

General Notes on requests

for Diversion or Extinguishment of a Public Right of Way



PROW & ACCESS SERVICE

Town and Country Planning Act 1990

Highways Act 1980

The application form needs to be completed in full and must be accompanied by a plan of the proposal at a scale of at least 1:2500, preferably based upon an Ordnance Survey Map extract providing you comply with their Copyright conditions. The plan will need to show the entire length of the existing path(s) concerned in a solid line and the proposed new route(s) in bold dashed lines, together with the location of any stiles, gates, bridges, culverts or other works necessary to bring the new route into effect. The extent of landownership(s) will also need to be shown on the plan and relevant Land Registry documents enclosed with the application.

Note: *These notes should be used when completing an application to divert or extinguish a Public Right of Way and mainly apply to Footpaths, Bridleways and Restricted Byways.*

These notes have been compiled on the basis of current legislation which of course could change at any time in the future.

INTRODUCTION

The Highways Act 1980 gives Kent County Council (KCC) the power to make a Public Path Diversion Order if it can be shown that it is in the interests of the landowner or in the interests of the public. A Public Right of Way may be extinguished if it can be shown that it is no longer needed for public use or is unnecessary.

The Countryside and Rights of Way Act 2000 gave KCC new statutory powers to process path change Orders that meet new criteria relating to school security and the protection of Sites of Special Scientific Interest (SSSI's).

Applications which are considered not to satisfy the new criteria but to fall within our general powers to process may be dealt with under those powers instead in appropriate cases.

Public Path Diversion or Extinguishment Orders to enable development to take place are usually dealt with under the Town and Country Planning Act 1990. It is important to note that an Order cannot be made under this Act if the development has already been completed or is substantially complete.

Applications in respect of Byways Open to All Traffic follow different procedures than those for Footpath, Bridleways and Restricted Byways. Please contact the Public Rights of Way Definitive Map Team for more information.

1 *Relevant statutes under which a Public Right of Way may be diverted or extinguished*

(a) Highways Act 1980 (General Powers)

A Public Right of Way may be diverted if it can be shown that it is in the interest of the owner, lessee or occupier of the land concerned or indeed if it is in the interest of the public.

Any person can request an Order to be made, however the landowner's consent should be sought and it is for the County Council to consider whether or not to make the Order.

After an Order is made, it may be confirmed. The statutory test for confirmation can be summarised as follows:

- 1) The diversion must be expedient in the interest of the owner, lessee or occupier of the land and/or in the interests of the public
- 2) Neither terminus of the path can be diverted except to a point on the same (or a connected) highway which is substantially as convenient to the public.
- 3) The Secretary of State/KCC is satisfied that the path/way will not be substantially less convenient to the public as a result of the diversion.
- 4) The effect the diversion would have on the public enjoyment of the path as a whole must be considered.
- 5) The effects on the other land served by the existing path and the land upon which the new path would run must also be taken into account.

To ensure that an Order will be capable of being confirmed in due course, the County Council will have regard to those statutory tests in deciding whether or not to make it.

A Public Right of Way may be extinguished if it can be shown that it is no longer needed for public use or is unnecessary. ***It is no easy matter to prove either of these statements.***

Applicants should note that the above is only a brief summary and is not intended to be a complete account of relevant legislation.

(b) Special Diversion Orders under the Highways Act 1980

- (i) Sites of Special Scientific Interest (SSSIs) - The appropriate conservation body may make a request in respect of SSSIs. An application may be considered where use by the public is likely to cause damage to the SSSI.
- (ii) Schools - The proprietor of a school may make a request for a diversion or extinguishment. Where a route crosses school property, an application may be considered where it can be shown that it is expedient to divert or extinguish the Right of Way to protect staff and pupils from violence or harassment.

(c) Town and Country Planning Act 1990

In respect of Town and Country Planning Act applications, Orders can only proceed if they are related to a specific planning application having been submitted. An Order cannot be confirmed until planning consent has been granted.

