

SECTION 2: POLICY STATEMENT – PROPOSALS TO ALTER THE RIGHTS OF WAY NETWORK BY MAKING PUBLIC PATH AND MODIFICATION ORDERS

1 THE OBJECTIVE AND CONSTRAINTS OF THIS POLICY

- 1.1 The objective of this policy is to protect walkers' rights and improve the network for walkers as far as is possible under current legislation.
- 1.2 Two constraints must be borne in mind when implementing the policy:
 - (a) Developments and changes in land use continually alter the public rights-of-way environment.
 - (b) Legal rules tightly control how changes in the network may be made. All objections on behalf of the Society must be agreed with the appropriate Courts & Inquiries Officer and will be subject to review by the Legal & Policy Committee.

2 CREATION OF NEW PUBLIC RIGHTS OF WAY (CREATION AGREEMENTS AND ORDERS)

- 2.1 Creation proposals which are not part of a package of rationalisation, extinguishment or diversion proposals will be encouraged. The promoter will be given all supporting evidence that we can muster.
- 2.2 Creations which are part of a package will be considered on the merits of the whole package.

3 PRE-ORDER MAKING PROPOSALS AND ORDERS MADE FOR THE DIVERSION OF PUBLIC RIGHTS OF WAY (DIVERSION ORDERS)

- 3.1 An objection will be maintained if the diversion route is not as convenient and enjoyable as the existing route; in responding to a proposal or order the Society should strive to achieve greater convenience and enjoyment, but it must be noted that legally the new route does not have to be better for walkers.
- 3.2 If a diversion is proposed or ordered in respect of an obstructed way, the highway authority will, normally, be urged not to consider it until the obstruction has been removed, but an objection made only on this ground cannot be legally sustained.
- 3.3 This rule does not apply where the obstruction is a quarry, or a completed (or substantially completed) building, in which event a route should be demanded which is at least as convenient and enjoyable as the obstructed route.
- 3.4 Diversions onto estate roads should be avoided. Preference will be given to made-up estate paths through landscaped or open space away from vehicular traffic.
- 3.5 If a way is to be diverted from an open route to a route alongside a wall or other physical boundary, the width requested will be the greater of the existing width or 2 metres (for a footpath) or 3 metres (for a bridleway).
- 3.6 If a way which is to be diverted is to be enclosed on both sides, the width requested will be the greater of the existing width or 2.5 metres (for a footpath) or 3 metres (for a bridleway).
- 3.7 Rationalisation schemes are subject to the same criteria.
- 3.8 It should be noted that different legal criteria apply for orders made to enable development which has been granted planning permission to take place, but the principle of seeking greater convenience and enjoyment still applies.
- 3.9 Wherever possible and desirable, the enhancement of the rights of way network by means of the creation of new rights of way should be sought.

4 PRE-ORDER MAKING PROPOSALS AND ORDERS MADE FOR THE EXTINGUISHMENT OF PUBLIC RIGHTS OF WAY (STOPPING-UP ORDERS)

- 4.1 The starting position for all extinguishments is that we will oppose them.
- 4.2 An objection will be maintained unless the way is no longer needed by the public because:
 - (a) a suitable alternative way is available (or to be provided by means of a creation order), or
 - (b) the way no longer has any public value.
- 4.3 If an extinguishment proposal or order is made in respect of an obstructed way, the highway authority will, normally, be urged not to consider it until the obstruction has been removed, but an objection made only on this ground cannot be legally sustained.
- 4.4 This rule does not apply where the obstruction is a quarry, or a completed (or substantially completed) building: in which event an alternative route should be available which is at least as convenient and enjoyable as the obstructed route.
- 4.5 It should be noted that different legal criteria apply for orders made to enable development which has been granted planning permission to take place, but the principle of seeking greater convenience and enjoyment still applies.

