



Environment Committee

15 November 2021

Title	Public Rights of Way Public Path Orders Policy
Report of	Chairman of Environment Committee
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	<i>Appendix 1 – Public Rights of Way Guidance</i> <i>Appendix 2 – Draft Public Path Order Policy</i> <i>Appendix 3 – Proposed Fees and Charges</i>
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Summary

Public rights of way are types of public highway that are legally recognised and protected. They allow members of the public to pass and re-pass along them without permission, interruption, or obstruction at any time within the constraints of the route's status.

There are over 73 kilometres of recorded formal public access in Barnet that run through both countryside and urban areas of the Borough. In addition to these there are also many kilometres of footways and cycleways that provide non-motorised public access.

Public Rights of Way are subject to a range of acts including, but not limited to Highways Act 1980, Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000, the Town and Country Planning Act 1990 and the Deregulation Act 2015.

In response to the requirements set out in these acts the Council has commenced a review of its policies, guidance, and application forms for Public Rights of Way to ensure the service is

reflective of the applicable legislative requirements.

The first policy that is being brought forward to the Environment Committee is that for Public Path Orders. This policy is seen as a high priority to respond to several applications received in relation to diversion, extinguishment, and creation of paths.

Future policies will be brought to the Committee as they are developed.

It is proposed that applicants are required to reimburse the Council for reasonable costs relating to the administration of the application, any legal or other professional fees or services, any costs incurred by advertising any orders made, any costs associated with bringing the new route up to a suitable standard, and any costs associated with claims for compensation under section 28 of the Highways Act 1980.

The proposed fees and charges are set out in a separate report to the 15 November 2021 Environment Committee.

Officers Recommendations

- 1. That the Committee notes the progress with the development of the Public Rights of Way service and associated policy framework.**
- 2. That the Committee approves the draft Public Path Order policy set out in Appendix 2 for consultation.**
- 3. That the Committee delegate authority to the Executive Director for Environment to amend (if necessary) the draft Public Path Order Policy to incorporate any changes necessitated by the result of the public consultation and to implement the policy.**
- 4. That the Committee notes the introduction of fees and charges aligned to the Public Path Order policy which is the subject of a separate report to the Committee.**

1. WHY THIS REPORT IS NEEDED

1.1 Public rights of way are types of public highway that are legally recognised and protected. They allow members of the public to pass and re-pass along them without permission, interruption, or obstruction at any time within the constraints of the route's status. They can have one of four statuses:

- Public footpaths – for walkers only. A person may take a pushchair or dog with them. It is normally a civil wrong to push or ride a bicycle or a lead or ride a horse on a footpath; legal action could be taken by the landowner for trespass or nuisance caused by the user.
- Public bridleways – for walkers, horse riders and pedal cyclists. Cyclists must give way to walkers and horse riders.
- Restricted byways – these may be used by walkers, cyclists, horse riders and carriage drivers. There is no public right of way for cars or motorcycles.

- Byways open to all traffic (*BOATs*) – these routes are available for use by walkers, horse riders, pedal cyclists, horse drawn carriages, motorcyclists, and motor vehicles. Traffic Regulation or Prohibition Orders can restrict the level of use by motorised users on some byways – either permanently or seasonally. There are currently no recorded *BOATs* within Barnet.
- 1.2 Cycle tracks are another type of minor highway for cyclists with, or without, pedestrian access. These cannot be recorded on the Definitive Map under the current legislation. Some of Barnet’s cycleways are defined as footpaths with permissive cycle access.
 - 1.3 We keep an official map that shows all the footpaths, bridleways, restricted byways that we know about. This is called the Definitive Map and is accompanied by a written description of each path, called the Definitive Statement. In the rest of this guide, we will refer to the Definitive Map and accompanying Statement simply as “the map”. We have a duty to keep the map up to date. It must show the exact route of each public right of way in London Borough of Barnet.
 - 1.4 Where the map shows a footpath, anyone has a legal right to walk along it. Where the map shows a bridleway, anyone has a legal right to walk, ride a horse or ride a bicycle along it. Where the map shows a restricted byway, anyone can walk, ride a horse or bicycle, or drive a non-mechanically propelled vehicle such as a horse-drawn cart.
 - 1.5 There are over 73 kilometres of recorded formal public access in Barnet that run through both countryside and urban areas of the Borough. The public rights of way network consist of approximately 30 kilometres of footpaths, 7 kilometres of bridleways and restricted byways and 36 kilometres of urban footpaths included within the list of streets. In addition to these there are also many kilometres of footways and cycleways that provide non-motorised public access.
 - 1.6 Additionally, there are paths through parks and open spaces that are usually available to the public, at least during park opening hours. A few of these are definitive footpaths or are included within the list of streets, but otherwise they form part of the park and are governed by the park bylaws. Several permissive routes also exist, mainly on Council owned land. Many form parts of regional or local promoted walks, including the London LOOP, Capital Ring, Dollis Valley Green Walk, Pymmes Trail, and local circular walks. Some also permit horse riding. Pedestrians also have right of access over common land (except excluded areas) in the borough and may also walk in many areas within parks where there are not defined footpaths
 - 1.7 Public Rights of Way are subject to a range of acts including, but not limited to Highways Act 1980, Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000, the Town and Country Planning Act 1990 and the Deregulation Act 2015.
 - 1.8 In response to the requirements set out in these acts the Council has commenced a review of its policies, guidance, and application forms to ensure the service is reflective of the legislative requirements. Appendix 1 sets out the proposed policy, guidance and application framework and associated delivery timeline for the Environment Committee’s information.
 - 1.9 The first policy that is being brought forward to the Environment Committee is that for Public Path Orders and associated fees and charges. This policy is seen as a high