The above Act provides that a diversion or extinguishment of a Public Right of Way may be pursued when necessary to allow development to take place for which planning permission has been applied for (amended following the enactment of section 12 of the Growth & Infrastructure Act 2013). Such Orders have **to be promoted by either the County Council or the relevant District Council dependent upon which authority gave the planning consent.** An Order under this Act may provide for a creation of an alternative highway in replacement for the Public Right of Way that is to be either stopped up or diverted. In addition, an existing highway may be improved for public use in lieu of the path affected by the application. An alternative path, unlike a diversion under the Highways Act 1980, does not have to have a terminus on the original path.

2. *Relevant guidance on the diversion or extinguishment of a Public Right of Way may*

Government has introduced new guidance (August 2023) setting out its policy on changes to public rights of way through a garden or curtilage of a residential dwelling, a farmyard or other commercial or industrial premises. Where the guidance applies, the Order making authority should weigh the interests of the owner/and or occupier against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route on the owner and/or occupier, in terms of privacy, security and safety are important considerations to which due weight should be given.

Whilst the guidance introduces a presumption in favour of diverting or extinguishing a public right of way through certain types of land, where privacy safety or security are a problem, the relevant legislative tests, as detailed above must be satisfied. Where a proposal has already been considered and declined by the Secretary of State, it is highly unlikely that the County Council will process a new application, unless the proposal has altered substantially.

The guidance refers to the diversion of a right of way onto other land where landowner consent is not forthcoming. Please note that the County Council will not process an application unless all landowner consents are in place.

A full copy of the guidance can be provided on request.

3 *Summary of Kent County Council's Public Rights of Way Network Change Policy*

KCC will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory reasons (as set out in section 1 of this document) for changing Public Rights of Way must apply.

- 1) The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
- 2) The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use (See section 3).
- 3) The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
- 4) The definitive line should where it is considered by KCC to be reasonably practicable be open, clear and safe to use.

However nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

3 *What costs are involved in processing the proposal?*

As a diversion or extinguishment is generally to the benefit of an applicant, KCC will expect that applicant to meet the full costs of promoting the change.

- (a) The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, as amended in July 1996, allow the Order Making Authority to charge the full costs of processing Orders.
- (b) Following decision 17/00080 by the Cabinet Member for Regulatory and Community Services, the Public Rights of Way and Access Service are authorised to annually review their fees and charges. The costs laid out within these notes are for guidance and are only relevant on the date they are produced. **The applicant will be expected to pay the revised costs calculated at the time of allocation to an Officer. These will be set out to the applicant at time of allocation.**

- (c) Applicants will be charged the full administrative costs for the making of an Order plus a further proportional cost relating to any additional connected paths included in the Order. In addition, applicants will be charged the estimated average cost of advertising the proposal in the press on the occasions of the making and then the confirmation of the Order and if applicable certification of the Order. Such advertising costs are not within the control of KCC, although KCC will endeavour to keep such costs to a minimum wherever possible. Should advertising costs greatly exceed the estimated average then the actual cost of advertising will be charged.
- (d) If there are any 'works' required to bring the new path into a fit condition for use the applicant will be required to pay for them (i.e. installation of bridges, stiles, etc). KCC would normally expect applicants to do the works themselves or arrange for such works to be done. The works must be completed to the satisfaction of KCC. Alternatively, if you would prefer KCC to carry out the works, costs will be estimated to you and if the works are not completed within 3 months of the Order being confirmed then the County Council may undertake those works and charge the applicant accordingly. Details of KCC's standards and specifications will be made available to you on request and may be discussed with the relevant Area Rights of Way Officer, together with estimated costs of any necessary fingerposts or waymarking and all other works.

PUBLIC PATH ORDERS - COST SCHEDULE

STAGE 1 - PRE-PUBLICATION STAGE

Preliminary costs incurred at this stage are non-refundable. The applicant will be charged pre-publication costs even if having sent the proposal to consultation, KCC decides not to make an Order.

