

# APPLICATION FOR A RAIL CROSSING DIVERSION ORDER

## HIGHWAYS ACT 1980 TRANSPORT AND WORKS ACT 1992

REQUEST FOR A RAIL CROSSING DIVERSION ORDER TO BE MADE UNDER SECTION 119A OF THE HIGHWAYS ACT 1980 (INSERTED BY THE TRANSPORT AND WORKS ACT 1992).

The following questions are to be answered and the information and maps requested to be supplied by the applicant to Essex County Council which is requested to make the order. Tick the relevant box shown in some questions.

### 1. RAIL CROSSING TO BE EXTINGUISHED BY THE DIVERSION ORDER

- (a) Name and location of rail crossing (including grid reference and parish or district in which it is located).
- (b) Name(s) and number(s) of any footpaths and/or bridleways leading to the crossing to be extinguished. (Indicate whether footpath or bridleway).
- (c) Length in metres of any path or way to be extinguished.
- (d) Description of length of any path or way to be extinguished by reference to terminal points shown on attached plan which must be to a scale of not less than 1:2500 or, if no such plan is available, on the largest scale readily available.
- (e) List the name(s) and address(es) of the owners, lessees and occupiers of the land on either side of any path or way to be extinguished.
- (f) Have you obtained the written consent of every person having an interest in the land over which any path or way to be extinguished passes, in so far as such consent is needed.

YES	NO	NOT NEEDED
-----	----	------------

If YES, enclose all the written consents.

If NO, enclose all written consents that you now possess, and give particulars of those where consent has been refused or has yet to be obtained.

- (g) Is the crossing, or any path or way to be extinguished, subject to any limitations or conditions?

YES	NO
-----	----

If YES, give details.

## 2. NEW PATHS OR WAYS TO BE CREATED

- (a) Type: Bridleway or Footpath. (*Delete as appropriate*)

- (b) Description:

(i) Length in metres:

(ii) Width in metres:

PLEASE NOTE, for a footpath the minimum width required for the new route is 2 metres; for a bridleway 3 metres.

(iii) Surface

(iv) Description of the length of path to be provided by reference to the accompanying plan at paragraph 1(d) above.

(v) What works do you propose to undertake to bring the new path into use for the public e.g. gates, bridges, steps, warning notices, barriers, etc.)

- (c) List the name(s) and address(es) of the owners, lessees or occupiers of the land over which the new path(s) or way(s) would pass.

- (d) Have you obtained the written consent of every person having an interest in the land over which the path or way to be created passes, to this land being dedicated for this purpose, in so far as such consent is needed?

YES	NO	NOT NEEDED
-----	----	------------

If YES, enclose all of the written consents.

If NO, enclose all written consents that you currently possess, and give particulars of those whose consent has been refused or has yet to be obtained.

(e) Are you prepared to maintain all or part of the path or way to be created?

YES	NO	IN PART
-----	----	---------

If NO, give reasons.

If IN PART, state which sections you are prepared to maintain and give reasons.

(f) Will the highway authority accept responsibility for maintenance of that part of the path or way to be created which does not pass over the applicant's land?

YES	NO
-----	----

If YES, a copy of any relevant letter must be attached.

If NO, state reasons.

(g) Are you prepared to enter into an agreement with the Council in accordance with Section 119A(8)?

YES	NO	IN PART
-----	----	---------

If NO, give reasons

If IN PART, state upon what matters you are not prepared to enter an agreement with the Council and the reasons.

(h) Will the new path or way connect with a trunk road?

YES	NO
-----	----

If YES, give details.

- (i) Give reasons for the proposed rail crossing diversion order (use separate sheets if necessary). Include information about:
- (i) the use currently made of the existing path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information, together with details of any survey carried out (any circumstances preventing or inhibiting such use must also be mentioned);
  - (ii) the risk to the public of continuing to use the present crossing, and the circumstances that have given rise to the need to make the proposed order;
  - (iii) the effect of the extinguishment of the crossing and the creation of the proposed new path(s) or way(s) having regard to the convenience to users and the effect on any connecting rights of way and the network as a whole;
  - (iv) the opportunity for taking alternative action to remedy the problem such as a bridge or tunnel in place of the existing crossing or the carrying out of safety improvements to the existing crossing;
  - (v) the estimated cost of any practicable measures identified under (iv) above;
  - (vi) the barriers and/or signs that would need to be erected at the crossing and the points from which any path or way is to be extinguished or created, assuming the order is confirmed; and
  - (vii) the safety of the alternative right of way to be created by the order relative to the existing rail crossing.