priority to respond to several applications received in relation to diversion, extinguishment, and creation of paths.

- 1.10 Public Path Orders seek to change the existing PRow network by extinguishing or diverting existing paths or by creating new paths. The legislation used to do this is contained within the Highways Act 1980 specifically:
- Highways Act Section 26 - the creation of a new footpath, bridleway or restricted byway.
 - Highways Act Section 118 - the extinguishment of an existing footpath, bridleway or restricted byway.
 - Highways Act Section 119 – the diversion of an existing footpath, bridleway or restricted byway.
- 1.11 For the Environment Committee information, there are also powers under the Town and Country Planning Act 1990 which affect public rights of way in relation to stopping up or diversion for development (Section 257); and temporary orders relating to mineral workings (Section 261) these matters are within the delegation of the Councils Planning Committees, therefore this report deals specifically with the power vested in the Council under the Highways Act 1980.
- 1.12 The Council has the discretion as to whether to make a Public Path Order following an application to do so by a member of the public, organisation, or landowner. For a Public Path Order application to be successful the proposal must meet all legislative tests and be considered appropriate by the Council and not place an undue burden on any third party. If the Council decides not to make an order, there is no right of appeal. The legislation gives the power but not the obligation to make such orders.
- 1.13 A draft of the proposed Public Path Order policy is set out in Appendix 2 for the Environment Committee information. This policy covers:
- Legislative framework
 - Definitions
 - Fees and Charges
 - Types of Public Path Orders
 - Application Process
 - Consultation
 - Path Widths & physically restricted widths
 - Council Generated Schemes
 - Fencing of new routes
 - Surfacing of new routes
 - Open paths
 - Public path changes
 - Order of processing
 - Determination of application
 - Order Making
 - Appeals Process

- 1.14 In addition, it is proposed that applicants are required to reimburse the Council for reasonable costs relating to the administration of the application, any legal or other professional fees or services, any costs incurred by advertising any orders made, any costs associated with bringing the new route up to a suitable standard, and any costs associated with claims for compensation under section 28 of the Highways Act 1980.
- 1.15 The power for local authorities to charge applicants for Public Path Orders is given by the Local Authorities (Recovery of Costs for Public Path Orders) Regulation 1993 (as amended).
- 1.16 The proposed fees and charges are set out in Appendix 3 for the Environment Committee's information, these proposed fees have been benchmarked against 11 other Authorities who offer Public Rights of Way Public Path Order application processes. The proposed fees and charges are set out in a separate report to the 15 November 2021 Environment Committee.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Council has a statutory duty to provide a Public Rights of Way function as defined under a range of acts including, but not limited to Highways Act 1980, Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000, the Town and Country Planning Act 1990 and the Deregulation Act 2015.
- 2.2 The recent appointment of a dedicated Public Rights of Way Officer has enabled the Council to review and refresh its approach to the management of Public Rights of Way service, with focus on delivering an updated suite of policies, guidance and application forms as set out in Appendix 1 of this report.
- 2.3 The first policy that is being brought forward to the Environment Committee is that for Public Path Orders and associated fees and charges. This policy is seen as a high priority by Officers to respond to several applications received in relation to diversion, extinguishment, and creation of paths within the Borough.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Due to the legal complexity of Public Rights of Way matters there is no alternative option to the application and implementation of a structured policy, guidance and application framework.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the Committee approves the recommendations, the Public Path Order policy will be subject to twelve weeks consultation with residents, businesses, and appropriate stakeholders from January 2021, in conjunction with the communication team. A consultation plan will be developed and implemented. This policy be delegated to the Executive Director for Environment for finalisation of any changes as a result of the consultation and implementation. This timetable is proposed so that the Public Path Order policy can be in place from early April 2022 aligned to the introduction of the new fees and charges.

