

Procedure and Policy for **Public Path Creations** under **Section 25 and 26,** of the **Highways Act 1980**

June 2008



Advice note for public Path Creations under section 25 and Section 26, of the Highways Act 1980.

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1. Purpose

This is an advice note for both landowners who are considering entering into a Public Path Creation Agreement or Creation Order with Essex County Council, and for user groups and members of the public as a general advice note. Public path creation can be in respect of dedicating new public footpaths or public bridleways or upgrading a footpath to a bridleway or restricted byway (over which the public has a right of way on foot, horseback, pedal cycles and horse drawn vehicles).

This note draws on Government Circular 01/08 'Public Rights of Way', the Highways Act 1980 and the Countryside and Rights of Way Act 2000.

2. Background

Public Rights of Way provide an essential means of access to the countryside for recreational purposes and form an integral functional and sustainable link to shops, services and schools and semi-urban areas. Current principles of good urban and semi-urban design encourage people to become more active by providing new footpaths, bridleways and open space and reducing car use. Public path creations can also provide vital links in the existing Public Rights of Way network which gives improved safety for walkers, horse riders and cyclists where currently the only option is to use busy roads. Furthermore, creations which may form an integral part of a wider public path order scheme can benefit both landowners and the public by providing for matters of safety, the resolution of drafting errors on the Definitive Map (DM) associated with the existing legal route of a footpath or bridleway, overcoming permanent obstruction problems and providing key strategic benefits to the local Public Rights of Way network.

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- matters of safety
- the solution to permanent obstruction problems
- key strategic benefits to the local PROW network
- the resolution of drafting errors on the DM associated with the existing legal route of a FP or BW.

Section 25 of the Highways Act 1980 makes provision for the creation of a new public path by agreement between the landowner and the highway authority or local district council. The process requires a signed declaration by the landowner(s) to the effect that they are dedicating a footpath or bridleway (as agreed by the relevant authority). Prior to making an agreement there is a requirement to consult the other council affected and to ensure that the path to be created, and subsequently dedicated as a public right of way, meets the requirements of the highway authority. Once the agreement is made, the fact has to be advertised through publication of a notice in at least one local newspaper.

Section 26, Highways Act 1980 is appropriate in circumstances where significant public need for a path has been identified but where no other powers to confirm or bring about a public right to use a particular way exist. Such process involves the making of a formal Order which is open to objection and also makes provision for compensation to be paid to the landowner.

Section 7 of this advice note clearly sets out the legal criteria and differences between Section 25 Creation Agreements and Section 26 Creation Orders.

Please Note

For public path creations under Section 257, Town and Country Planning Act 1990 or for public path agreements which are contained in the Schedule of Section 106, Planning Agreement, details are to be included in a subsequent Advice Note.

3. Policy

Historically, the County Council's strategy for creation of new public rights of way (particularly bridleways) using discretionary powers under the Highways Act 1980, evolved as part of the wider objectives for countryside access and directly shaped by the Countryside Commission's policy (now Natural England). A number of new rights of way projects emerged in the 1990s from the County Council's collaboration with the Commission, which attracted grant aid.

The County Council's strategy that resulted from these initiatives started to change at the end of the 1990s, with the conclusion of the Countryside Commission's projects and change of policies. This transition was further reinforced by the interpretation of the Countryside and Rights of Way Act 2000. The Countryside Commission's Business Plan for public rights of way – known as Milestones – was replaced by the Rights of Way

Improvement Plan (RoWIP). As a 10 year plan, RoWIP will form part of the County Council's Local Transport Plan and the draft RoWIP has recently been the subject of an extensive period of public consultation.

The RoWIP is required to contain an assessment of the extent to which local rights of way meet the present and likely future needs of the public, the opportunity provided by local rights of way for all forms of open air recreation and enjoyment and the accessibility of local rights of way to blind or partially sighted persons and others with mobility problems. User groups and the public have led the way in responding to the formulation of RoWIP and therefore identifying shortfalls in the rights of way network as raised by the public. A key objective of the new creation policy is to address some of these shortfalls by creating new rights of way.

In parallel with this new creation strategy, it is necessary to modernise processes and procedures for delivering new creation projects. As a result, the outstanding creation projects are to be prioritised using a risk assessment based on a points weighting system as described in this Advice Note to address a backlog of cases. The system seeks to improve procedure whilst securing service efficiencies and maximising the use of resources. Implementation will be in the first half of 2008 and in the interim there will be a period of consideration before any new creation schemes can be considered.