**3. NAMES AND ADDRESSES OF PUBLIC UTILITY UNDERTAKERS IN AREA**

(whether or not their apparatus is likely to be affected).

(a) Public gas supplier .....

(b) Public electricity supplier .....

(c) Water undertaker .....

(d) Sewerage undertaker (if different).....

(e) Public telecommunications operator.....

(f) Others (specify) .....

**4. MAPS AND PLANS**

List below all maps and plans accompanying this request, giving details of their scale and content. In addition to the map mentioned in paragraph 1(d), this must include a map of a scale not less than 1:25,000 or, if no such map is available, on the largest scale readily available, showing the crossing and any paths or ways to be extinguished or created, and any connecting paths or ways.

## **5. OTHER INFORMATION**

Give any other information you consider relevant.

## **6. THIS APPLICATION SHOULD BE ACCOMPANIED BY A SCALED PLAN TO THE INDICATING:-**

- any unaffected line of path/s.
- the section of path/s to be extinguished.
- the new path/s to be provided.

**DECLARATION**

I/We

- (a) understand that no authority for the extinguishment, obstruction or creation of any path or way in this request is conferred unless or until a Rail Crossing Diversion Order has been confirmed and come into force;
- (b) request that a Rail Crossing Diversion Order be made and confirmed relating to the crossing and paths or ways described in Sections 1 and 2 above; and
- (c) declare that, to the best of my/our knowledge and belief, all of the factual information included in this form is true and accurate.
- (d) declare that the highway to be stopped up is not obstructed and that it is fully available to the public unless legally closed by temporary Traffic Regulation Order (TTRO).
- (e) hereby agree that if a diversion/stopping up Order is made I/We will defray any compensation which becomes payable in consequence of the coming into operation of the Order and any expenses which are incurred in bringing the new site of the path into a fit condition for use by the public.
- (f) agree to comply with the terms and pay the charges for processing the Order as detailed in the attached terms and conditions and fee guide (Pages 8, 9 ,11 & 12) at the Assessment, Made Order and Confirmed Order stages as applicable. I am also aware that Essex County Council will not proceed with an application if the previous stages' costs remain outstanding.

Signed .....

Name in Capitals .....

On behalf of (name of railway or tramway operator) .....

Address .....  
.....  
.....

Position held .....

Date .....

Note: the Council will need all relevant information to enable them to proceed.

On completion, this form should be returned, together with the plans to:

Essex Highways Definitive Map Service  
Seax House 2nd Floor  
Victoria Road South  
Chelmsford  
CM1 1QH

Email: [publicpathorders@essexhighways.org](mailto:publicpathorders@essexhighways.org)

## **Terms and Conditions – important – please read before signing**

I/We acknowledge that a non-refundable assessment fee of £500.00 will be paid when notification is received of the commencement of the processing of the application.

I/We acknowledge and undertake that:

1. The application will not proceed until the assessment fee cheque has cleared/invoice paid
2. The assessment fee amount paid covers the following costs:
  - (a) Land ownership verification
  - (b) determining the application i.e. accept, consider and issue decision
  - (c) initial site visit
  - (d) drawing up of a proposal plan
  - (e) pre-Order 'informal' consultations and negotiations

3. The total amount paid is currently a fixed fee of £3,125 (which includes the £500 above). Any additional orders required which may form part of the same scheme will cost a further £795 per order, and a fee of £368 will apply for the second and each additional path within any order.

The set fee includes the following costs:

- (a) making an Order/s inc. legal costs and compiling final order plans (see above and PPO Fee Guide re additional Orders/paths).
- (b) advertising and consultation of Orders
- (c) confirmation of Orders inc. legal costs
- (d) the certification of the diversion routes including site visits
- (e) \* works costs are not included – see below

\*NB. Any works required to bring the new route into being will be paid by the applicant unless in exceptional circumstances other terms are agreed with the Council, this includes any work requiring execution on land other than that owned by the applicant to meet the legal schedule as set out in the conditions of the Order. The applicant will meet any costs incurred by the Council as a consequence of any alteration or replacement of any statutory undertaker's apparatus including telecommunications apparatus, arising from the effect of the Order together with any costs provided for under the 1980 Act. It may be possible in some circumstances for applicants to undertake or commission their own works to ECC design standards subject to certification by ECC. Please note: works connecting with highways with vehicular rights, such as carriageways and roads, can only be undertaken by ECC or their nominated contractors.

