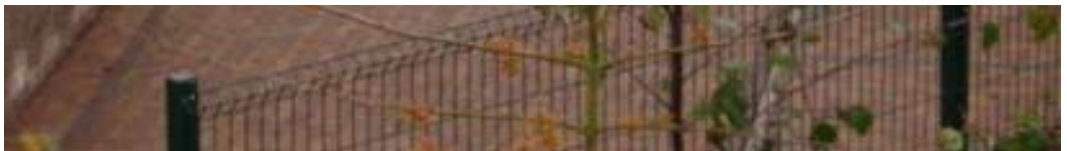




# Guidance Notes for Persons Attending Article 16 Public Local Inquiries

A Brief Guide



## **GUIDANCE NOTES FOR PERSONS ATTENDING PUBLIC LOCAL INQUIRIES RELATING TO ARTICLE 16 PUBLIC PATH ORDERS**

### **INTRODUCTION: WHY ARE FORMAL PROCEDURES NECESSARY?**

All public footpaths and other public rights of way are highways in law. The process for deciding whether a right of way should be closed or diverted is therefore a public one.

This leaflet specifically deals with Article 16 Public Path Orders which are those made by the Department of the Environment, under the Access to the Countryside Order 1983, to enable development to be carried out in accordance with planning permission. The procedures that have to be followed for other Public Path orders, under Articles 14 and 15, are outlined in a separate leaflet published by Northern Ireland Environment Agency.

The procedures are designed to ensure that the public are made aware of the proposed change, and that anyone who wishes to has the opportunity to state their views, and have them taken into account before a decision is made.

## WHAT ARE THE PROCEDURES THAT ARE FOLLOWED?

The usual way of to apply to close or divert a public right of way, to enable development to be carried out in accordance with planning permission is through an Article 16 Public Path Order application.

The first step is for the applicant to contact the Department of the Environment. The Department will decide whether or not to make an order. Usually, this is done by advertising a draft Public Path Order; this gives anyone who disagrees with the proposed change the opportunity to object and also allows the public to make representations.

If there are no objections (or any objections that have been made are subsequently withdrawn) then the Department may decide to confirm the Order. But if there are substantive objections, and the applicant still wants to go ahead with the change to the path, the Department may decide to hold a public inquiry.

The closure, or diversion, to the line of the path on the ground can legally take place only if – and when – the Public Path Order is confirmed. It is an offence to physically close or divert a public right of way, even temporarily, without lawful authority and anyone who does so runs the risk of action being taken against them by a district council.

## HOW ARE THE OBJECTIONS OR OTHER REPRESENTATIONS DEALT WITH?

If there are only a few objections to a draft order, the Department may decide to deal with the case by 'written representations' – by inviting each party to comment on the views expressed by the other. The Department will continue to exchange correspondence in this way until each side has had the opportunity to comment fully on everything the other party has said. An Officer will also visit the site (normally unaccompanied) before a decision is reached on whether the Public Path Order should be confirmed.

If a number of objections have been made or the issues raised are complicated ones, the Department will appoint an independent Inspector to hold a local inquiry to enable the arguments for and against the proposed change to be fully debated in public. A decision on whether or not to confirm the order will then be made by the Department, taking into account the Inspector's report of the inquiry and his or her recommendation. The rest of this leaflet explains briefly what normally happens at a local inquiry into an Article 16 Public Path Order.

## WHERE WILL THE INQUIRY BE HELD AND WHO CAN ATTEND?

The local inquiry will be held at a suitable venue in the locality, such as a community hall. The Department will write to all those who have submitted objections or representations about the order, informing them about the date and venue. The arrangements will also be advertised in the locality.

Anyone may attend this type of inquiry but only those who submitted written objections or representations about the order have a right to be heard. Other people do not have this right, but may be allowed to put forward their point of view at the Inspector's discretion. If a person cannot attend the inquiry, they may write to the Inspector asking for their letter to be read out.