ITEM	DETAILS	WHAT'S INCLUDED	COST
1. Process Application	Check application form, create case file, enter details onto schedule Land Registry Search (only required if no Land Registry documentation supplied)	Officer time , computer work, stationery, photocopying Officer time Land Registry charges (varying between £7 and £21)	£120 £12.00 + actual costs of title searches
2. Site visit	One site meeting. Site familiarisation, technical and legal appraisal, assessment of site works required.	2 x Officer time, Mileage	£390
3. Map preparation	Prepare one GIS map, quality control check, send to applicant for confirmation	Officer time, Computer work	£70 each
4. Initial consultation	Send consultation letter to user groups, local councils and statutory undertakers	Officer time, Computer work, Stationery	£220
5. Responding to consultation replies	Responding to queries and seeking to overcome objections Additional site meetings as required. (applicant to be notified prior to charges being incurred) Site meetings lasting over 4 hours will be charged the additional rate of £40 per hour.	Officer time, Administration etc Stationery	£45 per hour £120 per site visit
6. Preparation of Authority report	Prepare report including plans and prepare accompanying documentation. Present to Member Panel (if required*)	Officer time, Computer work, Stationery, Photocopying	£330 *(Additional cost for Panel meeting minimum £350)
	Total for Stage 1 Minimum		£1130 + Land Registry searches if required (item 1) + Item 5 costs + Member panel cost if required + cost of preparing extra maps if required (Item 3)

STAGE 2 - ORDER MAKING STAGE

If KCC decides to make an Order, the applicant will be invoiced for both the pre-publication stage and the Order making stage, if that is the payment option chosen by the applicant. The Order will only be made on receipt of payment. Please note that the actual cost of advertisement for the Order making stage will be invoiced at a later date.

ITEM	DETAILS	WHAT'S INCLUDED	COST
7. Prepare Order, notice and statement.	Draft Order, notice and statement. Sign and seal Order.	Officer time, Computer work, Stationery Legal charges incurred for signing and sealing or Order.	£270 (Includes £60 sealing costs)
8. Distribution of Order	Sending copies to consultees and updating website	Officer time, stationery, postage (incl. recorded delivery), computer work, photocopying	£135
9. Post notices on site	Post and check notices	Officer time, mileage, Stationery, wooden posts	£90
10. Advertise notice of making of Order	Booking advertising space and sending notice to newspaper. Check advertisement.	Officer time	£85 (includes average cost of advert)
11. Responding to public enquiries.	Responding to queries and seeking to overcome objections Additional site meetings as required. (applicant to be notified prior to charges being incurred) Site meetings lasting over 4 hours will be charged the additional rate of £45 per hour.	Officer time, Administration etc Stationery	£45 (Per hour) £120 per site visit
12. Forward to Secretary of State (if required)	Prepare submission and relevant documentation to send to Secretary of State	Officer time, photocopying, computer work	Non chargeable work.
	Total for Stage 2 Minimum		£580 +Item 11 costs

STAGE 3 - CONFIRMATION OF ORDER

On confirmation of the Order, the applicant will be charged the costs of confirming the Order as well as the advertising costs of two or three newspaper adverts. If the Order is sent to the Secretary of State for decision, the applicant will be charged the costs of all work carried out up to this point.

ITEM	DETAILS	WHAT'S INCLUDED	COST
13. Site visit	To check works carried out to ensure they meet agreed standard	Officer time, Mileage	£145
14. Prepare confirmation notice	Sign confirmed Order, draft confirmation notice. Management quality control check	Officer time, Stationery, computer work	£45
15. Distribution of confirmed Order	Sending copies to consultees and updating website	Officer time, stationery, postage (incl. recorded delivery), computer work, photocopying	£135
16. Post notices on site	Prepare, post and check notices	Officer time, Laminate Notices mileage, Stationery, Wooden posts	£90
17. Advertise notice of confirmation of Order	Booking advertising space and sending notice to newspaper. Check advertisement.	Officer time, stationery.	£85 (includes average cost of advert)
18. Amend Definitive Map, distribute LEO and inform Ordnance Survey	Send copies to prescribed organisations. Amend Definitive Map and Statement	Officer time, stationery, postage, photocopying	£45
19. Finance and admin	Invoicing, archiving	Officer time	£45
	Total for Stage 3 Minimum		£590