4. Non-ECC works: It must be noted please that it is your responsibility to check for any underground cables, pipes or any other structures before commencing the installation of any approved structure on the diverted route. You must contact the relevant Statutory Undertakers (i.e. BT, gas, water, electricity companies etc.) to ascertain whether they have apparatus within the area proposed to install the structure. If there is any objection from any of the relevant Statutory Undertakers then the highway authority must be informed and the installation must not proceed.
5. Repayment of monies received but not expended will only be made on verification by us that we are withdrawing the above application and will exclude the assessment fee and any other costs already incurred by ECC.
6. To pay on demand the cost at the made Order stage of £1,850 (plus additional costs as 3. above).
7. To pay on demand the remaining fees at the confirmation Order stage – usually £775 plus works.



8. If objections lodged are not withdrawn and upon referral to the Secretary of State, they subsequently dismiss the Order, but not on the ground of invalidity, monies paid by the applicant for costs incurred up to the made Order stage are not refundable. Please be advised that opposed orders will only be forwarded to the Secretary of State for Rural Affairs at the discretion of the Highway Authority who will determine if the benefit of the order outweighs the costs to the tax payer of a referral.
9. To pay any compensation in respect of a diversion onto land owned by persons other than the applicant under provisions of Section 28 (as applied by Section 121) of the Highways Act 1980 which may become payable to a person whose interest in the land has depreciated or who has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of the said Order.
10. To meet any costs, which the Council has to pay as a consequence of any alteration or replacement of any statutory undertaker's apparatus including telecommunications apparatus, arising from the effect of the order together with any costs provided for under the 1980 Act. This to include the removal or abandonment of any apparatus, including the cost of providing any telecom apparatus rendered useless under, in, on, over, along or across the path to be stopped up.
11. Where immediately before the date on which part of the public right of way is diverted, there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying out their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
12. I/We will notify the Highway Authority the name and address of any other person(s) known as having an interest in any of the land or premises affected by either the existing or proposed new routes; please complete the Requisition for Information form overleaf as appropriate.
13. Notwithstanding this order/s .....  
 (specify name of any applicable statutory undertakers) shall have the following rights over the land referred to in paragraph 1  
 namely:.....  
 (please provide details)

Is the land appertaining to the footpath registered with Land Registry?

If yes, provide registration numbers:

Please note that land that is not yet registered, whether on the current legal or proposed diversion route/s, will result in delays in the processing of your application. Essex Legal Services will not accept an instruction to make an order where landownership is not confirmed by Land Registry title plans and registers or alternative suitable proof (at ECC's discretion). Applicants are therefore urged to use the waiting list time to register any affected land parcels to prevent delays.

**I/We have read and agree the terms and conditions and these provide a legally binding agreement between Essex County Council and the applicant.**

Signature(s) .....

.....

Date .....

### Requisition for Information - Essex County Council

Pursuant to the provisions of section 16 of the Local Government (Miscellaneous Provisions) Act 1976, the above-named authority hereby requires you to state in writing the nature of your interest in the land affected by this application. This information is required by the Council with a view to performing their function in relation to public path orders under Section 119 of the Highways Act 1980. You are also required to state in writing the name and address of any other person known to you as having an interest in the said land or premises, as freeholder, lessee or otherwise, mortgagee or who receives rent for the land.

My/our interest in the land is as (owner, lessee, licensee, occupier)	
Full name and address of occupier	
State whether premises held on weekly tenancy, agreement or lease and term	
Full name and address of person to whom rent is paid, if he is Agent for another person state full name and address of such person	
Full name and address of Freeholder	
Full name and address of Leaseholder	
Full name and address of Mortgagee (Bank, Building Society etc.)	
Full name and address of any other person having an interest in the premises	

## Public Path Order (PPO) fee guide S118 & S119:

Please use the menu system below as a guide as to how much your PPO diversion order/s may cost.

NB. The costs outlined also apply to PPO extinguishment applications. ECC will only process extinguishments in exceptional circumstances where we determine that a path is not needed for public use.