- 4.2 Officers will continue to review and refresh its approach to the management of Public Rights of Way service, with focus on delivering an updated suite of policies, guidance and application forms as set out in Appendix 1 of this report.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Council's Corporate Plan - Barnet 2024, states in its strategic objectives that it will work with partners to achieve a pleasant, well-maintained borough that we protect and invest in.

- 5.1.2 In particular, the proposed policy will improve the highway network, which in turn will contribute to improving the local environment and the quality of life for the residents and help create conditions for a vibrant economy.

- 5.1.3 The proposed policy will contribute to the Council's Health and Wellbeing Strategy by making Barnet a great place to live and enable the residents to keep well and independent.

- 5.1.4 The Highway network is the Council's most valuable asset and is vital to the economic, social and environmental wellbeing of the Borough as well as the general image perception. The Highways provide access for business and communities, as well as contribute to the area's local character and the resident's quality of life. Highways, of which Public Rights of Way for am part, really do matter to people and often public opinion surveys continually highlight dissatisfaction with the condition of local roads and the way they are managed. Public pressure can often result in short term fixes, rather than properly planned and implemented longer term solutions within a robust policy framework. The proposed policy aims to improve the quality and safety of the network ensuring the Councils legal and statutory obligations are discharged.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Finance & Value for Money

- 5.2.1.1 The proposed Public Path Order policy will ensure the effective financial management of the highways network through the implementation of a clear policy framework, optimising resources deployed.

- 5.2.1.2 The fees and charges set out in Appendix 3 will ensure that the Council recovers reasonable costs where those costs have been incurred.

- 5.2.1.3 The proposed fees and charges have been benchmarked against 11 other Authorities who offer Public Rights of Way Public Path Order application processes.

- 5.2.2 Procurement – None as a result of this report.

- 5.2.3 Staffing – None as a result of this report.

5.2.4 IT – None as a result of this report.

5.2.5 Property – None as a result of this report.

5.2.6 Sustainability – This report and the associated policies, guidance and application forms will promote the effective management and utilisation of the Public Rights of Way network across the borough.

5.3 Legal and Constitutional References

5.3.1 The Council has a variety of powers under which it can make a Public Path Order but the most common are those set out in the Highways Act outlined in the draft Public Path Order Policy appended to this report.

5.3.2 Each of the powers set out in the Highways Act 1980 is discretionary and as such it is for the local authority to decide if it wishes to make or not to make a Public Path Order under any of the sections. If, it decides to make an order, it must be satisfied that the tests relevant to the particular type of order have been satisfied.

5.3.3 The Council also has power to charge applicants for the making and confirmation of Public Path Orders under Regulation 3 of the Local Authorities (Recovery of Costs for Public Path Orders) Regulation 1993 (as amended). The amount of the charge is at the local authority's discretion subject to the test of reasonableness.

5.3.4 Article 7 of the Council Constitution (Responsibility for Functions) states that the Environment Committee is responsible for all borough-wide or cross-constituency matters relating to the street scene. The subject matter of this report falls within the terms of reference of the Environment Committee.

5.4 Insight

5.4.1 Not applicable to this report, however the management of the Public Right of Way network will be informed by strategic insight data provided by the Council's insight team and other sources in due course.

5.5 Social Value

5.5.1 The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.

This is not applicable in the context of this report.

5.6 Risk Management

5.6.1 Effective management of risk is an integral part of highways asset management, of which the Public Rights of Way network forms an integral part. The Council's Risk Management Framework has established strategic and departmental risk registers.

5.7 Equalities and Diversity

5.7.1 Good roads and pavements have benefits to all sectors of the community in removing barriers and assisting quick, efficient and safe movement to schools, work and leisure. This is particularly important for older people, people caring for children and pushing buggies, those with mobility difficulties and sight impairments. The state of roads and pavements are amongst the top resident concerns and the Council is listening and responding to those concerns through the management of an effective Public Rights of Way network.

5.7.2 The physical appearance and the condition of the roads and pavements have a significant impact on people's quality of life. A poor-quality street environment will give a negative impression of an area, impact on people's perceptions and attitudes as well as increasing feelings of insecurity. The Council's policy is focused on improving the overall street scene across the borough to a higher level and is consistent with creating an outcome where all communities are thriving and harmonious places where people are happy to live.

5.7.3 There are on-going assessments carried out on the conditions of the roads and pavements, including Public Rights of Way, in the borough. These ongoing assessments incorporate Public Rights of Way on which there were requests by letter, email, and phone-calls from users.

