

Appendix 2

Concurrent Highways Act orders

Section 118(5) and Sch 6 para 3(2) allow extinguishment orders to be considered concurrently with creation or diversion orders. However, even if considered concurrently, the orders must each stand on their own.

Guidance given by the Planning Inspectorate to its inspectors (Rights of Way Section, Advice Note No.9, 11th Revision April 2019) states “Express provision is made in section 118(5) of the Highways Act 1980 for public path extinguishment orders to be dealt with concurrently with creation and diversion orders. When considering the confirmation of a public path extinguishment order, in particular, the extent to which the highway would be likely to be used by the public apart from the order, regard should be had to the extent that the creation or diversion would provide an alternative to the way being extinguished” (para 33).

Furthermore, “When dealing with such orders concurrently, each order should be considered separately on its own merits and decisions made in each case. Consequently, a decision letter should specifically cover for each order those matters relevant to the consideration of whether it should be confirmed” (para 34).

In the Planning Inspectorate’s Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders (October 2011), where the inspector has considered the two orders, but cannot confirm the extinguishment order, “he/she will not generally confirm the creation or diversion orders” (pg 33, para 6.31) suggesting that should the extinguishment order not be confirmed, neither would the proposed alternative.

Appendix 3

s. 118 Highways Act 1980

Stopping up of footpaths, bridleways and restricted byways

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Welsh Ministers, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a 'public path extinguishment order'.

- (2) The Welsh Ministers shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121 (2) below.
- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Welsh Ministers and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where, in accordance with regulations made under paragraph 3 of the said schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-
 - (a) Under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or
 - (b) Under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;

The council or Welsh Ministers, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order, or rail crossing diversion order would provide an alternative path or way.

- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.

(6A) The considerations to which-

- (a) The Welsh Ministers are to have regard in determining whether or not to confirm a public path extinguishment order, and
- (b) A council are to have regard in determining whether or not to confirm such an order as an unopposed order,

Include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

Appendix 4

s.26 Highways Act 1980

Compulsory powers for creation of footpaths, bridleways and restricted byways

- (1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to-
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in s.28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Welsh Ministers, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.

An order under this section is referred to in this Act as a 'public path creation order'; and for the purposes of this section 'local authority' means the county council or district council.

- (2) Where it appears to the Welsh Ministers in a particular case that there is a need for a footpath, bridleway or restricted byway as mentioned in subsection (1) above, and they are satisfied as mentioned in that subsection, they may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating a footpath, bridleway or restricted byway.
- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.
- (3A) The considerations to which-
- (a) the Welsh Ministers are to have regard in determining whether or not to confirm or make a public path creation order, and
 - (b) a local authority are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath, bridleway or restricted byway would be created.

- (4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.
- (5) A public path creation order shall be in such form as may be prescribed by regulations made by the Welsh Ministers, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath, bridleway or restricted byway is thereby created.

Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.