



Lake District
National Park

DIVERSION ORDER APPLICATIONS

General guidance on grounds, tests, LDNPA policies and costs

1 Background

- 1.1 The rights of way network is not rigid and processes exist to alter the line of paths where we consider it to be expedient. The legal means of carrying out such an alteration are set down in Section 119 of the Highways Act 1980, and can be initiated by a member of the public requesting a diversion order, or by us initiating an order.
- 1.2 There is no right to apply for a diversion, and our decision as to whether to move a path or not is discretionary. A simple diversion may take up to a year to process, but if objections are received it will be considerably longer.

2 Grounds for Diversions

- 2.1 There are only two grounds for a diversion of a right of way (section 119, Highways Act 1980), namely where it appears to us that it is expedient to do so:
 - a) *in the interests of the owner, lessee or occupier of the land crossed by the path, OR*
 - b) *in the interests of the public.*
- 2.2 Each diversion request or suggestion is closely scrutinised to determine whether one, or both, of these grounds applies. Suggestions (or actual applications) for diversions need to set out **in detail** what the benefits actually are. Any diversion order can be objected to, so the potential benefits must be strong enough to defend at a Public Inquiry.
- 2.3 Once it has been decided that the grounds for considering a diversion are valid (ie: it is in the interests of the landowner or the public, or both) then the Authority must apply a number of tests and policies to determine whether it is “expedient” to divert the path. Expedient is generally taken to mean suitable and appropriate as well as practical.
- 2.4 Defra published a ‘presumptions guidance’ in 2023 to help order-making-authorities when considering diversions or extinguishments of public paths currently within domestic curtilages / farmyards / commercial premises. The presumption is that we will make orders if possible, and this presumption can override some of our own National Park policies.



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3 Tests for a Diversion Order

3.1 The legal tests that must be considered are:

- Will the new path be substantially less convenient to the public?
- The effect the diversion will have on public enjoyment of the path or way as a whole;
- The effect the order will have as respects other land served by the existing right of way;
- The effect of the new right of way on land over which the new path is created;
- Is the termination of the alternative footpath on a connected highway, and substantially as convenient to the public?

3.2 Some of these tests would benefit from further explanation:

3.2.1 Convenience and enjoyment

The tests are that the path must not be substantially less convenient to the public as a result of the diversion and that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the way as a whole, and on land crossed by the existing path or to be crossed by the new one.

The question of what the phrase ‘not substantially less convenient’ (in relation to the line of the path itself) means is largely subjective. Case law shows that it means that the new path may not be as convenient (for instance, it might be longer or steeper) but that an insubstantial ‘inconvenience’ can be outweighed by positive factors such as nicer views, and so on. One factor that is almost always relevant is the surface – generally we expect to exchange like for like.

Factors that will be considered include:

- any significant change in the length of the path;
- any change in access to facilities or amenities along the path;
- any change in the quality of the route in respect of terrain, gradients, width, surface of the path, views and interesting features;
- any limitations (gates, stiles and so on) on the new route that were not present on the old route;
- the public use made of the old route. For instance: is it recreational and if so for what purpose; or is it to afford a route from A to B?
- any other factors of relevance, such as – does the current or new path allow access to a site of interest – for example: Site of Special Scientific Interest, National Nature Reserve, Wildlife site, historical buildings, or other features.



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3.2.2 Diversion of the ends of the path

If the highway ends at a point other than a highway (eg: sea-shore, beauty spot, middle of a field) it cannot be diverted – it may be possible to carry out concurrent extinguishments and creation orders instead.

The diversion can only alter the end point to another point on the same path, or on another highway connected with it, and which is substantially as convenient to the public.

“Substantially as convenient” means ‘as good as’ or as close to that as makes no difference. Convenience in this test really relates to ‘ease of use’ rather than ‘enjoyment’.

Factors that will be considered include:

- the relationship of the new path to others in the network and the safety and utility of new junctions with vehicular routes;
- any increased road use by pedestrians, equestrians or cyclists as a result of the diversion.