5.7.4 The Equality Act 2010 outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.7.5 The broad purpose of this duty is to integrate considerations of equality into day-to-day business and keep them under review in decision making, the design policies and the delivery of services. There is an on-going process of regularisation and de-clutter of street furniture and an updating of highway features to meet the latest statutory or technical expectations.

5.8 Corporate Parenting

5.8.1 No direct or indirect impacts on looked after children or care leavers identified beyond those applicable to the population.

5.9 Consultation and Engagement

5.9.1 Public consultation was undertaken in relation to development of the Public Path Order policy.

5.9.2 Once the Committee approves the recommendations, the Public Path Order policy will be subject to twelve weeks consultation with residents, businesses, and appropriate

stakeholders from January 2021, in conjunction with the communication team. A consultation plan will be developed and implemented. This policy be delegated to the Executive Director for Environment for finalisation of any changes as a result of the consultation and implementation. This timetable is proposed so that the Public Path Order policy can be in place from early April 2022 aligned to the introduction of the new fees and charges.

6. Environmental Impact

- 6.1 There are no direct environmental implications from noting the recommendations. Implementing the recommendations in the report will lead to a positive impact on the Council's carbon and ecology impact, or at least it is neutral.

7. BACKGROUND PAPERS

- 7.1 None.

Appendix 1

Public Rights of Way (PRoW) Policies, Guidance and Application Forms prioritisation and estimated delivery dates

A. Public Rights of Way (PRoW) Policies

Policy	Priority	Estimated Delivery Date
Public Path Order	High	April 2022
Modification Applications and Path Widths	High	Summer 2022
Least Restrictive Access	Medium	Summer 2022
Maintenance	Medium	Summer 2022
PRoW Outdoor Access Improvement Plan	High	Autumn 2022
Enforcement	Medium	2023
Ploughing and Cropping	Low	2024

B. PRoW Guidance/Orders/Applications

Type	Priority	Estimated Delivery Date
Public Path Orders Application Form	High	April 2022
Definitive Map Modification Order (DMMO) Application Forms	High	Spring 2022
Highways Act Emergency Closure Notice	High	Spring 2022
Structure Authorisation Forms	High	Spring 2022
Sign Posting, Waymarking & Promotion of PRoW Guidance	Medium	Spring 2022
PRoW - A Guide for Developments and Utility Companies	High	2023
PRoW and Livestock Guidance	Low	2024
PRoW and Windfarms	Low	2024

The above lists are not exhaustive and will be under constant review.

Appendix 2

Draft Public Path Order Policy

Draft Public Path Order Policy

Introduction

The Council's Highways Team looks after the public rights of way network in Barnet London Borough Council¹. The public have a legal right to use this network of paths even though they cross private property. We refer to all these routes as "paths", but the network consists of footpaths, bridleways and restricted byways. All these paths are public highways and share many of the same rules and legal protection afforded to the roads we drive our cars on.

We keep an official map that shows all the footpaths, bridleways, restricted byways that we know about. This is called the Definitive Map and is accompanied by a written description of each path, called the Definitive Statement. In the rest of this guide, we will refer to the Definitive Map and accompanying Statement simply as "the map". We have a duty to keep the map up to date. It must show the exact route of each public right of way in Barnet London Borough.

Where the map shows a footpath, anyone has a legal right to walk along it. Where the map shows a bridleway, anyone has a legal right to walk, ride a horse or ride a bicycle along it. Where the map shows a restricted byway, anyone can walk, ride a horse or bicycle, or drive a non-mechanically propelled vehicle such as a horse-drawn cart.

A person is legally entitled to take a dog² or a pushchair or mobility scooter on any type of path.

Definition of Public Rights of Way (PRoW)

Public rights of way are types of public highway that are legally recognised and protected. They allow members of the public to pass and re-pass along them without permission, interruption, or obstruction at any time within the constraints of the route's status. They can have one of four statuses:

- Public footpaths – for walkers only. A person may take a pushchair or dog with them. It is normally a civil wrong to push or ride a bicycle or a lead or ride a horse on a footpath; legal action could be taken by the landowner for trespass or nuisance caused by the user.
- Public bridleways – for walkers, horse riders and pedal cyclists. Cyclists must give way to walkers and horse riders.
- Restricted byways – these may be used by walkers, cyclists, horse riders and carriage drivers. There is no public right of way for cars or motorcycles.

¹ Barnet London Borough Council is the local authority for the London Borough of Barnet in Greater London, one of 32 within London. Barnet is divided into 21 wards.

² Dogs should be kept under control and not allowed to wander off the path or to foul land or the highway.

