

**CYNGOR SIR POWYS COUNTY COUNCIL**

**RIGHTS OF WAY COMMITTEE**

**23<sup>rd</sup> September 2010**

**REPORT BY: COUNTRYSIDE SERVICES MANAGER**

**SUBJECT: Charging Policy: Public path Orders**

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**REPORT FOR: Consultation**

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**Background:**

The current charging policy for public path Orders was adopted following the presentation of a report to the Council's Rights of Way Committee on 6<sup>th</sup> October 2005. The report and minutes of the meeting are attached (annexes A and B.) It was decided that the policy should be reviewed every three years and this time has now elapsed.

The majority of applications made to Powys County Council for public path Orders are under the provisions of the following legislation:

- Section 119 of the Highways Act 1980: Diversion of footpaths, bridleways or restricted byways, where it would be either in the interest of the public or of the landowner, occupier or lessee of the land crossed by the existing route of a path;
- Section 118 of the Highways Act 1980: Extinguishment of footpaths, bridleways or restricted byways, where the path is not felt to be needed for public use;
- Section 257 of the Town and Country Planning Act 1990: Diversion or extinguishment of footpaths, bridleways or restricted byways, where it is felt to be necessary to allow permitted development to be carried out;
- Section 116 of the Highways Act 1980: These Magistrates Court Orders allow for extinguishment or diversion of any public right of way; the Council may apply for an Order at the request of a member of the public. However, as other provisions are available for footpaths, bridleways and restricted byways, these applications are generally only considered where public motor vehicular rights are involved i.e. for byways open to all traffic (BOATs.)

Attached is a summary of the legislation and guidance that relates to the recovery of costs for these applications (annex C.) Sections 118A and 119A of the Highways Act 1980 make provision for Rail Crossing extinguishment and diversion Orders. The same provisions for the recovery of costs apply as for applications under sections 118 and 119 of the Highways Act 1980. Given this, it is suggested that Powys County Council should apply the same costs to Rail Crossing Orders as Orders under sections 118 and 119 of the Highways Act 1980.

There are other special powers available to make diversion and extinguishment Orders in specific situations; the charges that can be recovered are described in detail in the relevant legislation. Given this and that these circumstances arise infrequently, the costs of applications for such special Orders are not considered in this report.

**Current situation in Powys:**

Applications for public path Orders affecting footpaths, bridleways and restricted byways:

As dictated by the legislation, no charge is payable for applications until such time as a public path Order is actually made by Powys County Council. The same flat rate fee is payable for

public path diversion or extinguishment Orders made under both sections 118 and 119 of the Highways Act 1980 and section 257 of the Town and Country Planning Act 1990; this currently covers both the administration charges and advertising fees. This is £1000 for one path, with an additional £100 being charged for each extra path included in one Order. No VAT is payable on these fees. Given that the advertising costs of an Order in Powys are currently in the region of £300-£500, the portion of the administration fee left to cover the Council's time and other expenses would be in the region of £500-£700.

Charges are not normally made for applications to create a new path, via a creation agreement or Order under sections 25 and 26 of the Highways Act 1980, as these are generally felt to be primarily in the public interest. The exception to this would be the creation of a new path that is to be used as a replacement for an extinguished path, where the creation/extinguishment package is felt to be primarily in the interest of the applicant.

There is often significant pressure to process public path Order applications that are associated with permitted development quickly; this is due to the time and other constraints on permitted development, as an Order must be both made and confirmed before works can commence over the former route of the path. These applications will often take up more officer time than other proposals, as they involve significant amounts of time spent liaising with Planning Officers, developers, other Council departments, local residents and others. To allow such applications to be processed as quickly as possible, without disadvantaging other applicants or incurring extra costs for the Council, developers are now being asked to carry out some of their own pre-Order consultation work. This does offset some of the additional officer time that is taken up, given that the same flat rate fee is payable, irrespective of whether the application is related to permitted development or not.

It is felt that the Powys County Council charges for Orders affecting footpaths, bridleways and restricted byways need to be increased, to reflect the rising costs of processing the applications. Comparison has been made with the charges currently being levied by some other neighbouring local authorities. The attached table (annex D) illustrates the wide variation in the amount charged, with some authorities choosing to levy a single, all-inclusive rate and others seeking to recover the full costs incurred for each application.

#### Applications affecting Byways Open to all Traffic, requiring a Magistrates Court (s116) Order:

A flat rate fee of £1500 is currently payable for a Magistrates Court application to divert or extinguish a BOAT. Because the majority of these applications involve public vehicular rights, they may raise additional issues in terms of the location and construction of a new route. Given this and that there is a requirement to prepare and present a case to the Magistrates Court, they are generally more time-consuming and costly to process than other public path Orders. The costs may be difficult to predict at the outset. It seems likely that the current £1500 fee would not cover these costs, so it is felt that this flat rate fee should be reviewed.

#### Cost of works to make the new route of a diverted path ready for use:

For all proposals, the applicants' contribution to the cost of the works to make a new route ready for use depends on the circumstances under which the application is being made. Where a diversion is for the purpose of development for commercial gain, the developer would generally be expected to meet all of the costs of any work that is needed. For other applications, the Council's maintenance liabilities on the existing route of the path will be taken into account in deciding on the portion of the costs to be met by the applicant.