4. Explanation of prioritisation and factors to be considered when creating a new public path

Currently the County Council has a list of outstanding proposed creation schemes and in accordance with the policy as previously described, is establishing a batching system based on prioritisation to manage these properly. The system uses a 6 point criteria. Each case will be weighted and prioritised against the following: improvement to public safety (10 points); Rights of Way Improvement Plan objectives; multi-use benefits and site specific considerations (8 points); mitigation of permanent obstruction problems (6 points); linked routes (4 points); impact on wider network (2 points); length of time proposal has been on waiting list (1 point for each year). In some cases creation schemes alone will score highly on a number of these criteria, or form part of a wider public path scheme that includes diversions, extinguishments as well as creations.

Dependent upon the weighting given to any new creation proposal, this will determine where the scheme will appear in the batching lists. Hence, where a scheme receives maximum weighting the County Council will endeavour to:

- process a Section 25 Creation Agreement within 4 months from the date of commencing the scheme, providing no representations are made
- process a Section 26 Creation Order within 6 months from the date of commencing the scheme, providing no representations are made
- where the Section 25 Agreement forms part of 106 Planning Agreement, to monitor progress of the 106 Agreement or to ensure the new path is set on the ground and dedicated at the earliest opportunity
- where a creation scheme, subject to a Section 25 Creation Agreement is likely to directly affect another user group there will be a consultation with user groups. If such agreement is not forthcoming, or objections are lodged to a Section 26 and if no satisfactory conclusion can be devised within three months of commencing negotiations, the scheme will be dropped; or with an order, either not proceeded with or the matter referred to the Secretary of State for determination.

5. Landowner requirements/responsibilities

Section 25 Creation Agreements and Section 26 Creation Orders

- Owner to sign declaration of intent to dedicate the new path from the outset.
- Should the owner instruct a land agent, a ceiling on agent's fees to be agreed, in writing, with the County Council from the outset.
- Ensure on site welfare of Essex County Council officers during site visits and ensure all affected tenants are aware of the proposal and also of any impending site visits.
- Where required, agree to have the proposed creation route marked/pegged out as far as possible.
- If the creation is part of a wider public path scheme, require that the legal line(s) proposed to close in the scheme is free of obstructions, unless there are exceptional circumstances as permanent obstruction problems; in such cases,

the applicant should ensure that there is a clear, convenient way round the obstruction.

6. Criteria for creation

- The highway authority will only use the relevant statutory powers under Section 25 or Section 26 Highways Act 1980 if it is satisfied that there is a public need.
- The possibility of unrecorded public paths will be checked before creating new ones.
- Create the highest quality route and most cost efficient route practicable; and provide the shortest route acceptable with only the necessary status of public rights to meet current and foreseeable need.
- Creation on publicly owned land should generally be preferred, so long as it satisfies the public's needs.
- Improve the network by creating the missing links identified as needed through the Rights of Way Improvement Plan.
- Change the status of an existing public path, for example from footpath to bridleway where absolutely necessary, again as identified as a need by the Rights of Way Improvement Plan.

7. Tables summarising Section 25 Creation Agreements and Section 26 Creation Orders

The table includes relevant provisions within the CROW Act 2000 now enacted

Highways Act 1980		
Reference	Text	Notes
Section 25 Creation of footpath or bridleway restricted byway agreement	<i>A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area.</i>	<ul style="list-style-type: none"> • Limited to footpaths or bridleways and upgrading to restricted byways. • May be made by county, district, or unitary councils; by National Park Authorities (NPAs), or by London Borough Councils. • Requires consultation only with other authorities covering the area (No public consultation required). • Limitations and conditions may be imposed upon use of the path. • Payment may be made, N.B. this is not a right to compensation but a more general right of the LHA to make payment. • The LHA must ensure creation of the path and advertise it locally. • There is no laid out form for the agreement; although the County Council has a standard template. • S.29 of the Act * required councils to have regard to the needs of agriculture, forestry, and the desirability of conserving flora, fauna and geological and physical features.
		<ul style="list-style-type: none"> • The Council in making a creation agreement (or order) must have

* As amended by schedule 6 of the Countryside & Rights of Way Act 2000

Highways Act 1980		
Reference	Text	Notes
		regard to any material provision of rights of way improvement plans.
Section 26 Compulsory powers for creation of footpaths and bridleways	<p><i>Where it appears to a local authority that there is a need for a footpath or bridleway over land in their area and they are satisfied that, having regard to:</i></p> <p><i>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</i></p> <p><i>b. the effects which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 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 Secretary of State, or confirmed by them as an unopposed order, create</i></p>	<ul style="list-style-type: none"> • Limited to footpaths or bridleways. • The path must add to the enjoyment or convenience of a substantial section of the public or of local people. • May be made by county, district, or unitary councils, by London Boroughs, or by the Secretary of State (SoS). • Confirmation of the order must take into consideration material provisions of rights of way improvement plans. • Limitations and conditions may be imposed upon use of the path. • A claim for compensation may be made, see S28 below. • Requires consultation only with other authorities covering the area. There is no requirement to consult with the landowner and, in practice, many S.26 orders have been used specifically because a landowner could not be found. • Orders must follow the procedure laid down in the Public Path Order Regulations 1993. • S.29 of the Act * requires councils to have regard to the needs of agriculture, forestry, and the desirability of conserving flora, fauna and geological and physical features.

