

# Public Rights of Way

This webinar will  
begin shortly.



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# Speakers



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# Agenda

- What is a Public Right of Way
- How do we know
- Changing the Legal Record
- Diversion
- Extinguishment
- Procedure
- Costs
- The Presumptions Guidance
- The Right to Apply



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# What is a Public Right of Way

The right to pass and repass

- Footpath
- Bridleway
- Restricted Byway
- Byway open to all traffic

Green lanes, footways, pavements,  
alleyways.....



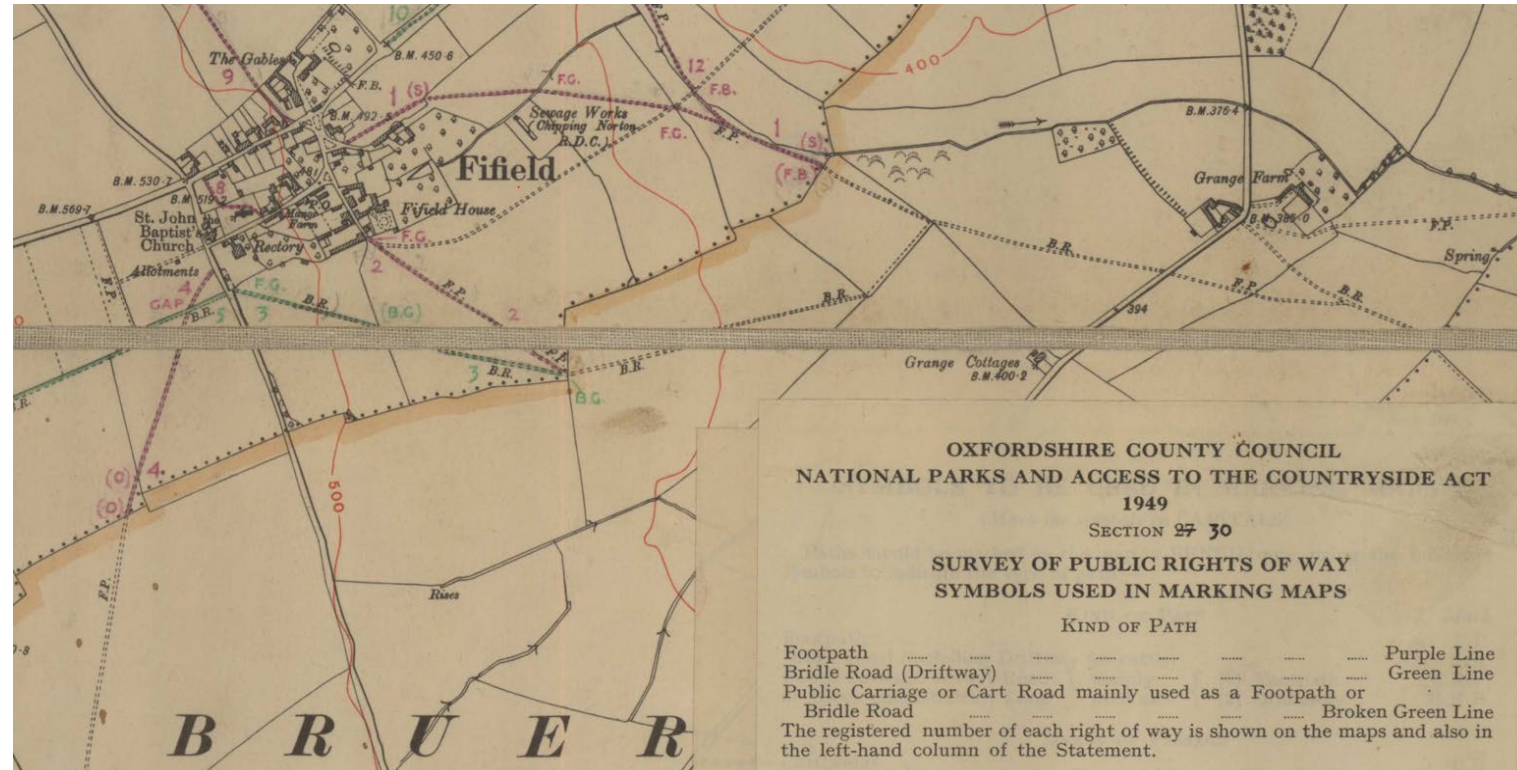
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# How do we know?

