex Area Footpath Secretary and Parish Council for the proposal (see Documents 4a, 4d, 4e, 4f & 4i) and sole objection, support, in the view of the OMA, the confirming of this order. Confirmation of the order is also supported by the DEFRA Presumptions Guidance (see 20-DEFRA Presumptions Guidance.pdf)

3. OMA's submission letter

The Planning Inspectorate
Rights of Way Section
Room 3A Eagle
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Date 11.08.26
Our Ref:
Footpath 7 Helions Bumpstead
Extinguishment

Dear Sir/Madam,

Highways Act 1980 – Section 118 Public Path Extinguishment Order 2024 Footpath 7 Helions Bumpstead Parish, Braintree District, Essex

Essex County Council, being both the Order Making Authority and Highway Authority, are writing with regard to the above-referenced proposed extinguishment application, which has undergone a statutory consultation period of the made order which was sealed on 26.03.26. Following the expiry of the statutory consultation period and attempts to negotiate with the objector by email the County Council were unable to achieve the withdrawal of the sole objection.

The County Council having considered the criteria for making and confirming the order are satisfied that the application meets the relevant tests and therefore support the Order. Accordingly, I write to formally request the Secretary of State in pursuance of section 2(2) of Schedule 6 to the Highways Act 1980 determines to confirm the above-mentioned Order. I enclose by email attachments documentation required for the submission of Public Path Orders to the Secretary of State for consideration.

The list of documents follows the order given on The Planning Inspectorate's *'Documents Required By The Planning Inspectorate (Checklist for Order Making Authorities)*.

I would request that where possible the dates below are avoided in respect of any possible dates for attendance at a hearing or Inquiry in the event that one of those determination methods is deemed appropriate. It is, however, the form view of the OMA that given the simplicity of the proposal and sole objection to it that determination by written representations is the appropriate mechanism.

Dates to avoid:



Yours sincerely

, Public Path Order & Development Officer, Essex County Council

- 4.a. Pre-application correspondence between then Area PROW Officer and Parish Council representative
- 4.b. Representations (Utilities) to the informal consultation
- 4.c. Essex Ramblers Area Footpath Secretary Objection to the informal consultation (includes OMA response)
- 4.d. Informal Consultation stage Essex Ramblers Area Footpath Secretary response to objection
- 4.e. Informal Consultation confirmation of no objection from Braintree District Council and the then County Councillor
- 4.f. Parish Council July 2025 meeting minutes confirming view that footpath should be extinguished
- 4.g. Informal Consultation Byways and Bridleways Trust comment
- 4.h. Made Order consultation Essex Ramblers Braintree District Footpath Secretary objection & OMA response
- 4.i. Post Made Order Consultation Essex Ramblers Area Footpath Secretary response to Braintree District Footpath Secretary objection

See submitted PDF files:

- 04.a.- PROW Officer and Parish Council pre-application correspondence
- 04.b.- Informal Consultation and responses Utilities
- 04.c.- Informal Consultation Essex Ramblers Braintree District Footpath Secretary objection & OMA response
- 04.d.- Informal Consultation stage Essex Ramblers Area Footpath Secretary response to RA objection
- 04.e.- Informal Consultation confirmation of no objection from Braintree District Council and the then County Councillor
- 04.f.- Parish Council July 2025 meeting minutes confirming view that footpath should be extinguished
- 04.g.- Informal Consultation Byways and Bridleways Trust comment
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- 04.i.- Post Made Order Consultation Essex Ramblers Area Footpath Secretary response to Braintree District Footpath Secretary objection

5. Statement containing the OMA's comments on the maintained objections

The OMA's written response to the objection is included in Document no's 4.c and h.

However, for the sake of clarity the objector's reasons and the OMA's responses to them have been expanded upon below.