3.2.3 Impact on other interests

We will also consider the effect the diversion may have on the rights of anyone with an interest in the land, with account being taken of the statutory provisions as to compensation (section 28 of the Highways Act 1980). Consultation and agreements from the landowners is by far the best method of determining this factor. However, if a dispute arises as to compensation then it is determined by the Lands Tribunal after the order has been confirmed.



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4 LDNPA Policies on changes to the public path network

- 4.1 Policies on changing the public path network have been developed and approved by the Authority. These are listed below, and explained where appropriate.
- 4.1.1 There will be a presumption in favour of preserving the historical integrity of the network.
- *Most routes have existed for a very long time and reflect the cultural heritage of the locality. It seems reasonable that they should be regarded as an integral feature of any property, especially when land ownership changes, unless good reasons exist for making a change.*
- 4.1.2 The concerns of those managing land, especially for agriculture and forestry, will be recognised where legitimate operations may affect the public's enjoyment of, or safety in using, a public right of way. Under schedule 6 of the Countryside & Rights of Way Act 2000, we also have to look at the impact of all changes on agriculture and forestry.
- *For example, the public may be inconvenienced by having to wait during stock handling operations or a farmer may be concerned about health and safety issues when using a tractor in a busy farm yard with a popular right of way running through. Such conflicts can frequently be resolved by a simple diversion which relieves the landowner or occupier of undue visitor pressure and also enables the public to enjoy its recreation without interfering with the ordinary life of the countryside.*
- 4.1.3 There will be a presumption against re-alignment of cross-field paths onto routes following field edges or boundaries.
- *Even where the field is used for arable crops, the Rights of Way Act 1990 provides a framework for managing such paths without the need for permanent re-alignment to the detriment of public enjoyment and convenience.*
- 4.1.4 There will be a presumption against any reduction in the amount of public access in the National Park.
- *This is generally more related to extinguishments than diversions – depending on the context. It may well be the case that a diversion results in a shorter path – but it is not really the total length that is to be considered – more the actual access network and what the path enables people to do and see.*
 - *The potential future impact of legislation such as CROW Act Open Access areas will also be considered – for instance, does the extinguishment of a path make it potentially harder to 'create' a route to an open access area?*
- 4.1.5 Where the route in use at present differs from the definitive line, there will be a presumption in favour of restoring the original route before considering a legal diversion.
- *Existing informal diversions may form exceptions to this principle although each will be judged on its merits.*



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- 4.1.6 The future maintenance and management implications of any proposed change to the network will be considered.
- *We will be unlikely to consider proposals that increase our overall liability. For instance, diverting a path from a privately maintained vehicular bridge to a new publicly maintainable footbridge is unlikely to be acceptable. Likewise, new routes involving boardwalks or unsustainable surfaces would not be favoured.*
- 4.1.7 Changes should, if possible, enhance public benefit through enabling the better enjoyment of the cultural landscape and nature conservation interest and should not reduce the ability of the public to discover any of the special qualities and features of the National Park.
- *This really relates to the public enjoyment of a path. For many people, some of the most interesting parts of a path are where they pass through or by historical or archaeological features (lime kilns, old farmsteads), or features of particular natural interest (SSSIs). The presumption is that we will not divert paths away from these features, and should consider actually moving paths towards such features if it would enhance the public's ability to appreciate and understand them.*

5 Other considerations required by legislation

- 5.1 Limited Mobility - *We have a duty to audit the proposals with regard to limited mobility (Equality Act 2010). Any physical changes such as surfacing will need to improve the accessibility. Stiles will generally be unacceptable on new paths, unless there is a strong reason not to have a gate or gap.*
- 5.2 The needs of agriculture and forestry - *The impact on these needs will be assessed, generally through consultation.*
- 5.3 Landscape impact, biodiversity and archaeological interests – *any impacts on these aspects and on the National Park Authority's purposes will be fully considered. Basically - does the diversion assist in conserving or enhancing the natural beauty, wildlife and cultural heritage?*

6 Other sources of guidance

Guidance on diversions can be found on the internet – either generic, or on various local authority websites. The Natural England booklet below is possibly the most useful generic guide. The Planning Inspectorate website contains many relevant decisions.