Summary of minimum costs

STAGE	DETAILS	FIXED COSTS	VARIABLE COSTS
Stage 1	PRE-PUBLICATION	£1130	+ Land Registry searches if required (item 1) + Item 5 costs + Member panel cost if required + cost of preparing extra maps if required (Item 3)
Stage 2	ORDER MAKING	£580	+Item 11 costs
Stage 3	CONFIRMATION OF ORDER	£590	
		£2300	£ approx.

ADDITIONAL CHARGES

ITEM	DETAILS	WHAT'S INCLUDED	COST
Additional letters	Letters to applicant and objectors etc. not covered by the above items	Officer time,	£45 per hour

CERTIFICATION / BRINGING INTO FORCE (if required)

ITEM	DETAILS	WHAT'S INCLUDED	COST
20. Site visit	To check works carried out to ensure they meet agreed standard	Officer time, Mileage	£145
21. Certificate preparation.	Draft certificate,	Officer time, stationery, postage (incl. recorded delivery), photocopying	£45
22. Advertise certificate	Sending notice to newspaper and checking advertisement	Officer time, stationery, postage (incl. recorded delivery), photocopying s	£85 (includes average cost of advert)
23. Distribution of certificate	Sending copies to consultees and updating website	Officer time, stationery, postage (incl. recorded delivery), computer work, photocopying	£135
24. Finance and admin	Invoicing, archiving	Officer time	£45

FINGERPOSTS AND WAYMARK POSTS

ITEM	DETAIL	Cost
Finger-post	Cost of either moving a finger-post or installing a new finger-post	£130
Waymark post	Cost of installing waymark post	Price on application

NOTES

*Should it be deemed appropriate by the Head of Service, or requested by the local County Member, then an application will be presented to the Regulation Committee Member Panel, alongside an officer recommendation, and decided on by the panel (and further costs occurred). Examples of when this may occur is if an application is borderline in meeting the legal tests or is particularly sensitive locally. The decision on whether to refer the application to the panel is solely that of the County Council and/or its elected members.

- The above costs include an estimated average cost of two/three advertisements in the relevant local newspaper. The cost of these adverts will depend on the newspaper used and the size of the advert, but as of March 2024 the average cost of

each advert was approximately £40. Should advertising costs greatly exceed the estimated average then the actual cost of advertising will be charged.

- Please be advised that if the necessary works are not completed to the required standard within 3 months of the Order being confirmed (unless agreed otherwise) then the County Council reserves the right to undertake the works and recharge the applicant the full costs for carrying out those works.
- If more than one plan is required for one Order then the cost of preparing the plan (stage 3) will be multiplied accordingly.
- Should KCC not make an Order or not complete the Order making process, or the applicant withdraws the application, the applicant will be charged costs incurred up to the date of KCC's decision not to proceed or such withdrawal.
- The minimum cost of an unopposed Order would be £2300
- If additional site visits and letters are required then these will be charged as stated above.

4 *Payment of fees*

In most cases a single invoice will be raised following the completion of the whole process (or for work carried out until the application is no longer being taken forward). Alternatively, the applicant can request to receive up to three invoices during the whole process. The first invoice will include Stages 1 and 2. If KCC confirms the Order itself, the second invoice will cover Stage 3. A third invoice will include Stage 4 (certification stage) if applicable (and the cost of carrying out the works if any cost is occurred). If there are no objections but KCC decides against confirming the Order, or there are objections and KCC decides not to forward the Order to the Secretary of State, the applicant will be charged for stages 1 and 2 only.