Public Path Orders

If you would like us to move a public right of way or to close one permanently, you can apply for a Public Path Order. The Highways Act 1980 says we have “powers” but not a “duty” to deal with applications to move, close or create paths. This means that we can decide whether or not to process your application and how quickly it should be dealt with. If we decide not to deal with your application, or we decide that we will not make the order you have asked for there is currently no right of appeal against our decision.

A Public Path Order can move a path, this is called a diversion, or it can close a path, this is called an extinguishment. A Public Path Order can also create a new path. The law has strict requirements that need to be met for us to carry out diversions, extinguishments, and creations of public rights of way. Before you apply for a Public Path Order it is worth talking to us so that we can advise you on any proposal and explain the law relating to such orders and tell you if we can do what you want us to do.

Please note this policy relates only to Public Path Orders made under the Highways Act 1980. Regarding Public Path Orders made under Section 257 or 261 of the Town and Country Planning Act 1990 please contact the Councils Planning department for further information relating to these orders.

Types of Public Path Orders covered by this Policy

Public Path Orders (“PPOs”) – Highways Act 1980

Public path orders are made under a variety of different sections of the Highways Act 1980 depending on what the required outcome is. Each section of the Act has its own tests:

- **Section 26 – Creation of public path.** The Council can create a footpath, bridleway, or restricted byway by order if it is satisfied it is expedient to do so to satisfy a need for a path, having had regard to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, as well as the effect which the creation of the path or way would have on the rights of those interested in the land over which the path would pass.
- **Section 118 – Extinguishment of a public path.** The Council can extinguish a footpath, bridleway, or restricted byway by order if it is satisfied it is expedient to do so on the ground that it is not needed for public use. Before confirming an order, the Council must have considered the extent that the path would be used by the public if not extinguished. Any temporary obstructions preventing or diminishing public use must be disregarded. The Council also needs to consider the effect of the extinguishment on the lands served by the path.
- **Section 116 – Stopping up or diverting a public path or BOAT.** The Council can also apply to the Magistrates’ Court for a court order to either stop up (extinguish) a public right of way on the ground that it is unnecessary or to divert a public right of way to provide a nearer or more commodious route. National guidance and Council policy generally restricts this use to BOATs as it is accepted that Section 118 is a more acceptable mechanism for extinguishing public paths.
- **Section 119 – Diverting public paths.** The Council can divert a footpath, bridleway, or restricted byway by order if it is satisfied it is expedient to do so in the interests of the owner, occupier, or the public. The termination points must be substantially as convenient and connected to the same or a connected highway. (A dead-end path must instead be extinguished and re-created). Before confirming the order, the Council must

be satisfied that the diversion route will not be substantially less convenient to the public and it is expedient to do so having regard to the effect on the public's enjoyment of the route and the effect on the lands served by the path and the diversion.

- **Sections 118A and 119A – Rail crossing extinguishment and diversion orders.** The Council can extinguish or divert a public path over a level crossing and any paths connecting to it if it considers it expedient to do so in the interest of the safety of members of the public using the crossing. The Council will not confirm such an order unless it is satisfied that it is expedient to do so having had regard to all circumstances – whether it is reasonably practicable to make the crossing safe for the public or for the provision of a bridge or tunnel. An application by Network Rail or its agents must be made in the proper form and the applicants can be required to pay for and maintain any alternative route.
- **Sections 118B and 119B – Special extinguishment and diversion orders for crime prevention.** The Council can make an order to extinguish or divert a public path within any area designated an area of high or persistent crime by the Secretary of State if the Council is satisfied that the existence of the path is facilitating the persistent commission of criminal offences to the properties adjoining or adjacent to the path. Before confirming an extinguishment order the Council must be satisfied that the path is being used for the commissioning of crime and having regard to all circumstances – in particular whether there is an alternative route or whether the path could be diverted.
- **Sections 118C and 119C – Special Schools extinguishment and diversion orders.** The proprietor of a school can apply under Sections 118B or 119B for a special extinguishment or diversion order. The Council can make an order where it considers it expedient for the purposes of protecting pupils or staff from violence, harassment, alarm, or distress arising from unlawful activity, or any other risk to their health or safety from that activity. Before confirming an order, it must have regard as to whether any other measures could have been taken to improve/maintain the school's security, whether the order is likely to result in a substantial improvement in that security, and the effect the order would have on other land served by the path.
- **Section 119D & E – SSSI Diversion order.** Natural England can apply to the Council for an order to divert a public path which runs over a Site of Special Scientific Interest (SSSI). Where it appears to the Council that public use of the path is causing or will cause significant damage to flora, fauna, or geological or physiological features it may make such an order. The Council must have regard to the same tests as set out in Section 119 above.