## WHAT HAPPENS AT THE INQUIRY?

There are no formal rules governing this type of public inquiry and, once the inquiry has opened, the Inspector has full jurisdiction over the proceedings. The way a typical inquiry might proceed is outlined below, although this may be varied by the Inspector to suit the circumstances of each individual case. The Inspector will open the Inquiry by explaining its purpose and by asking for the names of those who wish to speak and, where appropriate, the organisation they represent. An order of appearances will then be decided with allowances made, where possible, for anyone who has limited time to attend the inquiry.

It is the case for confirming the Order that is usually heard first. A representative for the Department will explain why the draft Order has been made. The applicant will then normally present his/her reasons for seeking the making of the Order. Witnesses in support of the applicant may then be called to speak. Statements made by such witnesses should be made available to the objectors. Those who wish to speak on their own behalf in support of confirming the order will also be given the opportunity to do so at this stage.

When all those who wish to speak in support of the change have been heard, it is the turn of those who are opposed to the Order to put their case. If the objectors are to be represented, the representative will similarly give a brief opening statement outlining their case and then call his or her witnesses, followed by any other people who wish to speak on their own behalf.

At the end of the inquiry, the Inspector will invite the representatives of the two sides to give short closing statements.

## WILL I BE CROSS-EXAMINED, AND WILL I HAVE THE OPPORTUNITY TO ASK QUESTIONS MYSELF?

If you wish to speak at the inquiry, then you must be prepared to answer any questions the Inspector may put to you. You should also expect to be cross-examined by the other side about the evidence you have given to the inquiry. In turn, you will have the opportunity to question the witnesses on the other side about their evidence (although not to directly question their representative).

## IT IS NECESSARY TO BE LEGALLY REPRESENTED?

Anyone who wants to give evidence at a local inquiry can, if they wish, appoint someone to represent them, such as a solicitor, a barrister or other professional person. Where this happens, copies of the statement made by the witnesses should be made available to objectors.

Those who are opposed to the Order can also appoint someone to represent them if they wish to, although it is not essential; the Inspector's job is to make sure that everyone who wants to put forward their views on the proposed change is able to do so, regardless of whether they are represented. If you do decide to appoint someone to act on your behalf, it is important to bear in mind each of the parties at an inquiry are expected to bear their own costs, regardless of the outcome of the case.

## WILL THE INSPECTOR LOOK AT THE LINE OF THE PATH ON THE GROUND?

The Inspector can be expected to have made an unaccompanied visit to look at the existing line of the path before the start of the inquiry. A further site visit may be arranged after the inquiry has closed, to enable those who have given evidence the opportunity to point out any features to the Inspector. However, the site visit cannot be used to introduce new evidence or to continue to debate the issues that were raised at the inquiry.

## WHAT HAPPENS AFTER THE INQUIRY IS OVER?

A detailed report of the inquiry will be made to the Department by the Inspector, together with his or her recommendation about whether or not the order should be confirmed. The Department is not bound to accept the recommendation, but where it does not it must set out its reasons.

Once a decision is taken, a copy of the Department's decision letter and the Inspector's report will be sent to all those who gave evidence at the inquiry and anyone else who requested a copy. If the decision is to confirm the Order, then notice of the decision will also be published in the locality.

## CAN THE DEPARTMENT'S DECISION BE CHALLENGED?

Once a public path order has been determined, the only way the decision can be challenged is through an application to the County Court. A challenge (which normally has to be made within six weeks of the decision) should not be made without taking legal advice.

If you believe the way the case has been handled amounts to mal-administration, it may be possible to ask for the case to be investigated by the Ombudsman. But the Ombudsman cannot alter the Order decision.

## WHERE CAN I OBTAIN FURTHER INFORMATION?

Northern Ireland Environment Agency of the Department of the Environment can provide advice on procedural matters relating to public local inquiries relating to public path orders. Contact the Countryside Access Officer, NIEA, Klondyke Building, Gasworks Business Park, Lower Ormeau Rd, Belfast BT7 2JA or telephone (028) 9056 9580.

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