Should the case have to be decided by the Secretary of State, the applicant will be charged the costs of all work carried out up to that point (Stages 1 and 2). If the Order is subsequently confirmed by the Secretary of State the applicant will then be sent an invoice for the works under Stage 3 (Confirmation Stage (and if applicable Stage 4). Please note that fees can also be paid using a Debit or Credit card over the telephone.

5 *Application*

The application form must be completed in full and accompanied by a plan of the

proposal at a scale of at least 1:2500 and documents proving land ownership e.g. land registry searches. It must then be sent to the County Council at the address provided in section 9 of this document.

6 *What happens once my application has been submitted?*

There are a number of steps and procedures that have to be followed in dealing with your application.

(a) *Check application details.*

Following receipt of your application, it will be entered onto the Public Path Change Order Schedule. Applications are normally dealt with in order of receipt and will be processed in accordance with the relevant legislation. We will check all aspects of the application form and supporting documents. Dependent upon the backlog of work at any one time and the complexity of your proposal it may be some time before work can begin on your application. As at March 2024, there is currently a waiting list of approximately 2½ years before work can begin on a diversion proposal.

(b) *Consultation*

KCC will consult representatives of user groups and relevant District and Parish Councils together with the Statutory Undertakers who may have apparatus over or under the ground affected by your proposal. They are all informed of your proposal and are invited to comment; some will wish to view the proposal. Normally a period of twenty-eight days is allowed for the receipt of their comments.

(c) *Resolve adverse comments*

If there are adverse comments at this stage we may endeavour to resolve them with your assistance. If, at this stage, adverse comments cannot be resolved KCC will either take account of those objections but still continue to process the application or, as a consequence of them, may decide not to continue with your application in which case you will be advised and invoiced accordingly.

(d) *Authority for Order*

Normally authority for an Order is sought from delegated powers of the relevant Chief Officer. Where KCC considers it appropriate to do so, then an application will be presented to the Regulation Committee Member Panel, alongside an officer recommendation, and decided on by the panel (and further costs occurred). If the

decision is to make an order, then the Order will be made and advertised in the local newspaper.

(e) *Make and advertise Order*

The Order will be made and advertised in the local press. The County Council will notify those bodies previously consulted together with any other interested individuals and prescribed organisations. The formal objection stage commences on the day the press advertisement appears and expires 28 days later. During this period notices are also displayed prominently on site.

(f) *Resolve formal objections*

If there are objections to the Order and they cannot be resolved, it could lead to the proposal either being withdrawn or being referred to the Secretary of State for the Environment, Food and Rural Affairs for decision.

(g) *Unresolved formal objections*

If KCC decides to support a proposal irrespective of sustained objection, it will be referred to the Secretary of State for decision as referred to above. At this point you will also be invoiced for the work already carried out.

The Secretary of State may either deal with the matter by way of written representation or appoint an Inspector who will hear the evidence at a Public Hearing or Inquiry, which affords the chance for any interested parties to state their case. The Inspector decides on the basis of the evidence put to them whether, or not, the proposal should be confirmed. He/she can also modify the details of the proposal when confirming an Order. The Inspector will not make his/her decision at the Public Inquiry. He/she will consider all of the evidence put before him/her and eventually inform the County Council and other interested parties of his/her decision. This could take several months.