How we deal with your application for a Public Path Order

When we receive your application, we begin by checking to see if the Highways Act 1980 will allow us to do what you have applied for. If it doesn't, we will contact you and explain what the problem is and suggest changes that you could make. We cannot make you change your application but if an order cannot legally be made the application will be refused. If we accept your application, we will add it to a public register of similar applications. We deal with applications in order of receipt unless taking them out of turn would enable us to resolve a nearby issue at the same time.

Once we have agreed with you what you want and have discussed the issues involved, we will write to any other landowner or occupier who would be affected by your application, as well as

to local and national user-groups, such as the Ramblers and British Horse Society. We will also write to the local councillor and to the utility companies. You will be charged for this and any following work unless we have told you that your application will be processed at no cost to yourself.

Once we have received responses from those people we have written to, we will write a report to be considered by the Executive Director. The report will discuss the legal aspects of your application and the comments made by the people and organisations we have written to. The Executive Director will decide if the order you have asked for should be made.

If we decide to make an order, we will tell you this. When we make the order, we advertise this in the local paper and erect notices on the path. An order does not take effect until it has been confirmed. People have four-six weeks from the date the order is made to object to it if they disagree with it. If we do not receive any objections, we can confirm the order and the map is changed. If we receive objections to the order, we will consider whether the order should be sent to the Secretary of State for Environment, Food and Rural Affairs to confirm in the same manner as for Definitive Map Modification Orders. We may decide not to ask for the order to be confirmed if there are good reasons not to. If we decide not to send the order for confirmation, there is no appeal against this decision.

If we decide not to make an order, we will inform you appropriately. There is no appeal against this decision. You can ask the Secretary of State for Environment, Food and Rural Affairs to make an order for you.

Widths of new routes

The following applies to **applications** received by the Council.

New routes of diverted paths and newly created paths must have a width recorded within the order to comply with legislation (Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993) and government guidance (DEFRA Circular 1/09). The position of the stated width should be identifiable on the ground, where possible by reference to landmarks on the ground which are likely to endure. Where the new route runs along an existing track, or between other features, such as parallel hedgerows, fences or walls, the normal presumption will be that the recorded width is equal to the width physically available on the ground.

The width of the section(s) of new path will be as per the table below, this is irrespective of whether a diverted route had previously had a narrower or no recorded width. If there is no recorded width, the width to be used will be the width available for use by the public. The widths recorded below are minimum widths. Where appropriate the Council will seek to secure agreement for a width in excess of the stated minimum.

The following table gives minimum widths for new or diverted paths:

Path status	Width
Footpath	2.0 m
Bridleway	4.0 m
Restricted byway	5.0 m

Physically restricted routes

A new route may be physically restricted where part or all of it uses a pre-existing alleyway, or where there are other significant features or structures which physically prevent the allocation of a greater width. Paths should conform to the general policy where possible. However, where a new path would unavoidably be physically restricted, the following minima will apply for as short

as length as possible.

Path status	Physically restricted minimum width
Footpath	1.0 m
Bridleway	2.0 m
Restricted byway	3.0 m

Council-generated orders.

The Council may decide to make a Public Path Order without receiving an application to fulfil one or more of its objectives. Such objectives may include:

- Making an order to provide a useable alternative route where enforcement action is considered unreasonable or not practicable by the Council.
- For the effective management of the rights of way network;
- To enhance public access where a need has been identified;
- For reasons of safety, crime, and animal & environmental welfare;
- To rectify an acknowledged error of this or another authority.

Such an order is described within this policy as a “Council-generated order”.

Council-generated orders are likely to be made to resolve issues relating to long-standing obstructions or gaps in the network. As such the widths and routes available to remedy the situation are likely to be limited by existing buildings and structures and using the land over which a new route may be placed. Moreover, the nature of a Council-generated proposal is likely to require some degree of compromise between landowner and Council to secure a mutually satisfactory agreement. Such compromises may include the provision of paths with widths less than the minima required for applications as stipulated above.

Any width decrease below the application minimum will be considered on a case-by-case basis by the Case Officer and only sanctioned if the detriment to the users is compensated by some other factor or can be considered reasonable considering all the circumstances - including the needs and expectations of the public and the aims of the scheme.

Fencing of new routes

Where the applicant notifies the Council of their intention to fence the route the Council will seek to secure a width in excess of the minimum width unless satisfied that the style of fencing to be used is unlikely to intimidate or deter users of the path.

Where a new path will run alongside an existing hedge, the position of the path will be set out from the hedge by a distance appropriate for the growth style of the vegetation to reduce any future maintenance liability of the landowner or Council. This distance will be measured from the centre line of the hedge.