Representation (objection maintained) – Essex Ramblers Braintree District Footpath Secretary

The Essex Ramblers Braintree District Footpath Secretary objected to the order initially on three and then six points. To more clearly address the points raised I have numbered them below in the order in which they were received, at both the Informal and Formal consultation stages. The points are quoted verbatim which may result in a degree of repetition:

Objection reasons given by the Braintree District Footpath Secretary at the Informal Consultation stage:

1. The only part of the footpath that was not walkable was the woodland at the Camps Road end. There was no visible fingerpost and no visible gap. Google streetview from October 2008 shows a fingerpost and a gap. We would ask that this section of the footpath be cleared and made available.
2. The Ramblers are in principle opposed to extinguishments.
3. However, could an off-vehicular road / verge route be provided, along the short section of Camps Road

and along the single track / narrow Drapers Lane?

Drapers Lane is a no-through road and so one could assume that it does not have much (lorry/ large vehicle) traffic. However, as noted in the June Parish Council Minutes there is concern about trucks going down the lane. In the short time that we were there several large vehicles went along the lane.

OMA response:

1. It is acknowledged that the footpath is currently not fully unavailable. My PROW Maintenance colleagues when assessing issues on the network must consider their urgency. When an application has been received seeking to address an issue they will wait to see the outcome before reinstatement.
2. While this may be a principle of the Ramblers Association, the law specifically allows landowners to apply to extinguish PROW or sections of PROW and for OMAs to make orders where they believe that such applications meet the criteria of the legislation.
3. The grass highway verges adjacent to Camps Road and Drapers Lane already function as an alternative route to the PROW. The OMA and applicants do not have powers to take additional land from adjoining landowners, including ones unaffected by the current footpath route, to achieve such a route, which is in any case considered unnecessary. Notwithstanding the Parish Council minutes referred to by the objector, it should be noted that the Parish Council did not object to the extinguishment proposal at either the informal or formal stage and instead expressed support for it in a pre-application email exchange with the then PROW Officer and in their minutes (see Documents 4.a. and 4.f.)

Objection reasons given by the Essex Ramblers Braintree District Footpath Secretary at the Formal, Made Order Consultation stage:

1. Footpath 7 provides an off-road route between Camps Road and Drapers Lane. As such it provides a pleasanter environment than walking along vehicular roads. Although Drapers Lane is a No Through Road, the Parish Council June 2025 Minutes item 102/2025 note that..."..Trucks going the lane [Drapers Lane] at over the speed limit resulting in the edge of the lane being eroded and trenches developing..". As such the Ramblers consider that footpath 7 is needed.
2. The Order notes that the existing legal line of footpath 7 runs... "through boundary features gardens and a paddock...". Public rights of way often run through paddocks and generally pass through hedges/fences/gates - so this is no reason to extinguish a public right of way. The now enclosed, previously arable land, to the rear of The Cottage is separated from the dwelling by a hedge and has not had planning permission for change of use to a garden. The only curtilage land that the path passes through is the land on the west side of the semi-detached dwelling, 2 Drapers Green - NOT 1 Drapers Green.
3. There is a procedural error on the Made Order map. The section of footpath running north-east from point A is shown on the Order Map as passing through land associated with "number 1" of the pair of semi-detached properties. Essex Highways maps and the Land Registry Title Plan EX599601 for 2 Drapers Green (see attached), show that the western semi- is number 2 Drapers Green - NOT number 1. The footpath substantially runs through the wooded section at the western end away from the dwelling.
4. Two points from the recent PINs Inspector's report (May 2026-attached) on the decision not to confirm

the extinguishment of a section of Wimbish footpath 70 (Uttlesford District), are especially relevant namely...

Section 11 of the DEFRA Presumptions Guidance says: "it is in the public interest that any change to remove or reduce the impacts on the property owner or occupier of the existing public right of way should, wherever possible, involve diversion or replacement of the way rather than extinguishment alone"....

28. In turn, I do not consider that the proposed Order satisfies the legislative tests set out in S118 HA 1980 [need and usage of the footpath], and it is therefore not expedient to confirm the Order. This conclusion is consistent with the DEFRA Presumptions Guidance, which says confirming authorities should only be predisposed to confirm an Order where the relevant legislative tests are met.

