



## APPLICATION TO DIVERT A PUBLIC PATH

### **GUIDANCE NOTES Please read before completing application form**

These guidance notes are for applicants for a Public Path Order to divert a recorded public right of way. Applicants should read these notes carefully before completing the application form.

1. Plymouth City Council will only consider applications seeking a diversion that meet one of the following criteria: -

- **Section 119 Highways Act 1980** - Diversions for securing the efficient use of land or providing a more commodious path
- **Section 119ZA Highways Act 1980** – Diversion of paths made in the interest of owners, lessees or occupiers of land used for agriculture, forestry or the breeding or keeping of horses.
- **Section 119A Highways Act 1980** - Diversion of paths crossing railway lines other than by a bridge or tunnel, made in the interests of public safety.
- **Section 119B Highways Act 1980** - Diversion of certain highways for the purposes of crime prevention in designated areas.
- **Section 119C Highways Act 1980** - a special diversion of certain highways crossing school premises for the purpose of protecting pupils and staff from:
  - Violence.
  - Threat of violence.
  - Harassment.
  - Alarm or distress arising from unlawful activity.
  - Any other risk to their health and safety arising from such activity

2. Applicants should note the City Council are under no obligation to make an Order and reserve the right to refuse to make an Order where it feels the criteria of the legislation are not met, even where informal consultation suggests there are no public objections.

3. If you are not the legal owner of the land over which the public path subsists, you must include his/her written consent on the appropriate certificate or the application cannot be processed. It is important that the City Council clearly identifies the owners of the land affected as well as tenants, because the owners must be consulted and their written consent obtained, before an Order can be made.

4. Diversion applications cannot be considered as an alternative to the removal of illegal obstructions on a path. Only in unusual circumstances will such proposals be considered and then only in the light of special circumstances affecting the particular case.



## **Special Diversion Orders:**

Paragraphs 8 and 12 of Schedule 6 of the Countryside And Rights Of Way Act 2000 (CROW Act) insert new section 119B into the Highways Act 1980, which enable highway authorities to divert (special diversion order) rights of way for the purposes of crime prevention.

Section 119B will also enable a highway authority to divert a right of way that crosses school land, if necessary, for the purpose of protecting pupils or staff. While the schools powers will be available throughout England, under the requirements of sections 119B highway authorities will only be able to divert rights of way for the purposes of crime prevention within areas that are designated by the Secretary of State by order (or orders). The designation orders will take the form of statutory instruments, subject to the negative resolution procedure in Parliament.

The following is a brief summary of the legislative conditions and considerations (in relation to crime prevention) that apply to section 119B.

- A highway authority may only make an order in an area, which has been designated by the Secretary of State, by order [section 118B(1)(a)].
- The section only applies where it is expedient, for the purpose of preventing or reducing crime, which would otherwise disrupt the life of the community, that the highway should be diverted [section 119B(1)(a)].

It must appear to the local highway authority that the following conditions are satisfied:

- that premises adjoining or adjacent to the highway are affected by high levels of crime [section 119B(3)(a)]; and
- that the existence of the highway is facilitating the persistent commission of criminal offences [section 119B(3)(b)].

Before making a special diversion order, the highway authority shall consult the police authority for the area in which the highway lies [section 119B(6)].

The highway authority (or Secretary of State) shall not confirm a special diversion order unless the conditions above are satisfied and it is expedient to confirm the order having regard to all the circumstances, in particular;

- the extent to which the special diversion order is consistent with any strategy for the reduction of crime and disorder under section 6 of the Crime and Disorder Act 1998 [section 119B(10)(a)];
- the effect which the coming into operation of the order would have as respects land served by the existing public right of way [section 119(10)(b)].
- the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it [section 119(10)(c)].

Any person may object to a special diversion order, and opposed orders will be referred to the Secretary of State to decide, with the opportunity for a hearing or inquiry.

## **Conditions for Special Diversion Orders in relation to Public Rights of Way crossing School ground:**

The diversion is expedient for the purposes of protecting pupils or staff of a school from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity and any risk to health and safety arising from unlawful activity where the applicant is a school proprietor as defined by Section 579(1) of the Education Act 1996 or a Local Education Authority.

## **PUBLIC PATH ORDERS**

### **RECOVERY OF COSTS**

Under the 'Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993' as amended by SI 1996 No. 1978, the City Council is empowered to recover the costs incurred in the making of Public Path Orders. The costs involved in making and confirming an order invariably differ from order to order especially where additional paths are involved or objections to the order are made. At present it is envisaged that a straightforward order will cost in the region of £1,500, however, the actual costs incurred in processing an order will be charged whether more or less than the estimate. The City Council will normally expect to recover the total costs, from the person applying for the order.