Where a path is enclosed by hedging or fencing without the consent of the Highway Authority, the maintenance of the surface of the path and clearance of vegetation will, under common law, become the responsibility of the owner/occupier of the land.

Surfacing of new routes

The surface required for a new path will be determined by the Case Officer who will take into consideration the path's location, environment, and proposed potential level and type of use. This may require that the surface of the new path be improved beyond the condition of the path being replaced or what is present on the line of the new path. Further information regarding surfacing will be covered within the PRow Maintenance Policy.

Structures on new routes

Any structures required on the new route must comply with the Council's policy on structures – Structures Policy: Achieving Least Restrictive Access on Barnet London Borough Councils Rights of Way and with its Rights of Way Enforcement Policy. Further information regarding structures will be covered within the PRow Maintenance Policy.

Open paths

The requirement that public rights of way are available for public use is a general duty of both the landowner and the Council. The execution of the Council's duty, however, must be reasonable and proportionate.

The presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified). Certification is the process by which the Council inspects and accepts that the works on a newly laid out path complies with the requirements of a public right of way. The extinguishment part of many diversion orders only has legal effect once the new alternative route has been certified.

Where the legal line of a path is obstructed, the applicant will have to make a case in writing why the legal line of a path cannot be made open and available for public use. The Case Officer may, if satisfied by the reasons given, temporarily waive the requirement to have an open path where its deemed appropriate, having regard to all the circumstances of the case.

Where an application seeks to extinguish a path, the Case Officer may require that the path be monitored for a period to assess whether it is used by the public and to what extent. This will be determined on a case-by-case basis. Where the application relates to a route that has been unavailable for public use because of obstructions that cannot be removed, the Case Officer may require that a suitable alternative route be provided so that a comparable level of use may be ascertained.

A suitable alternative route means one on an existing right of way or permissive path of equal or higher status, or on land in the same ownership as the application path along a route that does not impede the passage of the public entitled to use the application path, and which is substantially as convenient for members of the public to use. Where an alternative route is proposed on land in a different ownership the applicant would have to reach agreement with, and compensate, the affected landowner.

The duration of the assessment period will be determined by the Case Officer on a case-by-case basis and will generally be between one month and one year. The applicant will be

required to pay any reasonable costs expended by the Council in ascertaining the level of use of the route. The Case Officer has discretion to waive these requirements if a suitable alternative right of way of equal or higher status exists nearby.

Keeping paths open and available for public use is a general and on-going duty of the Council. Whilst we will positively encourage applicants to make a route available for public use, we would not refuse to process an application, or refuse to make an order, solely on the basis that the applicant has not made the existing path(s) available for public use.

The decision as to whether enforcement action is appropriate, and whether an application to divert or to extinguish is appropriate, should be made on the merits of each individual case. Where an application to divert or extinguish a path is received after enforcement proceedings have begun, the Case Officer has discretion as to whether to continue with the enforcement process or to allow the application to be processed on the condition that a suitable alternative route is provided in the interim.

Public Path Order Charges

We will charge you for the cost of any administration, advertising, and works in relation to your application. Charges will include:

- any site visits
- the drafting of any maps or plans
- writing letters to landowners, parish councils, user-groups and utility companies
- writing and presenting a report on your application
- drafting any legal orders and the costs of advertising any order, and
- the costs of any structures or work required to make a new path suitable for use by the public
- You would also be required to pay any compensation claimed by somebody whose legal interest in the land is affected by the confirmed Public Path Order

More guidance on the costs involved can be found in the application pack.

If the application would provide an enhancement to the local public rights of way network, for example, by creating a new link in a path; or would help to sort out an obvious problem, such as moving a path around a long-standing issue; or would help us to manage a path more efficiently, for example, by moving a path so that a new footbridge would not be required we will consider processing your application out of turn and at a lower cost to yourself.

Order of processing

Applications received from members of the public, landowners, and organisations will be dealt with in strict chronological order of receipt unless they meet one or more of the following criteria, when it will be at the discretion of the Case Officer as to whether the application will be processed out of sequence:

- 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 public rights of way network;

- Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan;
- An application would resolve issues relating to demonstrable criminal or anti-social behaviour of a persistent nature;
- An application is in close proximity to another application - in which case both applications will be processed simultaneously to reduce Council administration;
- Where determination of a public path order application is deemed to be a necessary pre-requisite to enforcement action being taken against the applicant;
- Where an application is associated with development for which planning consent has been given. This relates to applications made under the Town and Country Planning Act or Highways Act;
- Where an application is received from Network Rail or the Highways Agency, or one of their agents.