5. No diversion is being proposed only a complete extinguishment.
6. Without prejudice, the suggestion is made that the footpath could be diverted to run around the edge of the land associated with 2 Drapers Green, the western semi-detached dwelling by point A. This would move the path further away from the dwelling.

OMA response:

1. the grass verge provides alternative access. Walkers using the PROW, by necessity, already use this to make PROW connections required for any onward walking. As has been already stated, the Parish Council did not object and in fact expressed support for its extinguishment in a pre-application email exchange and post Informal Consultation parish meeting minutes.

2. The Order description, as with all orders, simply describes the route and while as the objector notes, a path description is not in itself a reason to extinguish a PROW, neither is it a prerequisite for the footpath remaining so it is not clear to the OMA what the objector's argument is here. Planning matters relating to land use are not within the scope of the s118 order. The footpath currently passes through the curtilage of three properties as noted in 2.(a).

3. The OMA obtains its basemap data including property numbers and names in good faith via the PSGA (Public Sector Geospatial Agreement) under license from Ordnance Survey (O/S). These details are not drawn manually within our Geographic Information System (GIS) software. O/S provide periodic updates to their data, which our Asset team then upload onto our mapping systems. The plan therefore represents what Ordnance Survey data showed at that time that the order plan was drafted. This is not therefore an error by the OMA but an error within the data provided by O/S, one which we can see they subsequently corrected. The OMA see no relevance to or impact on the public path order or its consultation from this misnumbering. The house numbers is not the matter under consultation, and all affected landowners either applied for or consented to the proposed changes and identification of the relevant parties being made via Land Registry title information and not house numbers on plans. The OMA do not know why the objector raised this objection as they provided nothing to establish any relevance.

4. The OMA are fully aware of the PINS Inspector's Wimbish Footpath 70 s118 decision not to confirm that order, and also the PINS decision to confirm without modification the Great & Little Leighs Footpath 4 s118 order. The clear implication in having different decisions applied to different referred orders is that all cases

should be considered independently and decided upon on their own merits. The danger in the objector trying to apply one outcome to all subsequent orders made under the same legislation is that it may erroneously lead them to form an opinion that all extinguishments should be opposed on principle rather than assessed individually (see their informal response 2.). They may also conclude that s118 orders are, through the decision they reference, bound to fail the legal tests if/when they are referred despite the evidence to the contrary. In respect of their quotes from the DEFRA Presumptions Guidance it should be noted that it is the view of the OMA that a) a diversion is firstly not necessary – consultation responses, especially local ones, would seem to support this view, and b) there is no practical diversion route available that would not recreate or possibly even exacerbate or shift onto others the privacy and security issues already affecting the applicants and consenting landowners – issues which the DEFRA guidance supports being resolved by means of an extinguishment order where a diversion is not possible. They go on to opine that the s118 tests have not been met without providing evidence to suggest why this footpath is needed either now or in the future. The OMA would reaffirm our opinion that there is nothing to suggest that this footpath provides for any present day or future public need and therefore the legal tests of s118 have been met.

5. The objector has effectively repeated their argument from 4. above.

6. Repetition of 4 and 5 above wherein the objector's proposal suggests (without detail) a diversion that would only tackle the land applying to 2 Drapers Green. This would not remove or change the alignment of the footpath from any other landowner's land nor change the point at which the path connects to this 3rd party land and would therefore leave those other landowner's concerns unaddressed and still leave the footpath within 8 metres and in sight of 2 Drapers Green.