The definitive map and statement:



Routes do not have to be recorded to be diverted or extinguished.



# Changing the Legal Record

Tools for landowners and occupiers: Public Path Orders.

- S119 Highways Act 1980: Diversion.
- S118 Highways Act 1980: Extinguishment.
- S25 and S26 Highways Act 1980: Creation.
- S116 Highways Act 1980: Diversion or stopping up of the highway at Magistrates' Court.

A power, not a duty.

For development to proceed:

- S247 and S257 Town and Country Planning Act 1990



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# Tests for Diversion: the Balance of Interests

**S119(1) of the Act:** It is expedient to divert the route in the interest of the owner/occupier/lessee of the land crossed by the route.

**S119(6) of the Act:** The route will not be substantially less convenient to the public in consequence of the diversion.

**S119(6)(a) of the Act:** The effect the diversion would have on public enjoyment of the route as a whole.



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# Tests for Extinguishment: the Balance of Interests continued

**S118 of the Act:** ....it is expedient that the path or way should be stopped up on the ground that **it is not needed for public use**

....it is expedient to do so having regard to the extent (if any) to which....the path....would....be likely to be used by the public and having regard to the effect which the extinguishment would have as respects land served by the path....



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# Procedure for Public Path Orders

1. Application Preparation.
2. Consultation by the Applicant or the Council.
3. Application Determination.
4. \*Making of an Order: 28-day objection period.
5. Confirmation of an Unopposed Order.
6. Certification after Works to the new route.



\*Opposed orders require determination by the Planning Inspectorate to proceed: time consuming for the Council and/or the applicant.



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# Costs

The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 as amended by The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996.

- a charge for the costs incurred in the making of an order.
- a charge for advertisements of the making, confirmation and coming into operation of an order.



Councils cannot charge to defend an opposed order and so incur costs in referring orders to the Planning Inspectorate, including potentially appearing at a public inquiry and conducting the defence of an order.



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# The Presumptions Guidance

Extract from Hansard 23 March 2016:

As a Government Minister, Baroness Williams of Trafford made the following statement:

“The right to apply will be supplemented by **guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.** The guidance will give authorities more scope to confirm orders made in the interests of the landowner in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.”



Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises

Date: August 2023

Version: 1.0

<https://www.birketts.co.uk/app/uploads/2023/08/Presumptions-guidance-for-diverting-or-extinguishing-rights-of-way.pdf>



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# The Presumptions Guidance continued

Extract:

“....the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. **They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given.**”



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# The Presumptions Guidance continued

Extracts:

4. Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises....

5. ....Few people are troubled by using public paths across privately owned land around a house or farm, so long as they feel they can keep a reasonable distance from it. But the more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to feel comfortable using it”.



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# The Right to Apply

Councils do not have to exercise their powers to determine Public Path Order applications.

The Countryside and Rights of Way Act 2000 created a right of application for landowners and occupiers of certain categories of land: agriculture, forestry, breeding or keeping of horses.

The categories were extended by the Deregulation Act 2015: ....“or of any land in England of a prescribed description”.



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# The Right to Apply continued

- A right to apply for a public path diversion or extinguishment order for a footpath or bridleway.
- Councils to determine applications within 4 months of receipt.
- Applications to include preliminary work and consultations by the applicant and the resolution of objections?
- **The legal criteria does not change.**
- Appeal to SoS if a Council refuses to make an order.
- Determination does not prevent a delay before order making.
- Opposed orders still require referral to the Planning Inspectorate for determination.
- **Full cost recovery by Councils.**



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# The Right to Apply continued

Where is the Right to Apply?



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# Q&A



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