<http://naturalengland.etraderstores.com/NaturalEnglandShop/> - publication number NE 112
www.planningportal.gov.uk/planning/countryside/rightsofway/rightsofway



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7 Costs

7.1 Current legislation and working practices allow the National Park Authority to charge the applicant or beneficiary of the order for all legal and administration work associated with order requests, up to the point where the order is confirmed or the applicant decides to withdraw the application. Additional costs borne by the applicant are two statutory notice advertisements in local newspapers. These advertising costs vary with column length and different newspapers.

7.2 In addition, all costs in connection with any physical works required must be borne by the applicant. These vary depending on the situation but could involve moving signposts or installing new gates.

7.3 If any objections are received at the formal publication stage of an order (which are not withdrawn after consultation), then the matter is referred to the Secretary of State for resolution.

7.4 An application for a diversion must comprise a standard form and costs agreement with a plan showing the current route, an indication of the proposed route and land ownership over which both routes pass. Written agreements of all owners and those with an interest in the land must also be provided – this is particularly important if the new route passes over someone else’s land.

7.5 There is no divide between advertising, works, and administration / legal costs. It is the TOTAL COST that is calculated, then allocated. So, for example, a fairly straightforward diversion in Copeland could cost the following:

Legal & admin:	£3150	At (say) 25% to be waived (category 3) – cost to landowner would equal £3,130 (+ some VAT).
Advertising	£700 +VAT	
New gate	£120	
Labour fitting gate	<u>£200</u>	
TOTAL	£4,170 (+ some VAT)	

7.6 There are also other circumstances where we could waive costs. For example, for a diversion wholly to the benefit of the landowner we would normally expect all the costs to be met by the landowner. However, if, as part of the package – the landowner offers a whole new path, or an upgrade in status of the path – then we could waive some or all of the charges.

7.7 There is also the possibility of waiving some charges in the case of extreme hardship – but there is no guidance on determining this.



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<i>Costs for:</i>	<i>Standard charge</i>	<i>Notes</i>
<p>ADMINISTRATION</p> <p>For an unopposed order:</p> <p>For an order which receives objections after being made:</p>	<p>£3,150 (nil VAT)</p> <p>Negotiated amount based on costs below.</p>	<p>This includes all the Authority's legal and administrative costs in negotiating, making and confirming an order. Stages of process as broken down below.</p>
<p>Advertising (UNTIL NO LONGER APPLICABLE)</p>	<p>£ variable</p> <p><i>Average cost: £300+VAT per advert – (2017)</i></p>	<p>Two advertisements must be placed in the local press:</p> <ul style="list-style-type: none"> • When the order is made and; • When it is confirmed. <p>Actual costs will be charged but these vary depending on the length of advert necessary and the newspaper's scale of charges. Opposed orders require a further advert if the matter goes to a Public Inquiry.</p>
<p>WORKS ON THE GROUND</p>	<p>£ variable</p>	<p>The cost of work necessary (if any) to bring the proposed new route to a standard suitable for public use will vary according to the site. An applicant may choose to do the work themselves (to the Authority's specification) or the Authority can carry out the work and reclaim the actual costs (labour and materials).</p>

For orders under the Town and Country Planning Act 1990 the above charges apply in full.

For orders under the Highways Act 1980 that are wholly or partly in the public interest, the charges may be negotiable according to the extent to which the public will benefit from the proposal in relation to the benefit derived by the applicant – SEE BELOW.

- **The total cost of a diversion is the sum of the costs involved in administration, advertising and works on the ground.**
 - **The exact amount to be waived will depend on the circumstances of each case, and will be negotiated with the landowner(s).**
1. Where an order is predominantly or wholly in the interests of the public, up to 100% of the total cost will be waived.
 2. Where an order is partly in the landowner's interest, and partly in the public interest, up to 75% of the total cost will be waived. The higher the level of public interest, the greater the percentage that will be waived.
 3. Where an order is predominantly in the interests of the landowner, but would result in some small public benefit then up to 25% of the total cost may be waived.
 4. Where an order is wholly in the interests of the landowner - none of the total cost will be waived.