6. Copy of the notice publicising the order together with a copy of the newspaper cutting

See submitted PDF file:

6-Copy of notice publicising the order plus newspaper cutting.pdf

7. Certificate that in accordance with the requirements of the Act, notices have been published, served and posted on site and at the local offices

I hereby certify that:

1. A Notice in the form numbered 1 of Schedule 2 to the Public Path Orders Regulations 1993[Si 1993 No. 11] in respect of Orders under the Highways Act 1980 was published in the Haverhill Echo on 14th May 2026. The time allowed for objections was not less than 28 days from date of publication of the Notice and the last date for objections was 11th June 2026.
2. Notices in form 1 referred to above, were duly served on every owner, lessee and occupier of the land to which the Order relates, Braintree District Council, Helions Bumpstead Parish Council and prescribed persons as specified in Schedule 3 of the said Regulations. The Notices were served by email on 14th May 2026.
3. A copy of the Order and Map were uploaded to our website (<https://www.essexhighways.org/public-path-notices>) on 8th May 2026s. It was also specified in the site notice and newspaper advertisement that copies of the order and notice could be requested to be posted or viewed by emailing publicpathorders@essexhighways.org to arrange a suitable time to inspect the documents quoting the Order title. Documents can be made available for inspection 8.30am-4.30pm Mon-Fri at Essex County Council, County Hall, E block main reception, Market Road, Chelmsford if so required.
4. A copy of the Notice and Plan were posted on site on 13th May 2026 by [REDACTED] Area Public Rights of Way Officer.

[REDACTED]
Public Path Order & Development Officer
Essex County Council

8. Certificate that the necessary consultations have been carried out (other local authorities and statutory undertakers)

I hereby certify that:

1. Braintree District Council, Helions Bumpstead Parish Council, statutory undertakers, owners and occupiers of affected land and prescribed persons as specified in the Regulations were consulted informally on 24th June 2025. Note: the Made Order consultation took place on 14th May 2026.
2. Those responses received from statutory undertakers confirmed that no apparatus would be affected by the proposed diversions.
3. No comments as were received from the District Council, Members of the public or other statutory and ECC policy consultees, excepting the aforementioned objection by the Essex Ramblers Braintree District Footpath Secretary and the supporting email from the then County Councillor.


Public Path order & Development Officer
Essex County Council

9. Name and address of every person, council or prescribed organisation notified under

- (i) paragraph 1(3)(b)(i), (ii) and (iv) of Schedule 6 to the 1980 Act and Schedule 3 of SI 1993 No.11 Highways England and Wales, The Public Path Orders regulations 1993;

See submitted PDF file:

9-Name and address of every person notified under Schedule 6 of the 1980 Act.pdf

10. Undertaking that if confirmed, notice will be duly published and served; or if not confirmed notice will be duly served

Essex County Council, hereby undertakes as the relevant order making authority for the area of land in question, in accordance with the requirements of the Planning Inspectorate the following:

That if the aforementioned Highways Act Order to extinguish Footpath 7 Helions Bumpstead is confirmed by the Secretary of State, the Council will duly publish and serve notice of the same or

if not confirmed notice to that effect will be duly served in accordance with the directions of the Secretary of State

 Public Path Order & Development Officer
Essex County Council

11. Location map to enable Inspector to locate the site

The extinguishment of Footpath 7 Helions Bumpstead is located at;

Drapers Green, between Camps Road and Drapers Lane, Helions Bumpstead, CB9 7AU See submitted PDF file:

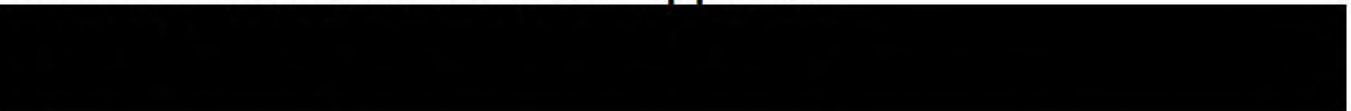
11-Location map Footpath 7 Helions Bumpstead.pdf

