

Draft response of the Peak District National Park Authority in consultation with the Peak District Local Access Forum

Consultation on: Implementation of the right to apply for orders to extinguish and divert public rights of way, and associated rights of appeal

Document link:

<http://www.defra.gov.uk/corporate/consult/row-rights/index.htm>

Preamble

The Peak District National Park has seven constituent Highway Authorities (HAs), and in any given area there may be three competent Order-making Authorities. The current situation of the determination of applications for extinguishments and diversions works satisfactorily well, with the HAs taking the lead, reflecting the greater level of resources at their disposal.

This consultation, if implemented, may have significant resource implications for the National Park Authority, which has only a very small team working on Rights of Way.

Furthermore, we regard the pricing and administrative aspects of the proposals discriminatory against small farmers and landowners who may not possess the financial resources to apply according to these proposals.

Question 1

Do you agree that the regulations should (a) require authorities to make available application forms for use by applicants, and (b) that the content of the application form should be for the authorities to determine ?

(a) Yes

(b) Yes

Question 2

Do you agree that the regulations should require authorities to seek basic information in the application form, as listed in the consultation paper ?

Yes, in order to register the application as valid. It would be useful to clarify in criterion (f) that it is the needs of the farm or forestry business for example and not the personal preferences or circumstances of the individuals involved.

Question 3

Do you agree that the right to apply should allow for the making of applications to extinguish or divert restricted byways ?

Yes

Question 4

Do you agree that the scale of the map accompanying an application should be at the scale of 1:2,500 or, where a map of such a scale is not available, at the largest scale readily available ?

Yes. It should be at the most appropriate scale sufficient to identify the path and its location.

Question 5

Q5. Do you agree that the maps accompanying an application should only be amended with the agreement of the authority ?

Yes

Question 6

Do you agree that the applicant should only be required to notify: other landowners, lessees or occupiers whose land they consider will be affected by the order?

Yes, but recommend removal of the words 'they consider'.

Question 7

Do you agree that authorities should be required to consult other councils within whose area the right of way lies, and such other persons as the authority considers appropriate, before deciding an application ?

Yes & make specific reference to groups or fora. For example high profile cases may have implications for the frameworks of LAF.

Question 8

Do you agree that authorities should be required to notify any persons who made representations on an application, of the outcome ?

Yes.

Question 9

Do you agree that 56 days is a fair period of time within which appeals should be brought ?

Yes

Question 10

Do you agree that appeals should be brought by using a form obtained from

the Secretary of State, but that the form of appeal need not be prescribed by regulations ?

Yes

Question 11

Do you agree that the authority should be required to provide the Secretary of State with the required information within four weeks of receiving notice from the Secretary of State (or such other date as agreed with the Secretary of State) ?

No, recommend that it should be consistent with planning appeals process. A copy of the application to be provided by the appellant and the authority to provide copies of representations and objections.

Question 12

Do you agree that the applicant (appellant) should not be required to give notice of the making of an appeal to any other parties.

No, recommend that it should be consistent with planning appeals process. The appellant should give notice to the Authority.

Question 13

In the case of appeals under section 121D(1)(a) do you agree that the Secretary of State should be required to give notice of an appeal to any person who made representations or objections on the application ?

Yes

Question 14

In the case of appeals under section 121D(1)(b) or section 121D(1)(c), do you agree that the Secretary of State should be required to give notice of an appeal to any person who made representations or objections on the order (and which have not subsequently been withdrawn) ?

Yes

Question 15

Do you (a) agree that the regulations should prescribe an Application Charge set at £1000 per application, and (b) what impact do you consider this would have on the numbers of applications made ?

- a) Yes. Although discretionary powers and charges are important. See attached report from DCC on current charges. Note that fee would be required to register the application as valid.**

- b) **Difficult to determine at this point in time although any level of applications would be an increase in the National Park as we are currently not an Order making authority for Orders under the Highways Act.**

Question 16

Do you agree that the regulations should provide for a standard order-making charge plus four Further Charges as proposed, at the levels proposed ?

Yes. There should be compatibility between different Order making authorities.

