

### Extract from Central Bedfordshire Council's Applications Policy: Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders

#### 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>1</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.
- 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

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<sup>1</sup> Section 117 of the 1980 Act allows members of the public to request that the Council take a case to the Magistrates' Court.

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>2</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.**

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<sup>2</sup> Including any mortgage company or bank and those parties with sporting or other rights.

## **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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