12. Written permission from the landowners allowing Inspector access to the land

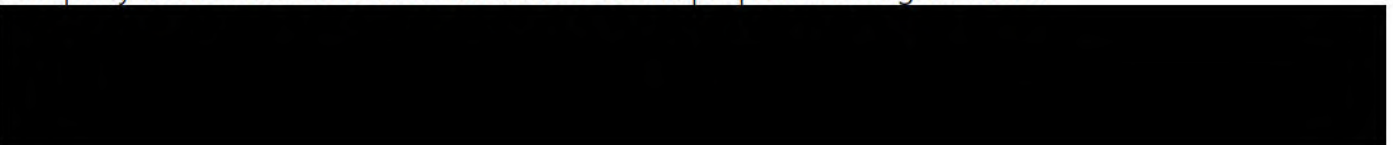
See submitted PDF file:

12-Written permission from the landowners allowing Inspector access to the land.pdf

13. Name and address of the applicant



3rd party landowners who have consented to the proposed extinguishment:



14. Confirmation that the OMA is supporting the order

Essex County Council as the Order Making and Highway Authority hereby confirms it is supporting the order as made to extinguish part of Footpath 7 in the parish of Helions Bumpstead.

We also confirm the County Council will continue to support the order should the matter be dealt with by Inquiry or Hearing.


Public Path Order & Development Officer
Essex County Council

15. Details of the time and place where documents relating to the order will be made available for public inspection by the authority

The documents relating to the Order will be made available for public inspection on Essex Highways website at: <https://www.essexhighways.org/getting-around/opposed-orders>

Copies of the documents relating to the order can also be made available to view at Essex County Council Offices, County Hall, E block main reception, Market Road, Chelmsford, Essex CM1 1HQ between the hours of 8.30am to 4.30pm Monday to Friday, or posted or emailed (subject to a recipients' email file size limitations). To arrange to view or be sent the documents, requests should be submitted by email to publicpathorders@essexhighways.org

16. Health and Safety issues questionnaire

Health and safety at the site questionnaire

1. Is the site uneven or does it present any other known risks? Is special footwear or any other Personal Protection Equipment required?

Footpath 7 has not been reinstated so full access to the legal alignment will not be possible due to hedging etc.

2. Is there any likelihood of exposure to pets or other animals which may present a risk to the safety of the Inspector?

See above. If access is gained to the paddock field there may be animals present or within the gardens.

3. Is the site remote and/or can it be seen from other highways or rights of way?

The legal route connects to two highways (Camps Road and Drapers Lane) but it is not likely to be visible from either to any great extent.

4. Does the site have a good mobile phone signal or is there easy access to a public telephone should the emergency services be required?

Ofcom's mobile availability checker shows that there is likely to be good outdoor coverage for all networks around the area of the footpath. We have been unable to locate any nearby public telephones.

5. Is the right of way easily accessible? Will arrangements for access by the Inspector need to be made in advance?

See 1. above re actual footpath route. Area of footpath is located in a rural hamlet (Drapers Green) with limited public transport. There is a bus service (Stephensons of Essex no.319) that runs between Audley End railway station near Saffron Walden (on the West Anglia Main Line) and Haverhill that stops in Helions Bumpstead (though not every bus stops there). There is no public car park so parking for vehicles would rely on finding unofficial spaces.

7. Are there any dangerous pieces of equipment or substances stored at any point along the right of way?

None known of.

8. If there is any other relevant information which the Inspector should be aware of that is not covered in this questionnaire?

Fuel, toilet facilities and food and drink are available within various supermarkets in Haverhill, Suffolk which is located a few miles to the north. Hospitals in case of emergency are located in Cambridge and Bury St Edmunds (30-45 minute drive away).

17. Extract from the definitive map and statement;

See submitted PDF file:

16-Extract from the Definitive Map and Statement.pdf

18. Confirmation of no relevant provision within the County Councils Rights of Way Improvement Plan;

See submitted PDF file:

17-Confirmation of no relevant provision within the Essex ROWIP

19. PROW Officer's Statement;

See submitted PDF file:

18-PROW Officer's Statement.pdf

20. Defra Presumptions Guide;

See submitted PDF file:

19- Defra Presumptions Guidance

18. Confirmation of no relevant provision with the Essex ROWIP

In the view of the Order Making Authority there are no relevant provisions within the Essex Right of Way Improvement Plan (ROWIP) that would apply to the proposed PROW changes in this extinguishment order.