5 APPLICATIONS BY HIGHWAY AUTHORITIES TO THE MAGISTRATES' COURT FOR THE EXTINGUISHMENT OR DIVERSION OF PUBLIC RIGHTS OF WAY

- 5.1 If it is proposed to extinguish or divert a right of way which carries public vehicular rights, this can only be done by means of an order made by the magistrates. Rights of way which are just footpaths or bridleways can also be extinguished or diverted by the magistrates, but this is very unusual.
- 5.2 The principles are the same as for orders made by the highways authorities: an alternative path must be available or created if needed, and greater convenience and enjoyment will be sought.

6 PRE-ORDER MAKING PROPOSALS AND ORDERS MADE FOR THE RECOGNITION OF EXISTING PUBLIC RIGHTS OF WAY (MODIFICATION ORDERS)

- 6.1 Proposals will be supported only when evidence, documentary and/or user, is available. The desirability of such ways for walkers is legally irrelevant.

7 PRE-ORDER MAKING PROPOSALS AND ORDERS MADE FOR THE DELETION, UPGRADING AND DOWNGRADING OF PUBLIC RIGHTS OF WAY (MODIFICATION ORDERS)

- 7.1 Proposals for such changes should be supported or resisted (as the merits determine) on the basis of evidence, both documentary and user. The desirability of such changes for walkers is legally irrelevant.

8 ALLEYGATING (GATING ORDERS)

- 8.1 Alleygating is undertaken within urban areas (and occasionally rural areas) to try and reduce criminal activities or anti-social behaviour by gating passages, rear roads or roads within a given area, to prevent public use at all times or during specific times of day.
- 8.2 The Society will not oppose an alleygating proposal, providing:
 - the majority of the local residents are in favour
 - the routes to be closed do not form part of a network with links to other local footpaths
 - the routes to be closed are not important off-road links for local people to amenities like schools, shops, bus stops etc.

9 ACCESS LAND

- 9.1 It is important for the Society to make its position clear on a number of aspects of the right of access on foot to access land.
- 9.2 The general principle that the main attraction of access land is the right to roam freely is accepted by the Society. The Society considers that the question of new footpath provision in such areas should be looked at on a case-by-case basis. This would also apply to new footpath provision at points of access where currently none exists.
- 9.3 The Society will also look into any reports that it receives concerning closures of access lands where such closures have either not been listed or are outside the permitted reasons for closure. The Society will not have a policy of inspecting or reporting on access land as part of its normal activities.

10 WINDFARMS

- 10.1 The Society does not have a stated policy of being always either in favour or against plans for proposed windfarms.
- 10.2 The primary consideration will always be whether or not a proposal would have a significant impact on the footpath network. The Society will therefore look at each proposal on its merits and consider each on a case by case basis.
- 10.3 Some general principles will apply, such as:
 - how close the turbines are to any footpath
 - how the proposal would affect the quiet enjoyment of the footpath and its associated landscape
 - whether the proposed access roads would cause further problems with the footpath network
 - the nature of any plans for restitution once the expected lifespan of the turbines has expired.

11 PRE-ORDER MAKING PROPOSALS AND ORDERS MADE TO UPGRADE RESTRICTED BYWAYS TO BYWAYS OPEN TO ALL TRAFFIC (BOATS) (MODIFICATION ORDERS)

- 11.1 In many cases any public motorised vehicular rights which may have existed on restricted byways have now been legally extinguished, so such routes cannot be upgraded to BOATs by means of modification orders.
- 11.2 However, there are some exceptions to this, and wherever possible these modification orders will be opposed. It must be noted that such orders are based on detailed evidence, which is time consuming to obtain and assess, complicated and always subject to interpretation, so the Society will only be able to maintain objections in a very few cases. If where we have opposed an order we either lose or have to withdraw our objection, we will always put the highway authority on notice that we will regularly inspect the route, and if we find damage that causes a problem to walkers, we will reserve the right to serve notice on the HA to try to ensure that the damage is repaired.