An application to extinguish a path will be deferred until the end of the monitoring period in cases where the Case Officer has required that the level of use of a path be assessed prior to the application being determined.

Council-generated proposals are not subject to the requirement to be processed in chronological order.

Determination of applications

When an application is received the Case Officer will examine the application to assess whether the proposed network changes meet the relevant tests in light of current case law, Government Guidance and Council policy. If the application is likely to meet these criteria, then the Officer will write to the applicant to notify them that the application is suitable and will be put in the queue to be dealt with either as a standard application or as a potential Council-generated scheme depending on the circumstances.

The acceptance of an order for processing does not guarantee that an order will ultimately be made or confirmed either by the Council or by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs.

Where an application is considered by the Officer to fail the relevant legislative tests in light of current case law, Government Guidance, or Council policy, the Officer will consult with the Rights of Way Manager and produce a report detailing the reasons why the application fails. The report will be presented to the Director of Service with a recommendation that the application be immediately refused and returned to the applicant. If the Director of Service accepts the recommendation, the application will be returned forthwith with a copy of the refusal report. If the Director of Service considers that the application should be accepted, the officer will inform the applicant.

Members of the public may apply for a public right of way to be created, diverted or extinguished - the precise details of the proposal being dependent on the applicant's particular needs and wants. Subject to the initial approval of the application, the Case Officer will prepare and present a report either to the Director of Service acting under delegated powers, who will determine whether or not to make an order. Applications for public path orders will be determined according to the following criteria:

- The scheme must meet the relevant tests of the Act for an order to be made;
- The scheme should provide an overall positive benefit or enhancement to the local public rights of way network.

The presumption shall be that if the application meets the tests of the Act and does not negatively impact on the local public rights of way network, then the Council shall agree to make the order requested, unless there are coherent and reasonable grounds for refusing the application. Such grounds may include, but are not limited to, the following:

- Where the circumstances of the order would be such that the Council would be required to take on a disproportionately greater maintenance liability in consequence of making and confirming the order than had previously been the case;
- Where the detrimental effect of the proposal on other landowners/ occupiers is disproportionate to the benefit gained by the applicant when all factors are taken into consideration;
- Where the order requested would conflict with other objectives or duties of the Council, and it is felt that these objectives and/or duties outweigh the benefits to the applicant.

Contact us

You can find out more about rights of way by contacting us at:

**Public Rights of Way
Highways Service
2 Bristol Avenue
Colindale
NW9 4EW**

Website: www.barnet.gov.uk

Appendix 3

Proposed Fees and Charges for Public Path Order applications

Fee/Charge Title	Area	Description	Unit of Measure	Charges 2022/23	Change from prior year (%)
HW 83 - Highways	Highways PUBLIC PATH ORDERS	Stage 1 Process Application. Check application, site visit, map preparation, initial consultation, correspondence and prepare committee report. Legal advice if required will be charged at £150 per hour (an estimate of costs will be provided before works start). Additional time dealing with consultee responses will be charged at £40 per hour (an estimate of costs to be provided before works start)	per path	up to £955	NEW
HW 84 - Highways	Highways PUBLIC PATH ORDERS	Stage 2 – Order Making. Prepare Order, Notice, and statement. Sign and seal Order. Distribute Order to all consultees and advertise (28 days consultation period) and advertise on Barnet website. Post, check and remove notices. Respond to queries and seek to overcome objections charged at £40 per hour. Additional site meetings if required charged at £110 per visit. Forward to Secretary of State if objections upheld and follow due process with possible Public Inquiry (non-chargeable work)	per order	up to £685	NEW
HW 85 - Highways	Highways PUBLIC PATH ORDERS	Stage 3 & 4 – Confirmation of Order/Legal Event Order Confirm works completed to agreed standard, Sign confirmed Order, draft confirmation notice. Quality control check. Distribute Order. Post notices on site, check and remove. Advertise notice of confirmation of order (cost not included, advertising cost will be charged at the prevailing rate). Send copies to prescribed organisations. Amend Definitive Map and Statement. Produce Legal event Order (LEO) and sign and seal 2 copies	per order	up to £550	NEW

Fee/Charge Title	Area	Description	Unit of Measure	Charges 2022/23	Change from prior year (%)
HW 86 - Highways	Highways PUBLIC PATH ORDERS	Stage 5 Certification. Confirm works completed to agreed standard as detailed in Certificate of Works plus any additional agreements. Draft certificate, advertise (advertising cost not included, advertising cost will be charged at the prevailing rate) and send to all on consultation list including applicant, landowners and Ordnance Survey.	per certificate	up to £245	NEW