* As amended by Schedule 6 of the Countryside & Rights of Way Act 2000

Highways Act 1980

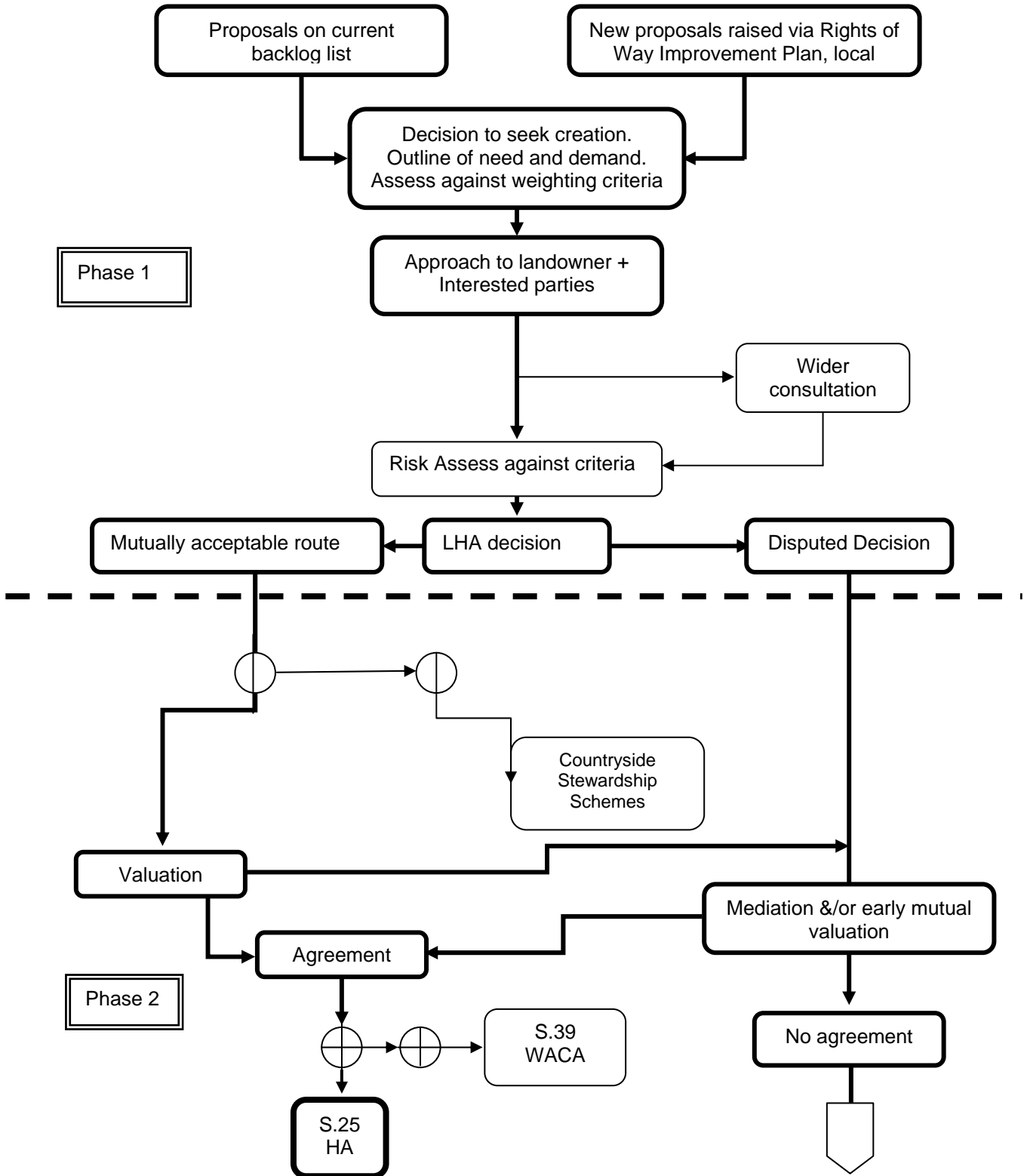
Reference	Text	Notes
	<p><i>a footpath or bridleway over the land.</i></p>	<ul style="list-style-type: none"> • The landowner or any third party can object to orders. If the objections are not withdrawn, the order must be abandoned or referred to the SoS. The SoS will normally resolve the order by correspondence or by a local public inquiry. • The order can be rejected or confirmed with or without modifications. • 'Interest' in the land can include that arising from a licence or agreement covering all or part of the land, for example sporting rights, as well as ownership of the land. • The Lands Tribunal can ultimately determine any dispute arising as to the level of compensation after the order has been confirmed (Section 307 HA 80).
<p>Section 28 Compensation for loss caused by public path creation order</p>	<p><i>28(1) ...If... it is shown that the value of an interest of a person in land is depreciated, to that a person has suffered damage by being disturbed in his enjoyment of the land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.</i></p>	<ul style="list-style-type: none"> • 'Interest' in the land can include that arising from a licence or agreement covering all or part of the land, for example sporting rights, as well as ownership of the land. • The Lands Tribunal can ultimately determine any dispute arising as to the level of compensation after the order has been confirmed (Section 306 HA 80).