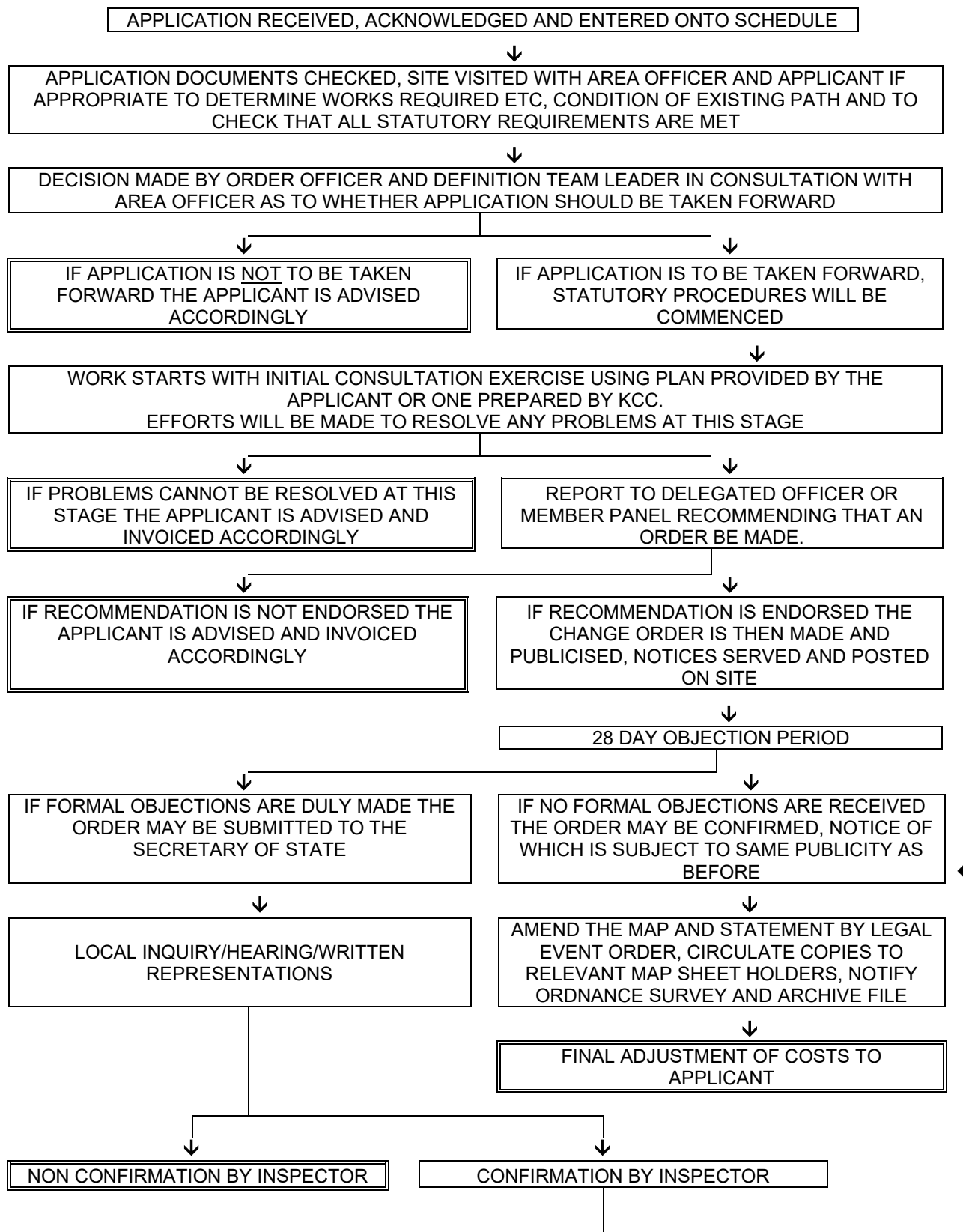
(h) *Confirm Order*

If there were no objections at the advertising stage, or following resolution of objections, KCC may confirm the Order and arrange for it to be advertised as required. The County Council will then send you a final invoice for the administrative costs of confirming the Order, the cost of all advertising and if applicable any works which have been carried out. If the case is submitted to the Secretary of State you will be invoiced prior to decision for all work carried out up to that point.

The Definitive Map and Statement of Public Rights of Way will then be

amended to show the change. Within the Confirmation Notice there is provision for anyone to appeal to the High Court within six weeks if they are aggrieved with the way in which the County Council has dealt with the matter.