**Public Rights of Way Officer
Statement**

I, [REDACTED], of Essex County Council, County Hall, Market Road, Chelmsford, Essex, WILL SAY as follows:

I have been employed as a Public Rights of Way Officer in Essex since 2019. I became responsible for Public Rights of Way enquiries within the parish of Helions Bumpstead in March 2026.

Footpath 07 - Helions Bumpstead has been obstructed and unavailable for public use for many years due to the presence of a ditch and overgrown vegetation within the small woodland at the south-western end of the route, together with a number of fences and a hedge located between the adjoining properties.

The Essex Highways enquiry reporting system has received a total of four enquiries relating to the route's signage and obstructions, the earliest of which was recorded in January 2018.

In order to reinstate the footpath, it would be necessary to clear a path, 1.5 metres wide through the woodland and install a footbridge over the ditch at the south-western end of the route. A gap would also need to be created within the hedge at the opposite end of the route, together with the installation of fingerposts at both termini.

Each landowner would need to provide an opening through their respective boundary fences and, where livestock are present, install an appropriate pedestrian gate.

Ongoing maintenance would involve an annual vegetation cut along the route and ensuring that side growth is kept trimmed back by the relevant landowners.

The alternative route follows Drapers Green for approximately 60 metres, most of which can be walked on the verge, before continuing along Drapers Lane for approximately 150 metres. Drapers Lane is a very quiet no-through road.



Department
for Environment
Food & Rural Affairs

Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises

Date: August 2023

Version: 1.0

Please note

1. Sections 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981 have not yet been commenced and are not in force.
2. Therefore, this guidance currently applies only where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980.
3. Defra will inform local authorities in good time prior to commencing 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981.

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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www.gov.uk/defra

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Extracts from Hansard 23 March 2016

As a Government Minister, Baroness Williams of Trafford made the following statements:

“The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.

The guidance will give authorities more scope to confirm orders made in the interests of the landowner in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.

I am happy to reaffirm the commitment made by the previous Government that we will review, within two years of implementation of the reforms package, how effective the right-to-apply provisions and the accompanying guidance have proved to be. The review will send a message to authorities that the Government are determined that the new policy should work and that if guidance does not bring about sufficient changes, we will consider the introduction of further measures.”

Introduction

1. This guidance sets out Government policy on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises. It sets out how local authorities should respond when considering diverting or extinguishing public rights of way under s119ZA and s118ZA of the Highways Act 1980, or when considering making a ‘modification consent order’ under section 54B of the Wildlife and Countryside Act 1981. It also applies where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980. It should be read in conjunction with all other relevant guidance, including rights of way Circular 1/09 (or as revised) and sections 118, 119, 118ZA and 119ZA of the Highways Act 1980 and Section 54B of the Wildlife and Countryside Act 1981; the relevant web links are appended to this guidance.

Context

2. The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

3. However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.
4. Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path.
5. The less contained such a space is, the fewer the public's concerns tend to be. People are used to walking past a house along an adjacent road or pavement, and this feels acceptable because they are clearly outside its visible domain. The degree of proximity can also make a big difference. Few people are troubled by using public paths across privately owned land around a house or farm, so long as they feel they can keep a reasonable distance from it. But the more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to feel comfortable using it.
6. Even where a public path through a private garden or farmyard has existed for centuries, and perhaps even pre-dates the use of the land for these purposes, there may be one or more reasons why its presence could be problematic for the landowner:
 - a. A reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same contained space;
 - b. Greater concerns today than in previous eras about the security of children or property in such situations;
 - c. An increased use of public rights of way for general leisure and recreational use rather than local people using them to get around the locality, particularly where rights of way are promoted by local authorities.
 - d. A concern that having a public path close to the house has a negative impact on the value of the property;
 - e. Farmyards or commercial operations putting the public potentially at risk, or being regularly disturbed, because of the limited space within which a route passes.