Highways Act 1980

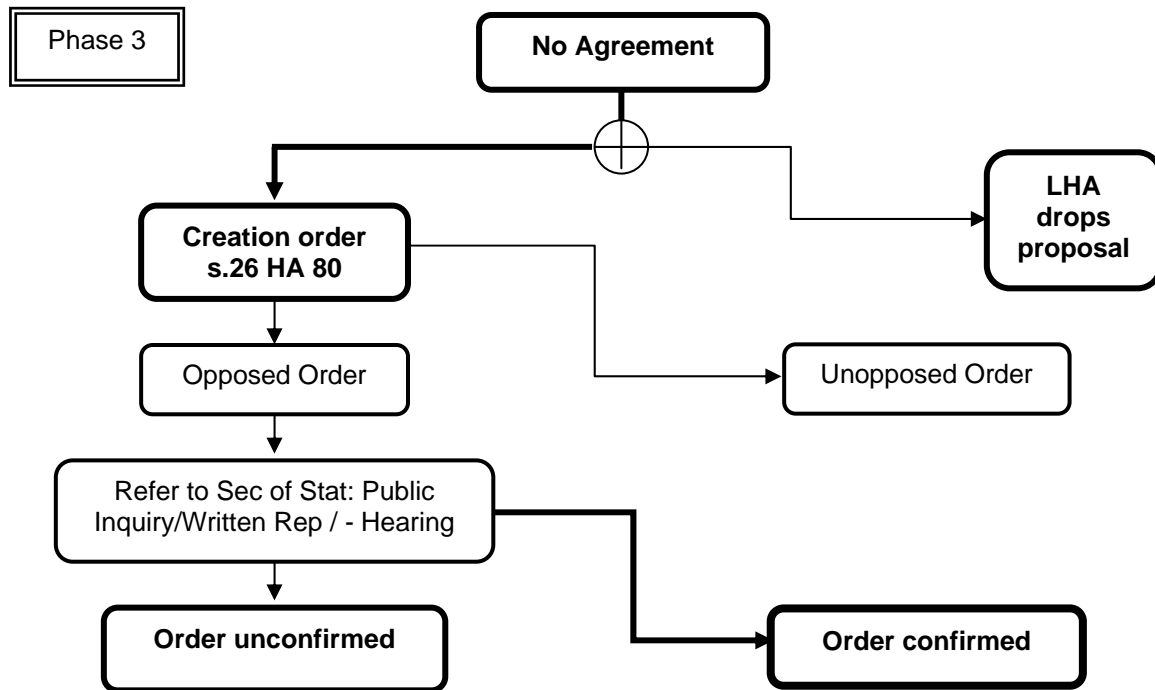
Reference	Text	Notes
	<i>28(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the secretary of State, and shall be made to the authority by who the order was made.</i>	<ul style="list-style-type: none">• The regulations are currently laid out in Regulation 5 Claims for compensation as respects orders of the Public Paths Orders Regulations 1993.• Claims must be made in writing.• Claims must be made within six months of the creation order coming into force.

8. Flow diagram explaining creation process

(Phases 1 and 2 are common to both section 25 agreements and section 26 orders; phases 3 and 4 apply to section 26 order only)



Flow diagram continued - Creation Orders



9. Contact details

By post:

The Definitive Map Service
Development Highways and Transportation
Essex County Council
County Hall
Chelmsford
Essex CM1 1QH

By telephone

Garry White Definitive Map Manager	01245 437563
Dian Tompkins Definitive Map Officer	01245 437197
Ann Tompkins Definitive Map Officer	01245 437112

10. Glossary of terms

LAH - Local Highway Authority

PERMISSIVE PATH – Informal route provided by the landowner which has no legal status

ROWIP – Rights of Way Improvement Plan

Countryside Stewardship Schemes – grant aided projects funded by Department Environment, Farming and Rural Affairs

WACA – Wildlife and Countryside Act 1981

NPACA – National Parks and Access to the Countryside Act 1949

S of S – Secretary of State