

From: McEntee, Jean jean.mcentee@planninginspectorate.gov.uk
Subject: ROW/3268692 The Cheshire East Borough Council (Footpath No. 14 Parish of Sandbach) Public Path Stopping Up Order 2019
Date: 9 June 2021 at 11:23
To: McEntee, Jean jean.mcentee@planninginspectorate.gov.uk



Dear Sir/Madam,

I refer to the above-mentioned Order which has been submitted to the Secretary of State for confirmation following receipt by the Authority of objections/representations. In accordance with the Act or paragraph 4(1)(2) of Schedule 14 to the Town and Country Planning Act 1990 the Order is to be determined by an Inspector appointed by the Secretary of State.

The Act or paragraph 3(3) of Schedule 14 of the Town and Country Planning Act 1990 states that where an objection or representation has been made and not withdrawn, the objector/representor has a right to be heard by a person appointed for the purpose. Alternatively, with the agreement of the Order Making Authority, objectors/representors and applicant (if applicable), a decision may be made following an exchange of written representations. If this method is adopted, the Inspector will visit the site before coming to his decision. It is our view that the written representations procedure would be appropriate in this case.

By agreeing to this procedure, all parties will be expected to abide by the Inspectorate's procedure for written representations, which can be found at Annex B of our booklet *Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England*. The procedure, which is also summarised in section 2 of the booklet, sets out the timetable for the submission of statements of case. Guidance on how to prepare statements of case can be found at Annex E. Before agreeing to written representations, we ask all parties to ensure that they are familiar with the procedure and the timetable. Your attention is also drawn to section 6 of the booklet which identifies the various matters to be considered by the Secretary of State or Inspector in deciding whether or not to confirm an order.

Our booklet is available online at <https://www.gov.uk/government/publications/rights-of-way-guidance-booklet> Hard copies are available on request. For your convenience section 2 of the booklet is attached.

IMPORTANT: Will you please let me know by **23 June 2021** whether you would be happy to adopt the written representation procedure or, if you have made an objection or representation and do not consider the written representations procedure to be appropriate, that you wish to exercise your right to be heard by the appointed Inspector. If you have not replied by the above mentioned date, it will be assumed that you are happy to adopt the written representation procedure/do not wish to exercise your right to be heard.

The Inspectorate considers that it is in everyone's interest for all objections and representations to be publicly available. I have therefore asked the Council to make the objections/representations made in relation to this case

Council to make the objections/representations, made in relation to this case available for viewing at their offices. They have also been asked to ensure that all statements of case and any other document submitted in relation to this case be made available for public inspection in due course.

2 Written representations

- 2.1 Some orders are decided after exchanges of written evidence; there is no hearing or inquiry, but everyone involved has to agree to use this procedure. It is best suited to orders where there is only a little evidence, the issues are relatively straightforward and there are only a few relevant persons. Where we have an order which meets these criteria, we write to the local authority, the applicant and the relevant persons asking for their agreement to using this procedure. We also ask them to adopt the procedures for handling the exchanges of evidence and comments (Annex B).
- 2.2 We then **give notice** in writing to the local authority, the applicant, relevant persons and any other person who has written expressing an interest in the order that the written representations procedure is to be used. We also inform the prescribed organisations and everyone who the local authority were required to inform when they made the order.

Preparing the evidence

- 2.3 The local authority, the applicant, relevant persons and other persons who wish to submit evidence each prepares a "statement of case" (see Annex E). This is a written statement containing full details of the case which each of them wishes the Inspector to consider. It should include copies of all documents on which they wish to rely. The local authority does not need to prepare a statement of case if it has nothing to add to the statement of reasons which it sent in with the order.
- 2.4 According to the Procedure for Written Representations, the local authority sends us its statement of case, a copy of the documents it is submitting as evidence and a list of all these documents within **2 weeks of the start date**. We copy the local authority's statement of case to the applicant, relevant persons and any other person who has written expressing an interest in the order. If you want to examine the documents submitted with the local authority's statement of case, you can inspect them at the places listed in our notice informing the parties of the procedure. The statement of case can be inspected at the local authority's offices. We do not normally accept late statements (please see paragraph 2.13 for guidance on late submissions).
- 2.5 The applicant and the other persons have a bit longer to submit their statements of case. This gives them the opportunity to examine the local authority's statement and supporting documents. If a document is included in the local authority's statement of case, the

document is included in the local authority's statement of case, the applicant or other persons do not have to supply a copy – they can refer to the copy of the document sent in by the local authority.

- 2.6 According to the Procedure for Written Representations, the applicant, relevant persons and any other person who wishes to give evidence should ensure that their statement is received by us **not later than 8 weeks after the start date**. We copy these statements including the documents to the local authority, which makes them available for public inspection. We also copy the applicant's statement excluding the documents to the relevant persons and any other person who has submitted a statement of case. We then copy the relevant and other persons' statements to the applicant, every relevant person and the other persons who have submitted a statement of case. We do not normally accept late statements (please see paragraph 2.13 for guidance on late submissions).
- 2.7 The local authority, applicant, relevant persons and other persons comments on any or every other statement of case has to be received by us **not later than 14 weeks after the start date**. We copy these to the local authority, the applicant, relevant persons and anyone else who has submitted a statement of case. We do not normally accept evidence received more than 14 weeks after the start date. (Please see paragraphs 2.13 – 2.15 for guidance.)
- 2.8 Usually, there are no further exchanges of comments. If we need to, we ask the local authority, the applicant, relevant persons and anyone else who has made comments for further information about their statements or their comments. However, from our experience, further exchanges do not usually add to the case for or against an order.