Actual costs excluding works costs will be confirmed when your application is ready to be processed.

NB: the costs in this table are for s119 Diversion and s118 Extinguishment Applications under the Highways Act 1980 only.

For Section 257 Applications under the Town and Country Planning Act 1990 please refer to our website.

ALL APPLICATIONS	ALL APPLICATIONS	WHEN ADDITIONAL ORDER/S REQUIRED*	WHEN ADDITIONAL PATHS INCLUDED*	WORKS COSTS AS REQUIRED*
ASSESSMENT FEE	SET FEE	Y/N	Y/N	Y/N
£500	£3,125 (includes £500 assessment fee)	£795 per order	£368 per path	Estimate can be provided once works requirement known

\*see additional guidance below:

### Examples:

1. Application to divert Footpath 22 in the Parish of Finchingstead, and Footpaths 9 and 13 in the Parish of Great Balford requiring two orders.  
Assessment fee £500, set fee £3,125 (which includes the £500), additional order fee x £795, additional path fee x1 (one path is included with each order) £368. TOTAL FEE (exc. Works) = £4,288
2. Application to extinguish Footpath 7 Little Charlwood and Footpath 23 Midsummer Warley (note: these paths are contiguous and in the same ownership. The parish and path number change because the of the location of the parish boundary but they can logically be included in one order)  
Assessment fee £500, set fee £3,125 (which includes the £500), additional path fee x1 £368. TOTAL FEE (exc. Works) = £3,493

\*The Definitive Map Team officer processing your application will determine how many orders are required when there are multiple paths included within the application.

Please note that Extinguishments and Diversions cannot be combined within the same order.

ECC will generally advise against combining proposed changes within one order unless the paths, though numbered and named differently, are contiguous or in close proximity to each other, making their inclusion within a single order logical and an aid to the public's comprehension of the proposals.

Including more than one diversion proposal within one order could increase the risk that both proposals fail. This is because if an objector objects to one proposal and not the other the whole order will then nonetheless need to be referred to the Planning Inspectorate on behalf of Secretary of State for determination if it is to proceed.

The additional path fee will apply even if both/all the path proposals can be included within the same order. This reflects the additional work involved in site visits, plan construction, order and advertisement wording etc. for more than one path.

### Payment schedule:

At application commencement: assessment fee £500

At Made Order stage: £1,850 (plus any additional path/order costs as applicable)

At confirmation stage: remaining costs plus applicable works costs.

### Works costs:

Applicants may be able to reduce or remove works costs by undertaking the works themselves or commissioning a 3<sup>rd</sup> party to undertake them to ECC's design specifications.

The Area Public Rights of Way Inspector and Definitive Map Team Officer will be able to advise if this is possible after the site visit.

If an applicant opts to undertake works they will be fully responsible for undertaking Statutory Undertaker (STATS) searches (to determine the presence of buried services i.e. utility pipes, telecommunications assets etc.) and for any consequences, whether personal or financial arising from damage or interference with them (see 13. in app. form).

Works associated with public paths connecting with highways with vehicular rights, such as carriageways and roads, are likely to require traffic management and therefore will only be able to be undertaken by ECC or their nominated contractors. Please confer with the respective Area PROW Inspector as your application progresses.

### Schemes

As in the examples above a number of paths can be included in one application and where these are not contained within one order this is referred to as a 'scheme.'

The costs for a scheme are captured in the menu-based fee calculation system above depending on the number of orders required and paths included.

In exceptional circumstances only it may be possible to combine several distinct applications from different applicants and to process them at the same time.

If these applications then proceed in-sync it may result in cost savings to the Highway Authority e.g. through shared newspaper advertisements and email consultations, site visits etc. It will not be possible to determine if such savings are likely until proposals have been fully assessed. If such savings can be achieved it will be possible to pass these on to both/all sets of applicants in the form of reduced fees commensurate to the complexity of the various applications and savings achieved. Please note, however, that at the assessment stage such a fee reduction cannot be accurately quantified and savings may not materialise at all. Applicants should therefore in the majority of cases budget for and expect to pay the full fee.

Applications which are not cohesive (e.g. different parishes and/or districts, paths in locations remote from each other, different landowners) will likely not be suitable for consideration as a scheme and will for clarity and ease of presentation to the public be presented to them separately.