7. **Flow Chart showing the procedure for progressing Public Path Change Orders**



8 *How long will it take from when your application is allocated to an officer?*

KCC will endeavour to process applications as soon as reasonably practical and as resources and other priorities allow.

Normally, for an unopposed Order, an estimated timeframe of 6 months is reasonable from when the case is allocated to an officer. However, if an opposed Order is sent to the Secretary of State for determination, it may be many months before a decision is reached.

9 *How to proceed with your application and further information*

Please read through these Notes carefully and look at the requirements within the application form. Please email the application to prow@kent.gov.uk or send the application form and plan to:

**PROW & Access Service
Invicta House
County Hall
Maidstone
Kent
ME14 1XX**

Your application will be acknowledged on receipt.

10 Data Protection Statement – How We Handle Personal Information

Kent County Council (KCC) collects, uses and is responsible for certain personal information about you. When we do so we are regulated under the General Data Protection Regulation which applies across the European Union (including in the United Kingdom) and we are responsible as ‘controller’ of that personal information for the purposes of those laws.

The personal information we collect and use

In the course of processing your request to divert or extinguish a Public Right of Way, we collect the following personal information when you provide it to us:

- Name
- Contact details (postal address, telephone number, email address)

How we use your personal information

We use your personal information to process your request to divert or extinguish a Public Right of Way only.

How long your personal data will be kept

We will hold your personal information indefinitely as per any enactment enabling the diversion, creation or extinguishment of a public right of way.

Reasons we can collect and use your personal information

The lawful basis on which we collect and use your personal data is that ‘processing is necessary for compliance with a legal obligation’, specifically sections 118 and 119 of the Highways Act 1980 and section 257 of the Town and Country Planning Act 1990.

As we have a statutory basis for collecting your personal data if you do not provide your name and contact details we may be unable to process your application.

Who we share your personal information with

Your personal data is not routinely shared; however, your name may be published as part of the order which has to be posted.

We will share personal information with law enforcement or other authorities if required by applicable law.

Your Rights

Under the GDPR you have a number of rights which you can access free of charge which allow you to:

- Know what we are doing with your information and why we are doing it
- Ask to see what information we hold about you
- Ask us to correct any mistakes in the information we hold about you
- Object to direct marketing
- Make a complaint to the Information Commissioners Office

Depending on our reason for using your information you may also be entitled to:

- Ask us to delete information we hold about you
- Have your information transferred electronically to yourself or to another organisation
- Object to decisions being made that significantly affect you
- Object to how we are using your information
- Stop us using your information in certain ways

We will always seek to comply with your request however we may be required to hold or use your information to comply with legal duties. Please note: your request may delay or prevent us delivering a service to you.

For further information about your rights, including the circumstances in which they apply, see the guidance from the UK Information Commissioners Office (ICO) on individuals' rights under the General Data Protection Regulation.

Keeping your personal information secure

We have appropriate security measures in place to prevent personal information from being accidentally lost, or used or accessed in an unauthorised way. We limit access to your personal information to those who have a genuine business need to know it. Those processing your information will do so only in an authorised manner and are subject to a duty of confidentiality.

We also have procedures in place to deal with any suspected data security breach. We will notify you and any applicable regulator of a suspected data security breach where we are legally required to do so.

Who to Contact

Please contact the Information Resilience and Transparency Team at data.protection@kent.gov.uk to exercise any of your rights, or if you have a complaint about why your information has been collected, how it has been used or how long we have kept it for.

You can contact our Data Protection Officer, Benjamin Watts, directly at dpo@kent.gov.uk or you can write to the Data Protection Officer, Sessions House, Maidstone, Kent ME14 1XQ.

The General Data Protection Regulation also gives you right to lodge a complaint with a supervisory authority. The supervisory authority in the UK is the Information Commissioner who may be contacted at <https://ico.org.uk/concerns> or telephone 0303 123 1113.

For further information visit <https://www.kent.gov.uk/about-the-council/about-the-website/privacy-statement>