What happens if you think written representations is no longer appropriate?

- 2.9 We can change the procedure to decide an order at any time before the decision is issued. The other options are a hearing or an inquiry. If the local authority or applicant thinks the written representations procedure is no longer appropriate, they should let us know, with reasons why we should change the procedure. We will then consider the request having consulted with the other parties to the order, as necessary. Anyone who has made a duly made objection or representation to an order has a statutory right to be heard; where a party subsequently decides to exercise their right to be heard we will determine the procedure – hearing or inquiry, taking account of the circumstances the order.

What happens if people do not abide by the Procedure for Written Representations?

- 2.10 We may take the decision to hold a hearing or local inquiry if it becomes clear that the Procedure for Written Representations is not being adhered to correctly.

Site visits

- 2.11 The purpose of a site visit is for the Inspector to see the land to which the order relates and the surrounding area, and to note physical features such as stiles, gates, fences, walls, hedges and trees. The Inspector usually visits the site when the exchange of comments is complete and makes this visit alone unless the local authority, the applicant or a relevant person asks to accompany the Inspector. If the Inspector decides an accompanied visit is necessary, or a request for an accompanied visit is received by any of the above, we give the local authority, the applicant and relevant persons **not less than 2 weeks notice** of the date and time it will take place
- 2.12 Those accompanying the Inspector may only point out physical features that they have mentioned in their evidence. As the Inspector will proceed to their final decision after the site visit, the Inspector will not accept any further evidence at that time, nor will they deliberate on the merits of the case. The Inspector will not defer the site visit in the absence of anyone who has asked to be present. If an objector to an order requests to accompany the Inspector then the local authority are required to send a representative however if the request is made by the local authority, the applicant or a supporter we will write to the objector(s) seeking their confirmation that they are prepared to attend the site visit. If representatives from both sides are not present, the Inspector will have to conduct an unaccompanied site visit instead.

Late evidence on cases being dealt with by way of written Representations

- 2.13 Sending late material is unfair on others who have an interest in the order. Unless there are extraordinary circumstances ^[1] for submitting late statements of case, we will return them if they are received by us outside of the deadline from an already involved party (2 weeks from the start date for OMAs and 8 weeks from the start date for all other parties, the specific dates will be set out in the order start notice).
- 2.14 When making a decision, the Inspector may disregard any written representation, evidence or other documents received after the exchange period (14 weeks from the start date), even if it raises new issues (unless the Inspector has asked for further information). If an already involved party's comments on the statements of case are received after the 14 week deadline, the Inspector will only look at the material if there are extraordinary circumstances for its late submission. If the Inspector concludes that there are extraordinary

submission. If the Inspector concludes that there are extraordinary circumstances, we will circulate a copy all other parties giving them two weeks to make written representations or ask to be heard.

- 2.15 If an entirely new interested party submits correspondence after the 14 week deadline, we will not accept it unless the author can provide us with a good reason for it being late. An acceptable reason might be that they have only just become aware of the order, for example by coming across the site notice. If no reason is given, or we do not find the reason given acceptable, we will return the correspondence. Otherwise we will circulate a copy to all the other parties giving them two weeks to make written representations or ask to be heard.

Legal submissions

- 2.16 A challenge to an order or a representation or objection on a question in law is known as a "*legal submission*". If you want to make a legal submission it would be helpful if you could submit it with your statement of case. On receipt of a legal submission we will need to decide whether the written representation procedure is still appropriate for determining the order or whether a hearing or inquiry needs to be arranged instead. In any event, the Inspector will not give a ruling on legal submissions, but usually responds to them in the decision. Further advice on legal submissions is given in PINS' Rights of Way Advice Note No. 3. The advice note is on our website at www.planningportal.gov.uk/countryside.

What happens next?

- 2.17 After the site visit, the Inspector writes the decision.
- 2.18 If, as part of the written representations process you have submitted original documents that you would like us to return, please let us know. We will return your documents to you after the period for challenging the decision has ended. Once a final decision has been issued and all our actions have been completed the case file will be sent into storage, normally for 12 months, before being destroyed.

Kind Regards,

Jean McEntee
Defra Team (Rights of Way)

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>

[1] Please see paragraph 15 of the Circular for Rights of Way Orders which is attached to the back of this booklet.

Please take a moment to review the [Planning Inspectorate's Privacy Notice](#) which can be accessed by clicking this link.



Please note that the contents of this email and any attachments are privileged and/or confidential and intended solely for the use of the intended recipient. If you are not the intended recipient of this email and its attachments, you must take no action based upon them, nor must you copy or show them to anyone. Please contact the sender if you believe you have received this email in error and then delete this email from your system.

Recipients should note that e-mail traffic on Planning Inspectorate systems is subject to monitoring, recording and auditing to secure the effective operation of the system and for other lawful purposes. The Planning Inspectorate has taken steps to keep this e-mail and any attachments free from viruses. It accepts no liability for any loss or damage caused as a result of any virus being passed on. It is the responsibility of the recipient to perform all necessary checks.

The statements expressed in this e-mail are personal and do not necessarily reflect the opinions or policies of the Inspectorate.

DPC:76616c646f72