Question 17

Do you agree that authorities should be required to refund the difference, where the actual cost of placing the newspaper notice is less than Further Charge C ?

Yes, although there will be administrative complications in refunding. Invoicing for actual costs would be preferable.

Question 18

Do you agree that Further Charge C should be set at a higher level in those areas where costs are unavoidably higher.

Yes, where costs are legitimately higher.

Question 19

Q19 (For Order-making authorities only): Do you consider that Further Charge C should be set higher than £500 in your area ? If so, provide evidence to show that costs unavoidably exceed £500, and state what level you consider it should be set at in your area.

No, not necessary.

Question 20

Do you agree that the prescribed charges for public path diversion and extinguishment orders should apply to special orders (for school security) ?

Yes

Question 21

Q21. Do special orders raise any additional issues which the Secretary of State should take into account in making regulations which meet the needs of schools ?

No, not as far as we are aware.

Question 22

Do you consider that (a) there is a risk of authorities erring on the side of refusing applications (which will minimise their own costs) thereby forcing applicants to appeal, and if so, (b) what measures would most effectively mitigate the risk ?

- (a) No, not if the applications meet the criteria.**
- (b) None required.**

Question 23

Do you agree that applicants who appeal against an authority's refusal to make an order, should be required to meet the expenses incurred by the Secretary of State in drafting and publicising an order, through payment of a charge of approximately £150 plus the actual cost of erecting site notices and publishing newspaper notices ?

Yes.

Question 24

Do you agree with the proposed circumstances in which authorities should be required to remit or refund charges ?

Yes, but there should be some restriction on the maximum amount allowable under one application.

Question 25

Should a partial or full refund of the Application Charge be made when the authority refuses an application for an order ?

No, but consider allowing a repeat application if made within 12 months from refusal similar to the planning process.

Question 26

Do you agree that applicants should be entitled to claim refunds as proposed, and that authorities should be required to make a refund on receiving such a claim ?

Yes,

Question 27

Do you agree with the proposed levels of remittance/refund to be prescribed in the regulations ?

Yes.

Question 28

Do you consider authorities should be given the power and/or should be required to remit or refund the Application Charge and/or the Further Charges, in any other circumstances.

We have no view on this.

Question 29

Does the partial RIA adequately assess the likely level of uptake, costs, potential impacts, risks, and benefits ?

Yes, but requirement for review within 12 months.

Question 30

Do you consider that the proposals would (a) meet the needs of landowners/lessees/occupiers and (b) take full account of the needs of other stakeholder groups ?

- (a) Firstly, we are not aware of any problems in this administrative area. The legal backup with respect to the right to apply & appeal is an important consideration, but this must be weighed against the additional bureaucracy, costs and administration of the proposed process. The proposed charges create a disparity between applicants. The proposed rights allow the opportunity to appeal and are useful if time is a factor.**
- (b) Doesn't take full account of other stakeholders. Doesn't specify a requirement to consult and the practice may vary from authority to authority.**

Question 31

Do you consider that the legislation relating to the right to apply and appeal should be (i) commenced in its current form, or (ii) repealed, or (iii) amended ? If you consider it should be amended please say in what ways and give your reasons.

The system appears to be working OK & consequently is there the requirement to change especially where there are resource implications? The proposal has virtues in its current form but not the process as proposed. Would also support discretionary charges.

Question 32

Do you agree that the regulations should allow applications, notifications and appeals to be made online ?

Yes

Question 33

Do you agree that a lead in-time of at least 6 months would be sufficient to prepare for the new rights?

Yes.

Question 34

Are there any other considerations which you think it is important for the Secretary of State to take into account in deciding how or when to introduce the new rights ?

- **Consider advising which is the most appropriate authority.**
- **Set out requirements in order to register the application as valid and ensure that specified time periods for determination will only commence once an application has been registered as valid (or from date of receipt if duly made).**
- **Consider procedures for withdrawal of an application.**
- **Consider twin tracking of applications especially if also made under existing discretionary powers.**

Question 35

Do you consider that (a) authorities should be required to notify their local access forum of each application received, and/or (b) that the Secretary of State should be required to notify the relevant forum of each appeal made ?

(a) Yes

(b) Yes