Guiding principles

7. This guidance applies where a public right of way passes through:
 - a. A garden or curtilage of a residential dwelling
 - b. a farmyard or
 - c. other commercial or industrial premises
8. It does not apply to gardens, dwellings or commercial premises which do not have the necessary permission for the current use of the land (most land and property will have an authorised use, either by way of existence of that use prior to the Town and Country Planning Act 1947 or, post 1947, either by way of an implemented planning permission or an authorised use as a consequence of a relevant period of use).
9. In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given. In relevant circumstances, the duty on authorities to prevent crime and anti-social behaviour under section 17 of the Crime and Disorder Act 1998 may be a consideration.
10. The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests. There are different tests for extinguishment and diversion; these are set out in s.118 and s.119 (respectively) of the Highways Act 1980. The relevant web links are appended to this guidance.
11. In such circumstances, it is in the public interest that any change to remove or reduce the impacts on the property owner or occupier of the existing public right of way should, wherever possible, involve diversion or replacement of the way rather than extinguishment alone. Before making an order, authorities should consider all the options available to them and/or to the landowner, and should be open to using the combination of powers, agreements and management arrangements that best suit the circumstances, whether mentioned below or not.
12. These options include:
 - a. Diversion of the right of way onto land already owned/occupied by the owner/occupier.
 - b. Diversion of the right of way onto other land –
 - i. either by agreement with that landowner, or

- ii. where agreement is not forthcoming, using powers under s119 (5) to require the owner or occupier to underwrite compensation payable to a third party.
- c. Concurrent extinguishment of the right of way and creation of an alternative route under s118 and s25 and/or s26 Highways Act 1980 –
 - i. on land already owned/occupied by the owner/occupier, or
 - ii. on other land by agreement with that owner/occupier, or
 - iii. using the power under s26 to create a route across other land, bearing in mind the provisions of s28 of the Act.
- d. Extinguishment of the right of way where other existing rights of way (including carriageways) would meet the need of the public for access
- e. Extinguishment of the right of way where an existing path is not needed for public use. (For the purposes of section 118, in order to be not needed for public use, a public right of way does not necessarily have to be unused. In assessing non-use, authorities should disregard any temporary circumstances that prevent or diminish the use of the way, such as obstructions).

13. Authorities should also consider:

- a. The potential for improving a path so diverted or replaced (for example, by replacing stiles with gates).
- b. Where a route is to be extinguished, the scope for the owner/occupier to defray the cost of improving an existing alternative route or of creating an alternative route

Conclusion

14. In determining an application to which this guidance applies, it is for the authority to consider the case on all its merits taking into account all the statutory requirements and available guidance. In making its decision as to whether the existing path should be diverted or extinguished, an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.

Appendix

Links to legislation referred to in the guidance

Highways Act 1980

Section 25: <https://www.legislation.gov.uk/ukpga/1980/66/section/25>

Section 26: <https://www.legislation.gov.uk/ukpga/1980/66/section/26>

Section 28: <https://www.legislation.gov.uk/ukpga/1980/66/section/28>

Section 118: <https://www.legislation.gov.uk/ukpga/1980/66/section/118>

Section 118ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/118ZA>

Section 119: <https://www.legislation.gov.uk/ukpga/1980/66/section/119>

Section 119ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/119ZA>

Wildlife and Countryside Act 1981

Section 54B: [not yet commenced, see Schedule 7 of the Deregulation Act 2015]

<https://www.legislation.gov.uk/ukpga/2015/20/schedule/7/enacted>

Town and Country Planning Act 1947

<https://www.legislation.gov.uk/ukpga/1947/51/enacted>

Crime and Disorder Act 1998

Section 17: <https://www.legislation.gov.uk/ukpga/1998/37/section/17>