Some applications may attract additional costs associated with the long-term maintenance of features on a newly created route. There may be a need for the Council to draw up and enter into a legal maintenance agreement, for example where a bridge is to be used for both the public right of way and private vehicular access. Where additional maintenance liabilities are felt to have arisen primarily due to the interests of the landowner, Legal Services may recharge the landowner separately for their costs in drawing up the agreement.

Circumstances under which fees are payable:

The power to make charges for public path Orders is discretionary and in certain circumstances, Powys County Council chooses to waive the fees and meet the costs of processing applications itself. The circumstances under which fees are waived are detailed in the current policy, as attached and approved in 2005.

**The main considerations of the working group:**

A working group, consisting of Councillor Davies, Councillor Ashton and two officers, met in September 2009 and March 2010 to review the current charging policy. Consideration was given to:

- The amount that should be charged (per application) as an administration fee, to cover the current costs of officer time and other expenses;
- The way in which the advertising costs should be recovered;
- The costs that should be met by the applicant for any works that are needed on the new route of a diverted path;
- The charges that should be made in respect of applications for Magistrates Court Orders;
- The circumstances under which the fees for an application should be waived and the application processed entirely at the Council's expense.

The working group reviewed the merits of the following approaches to recovery of costs:

	Method of charging	Advantages	Disadvantages
1.	Flat rate fee that includes both administration and advertising costs	-Easy to administer. -The cost to the applicant is known at the outset of the application. -No disadvantage to applicants where unexpected complications arise.	-Advertising fees vary widely depending on the publication, which is largely dictated by the geographical area of the application. Leaves a variable amount of fee to contribute to Council's administration costs.
2.	Flat rate administration fee plus the actual advertising costs	-Relatively easy to administer. -The approximate cost to the applicant can be predicted with reasonable accuracy at the outset. -Recovers a greater proportion of the costs than an all-inclusive flat rate fee. -No disadvantage to applicants where unexpected complications arise.	-Significantly different costs may be incurred for applications of similar complexity, due to the publication that must be used to place the adverts.
3.	Recharge the actual costs incurred, for both administration and advertising	-Ensures recovery of all permissible costs by the Council.	-Requires a detailed record to be kept of the time spent on each application, which may be time-consuming in itself. -Difficult to predict approximate cost to applicant at the outset; time spent may be much greater than initially expected, if unforeseen issues arise.

For applications under sections 118, 118A, 119 and 119A of the Highways Act 1980 and section 257 of the Town and Country Planning Act 1990, it is felt that the charging of a flat

rate administration fee, plus actual advertising costs would be a good compromise for Powys County Council. For the Council, it would allow recovery of a greater proportion of the costs incurred than a flat rate, all-inclusive fee; from the applicant's perspective, a reasonable estimate of the costs could be given at the outset, which would not be altered if complications arose at a later point. The guidance is that a flat rate fee should cover the cost of the minimum amount of time that would be spent on processing an application for an Order, to ensure that it does not exceed the actual costs incurred for any application. A breakdown of the officer time and other costs that are currently being incurred in processing these applications is attached (annex E.)

Where applications are made for a Magistrates Court Order, the Council may require the applicant to meet all reasonable costs. Unlike other public path Orders, costs can be recovered even where no Order is actually made in respect of the application. Given the significant costs that may be incurred in considering and preparing these applications for the Magistrates Court, it is felt that the Council should seek to recover the full costs even where no Order is actually made.

### **The Revised Policy Framework**

The following sets out the working group's recommendations to Committee:

1. The administration fee payable for diversion and extinguishment Orders made under sections 118 and 119 of the Highways Act 1980, under sections 118A and 119A (the Rail Crossing Order provisions) of the Highways Act 1980 and under section 257 of the Town and Country Planning Act 1990 should be set at £1500. This administration fee should increase annually, where positive inflation applies and in line with the RPI. This could be included as part of the charging policy to avoid the need for re-approval.
2. In addition to the administration fee, applicants should be recharged the full advertising costs.
3. No change should be made to the current approach to recovering the cost of works to make a diverted route ready for use. Likewise, the current approach in terms of drawing up and recharging for legal maintenance agreements should continue.
4. The new charges should apply to new applications; where the fees rise whilst an application is waiting to be processed, the fee set at the date of application should be applied. The exception to this would be for applications that were originally eligible for the fees to be waived, but for which the circumstances change to the extent that this is no longer the case. The full current fee, as at the time of processing, should then apply.
5. For creation/extinguishment packages that are felt to be in the interests of the applicant, the administration fee for a single Order should be payable, because the consultation for the creation and extinguishment would be carried out concurrently. In addition to this, applicants for such packages should be recharged the full advertising costs.
6. Guidance notes are provided to applicants before they submit an application; these should include a detailed explanation and breakdown of the costs to be met.
7. For applications for a Magistrates Court diversion or extinguishment Order, the applicant should be required to meet the full costs incurred, irrespective of whether an Order is made by the Magistrates Court. The applicant would need to meet a variable administration fee that would be determined by the actual officer time spent and any other costs, plus the costs of advertising and works.
8. As detailed consideration was given to the circumstances under which fees should be waived in 2005, this aspect of the charging policy should remain unchanged.

**RECOMMENDATION:** That the Rights of Way Committee commends the report and its contents to the Portfolio Holder, for consideration as adopted policy.