

## Appendix 2: Legal Options

Options	Details	Process	Impact
Creating a Right of Way through a Creation Order (Highways Act 1980 Section 26)	Section 26, Highways Act 1980 is appropriate in circumstances where significant public need for a path has been identified.	Such process involves the making of a formal Order, which is open to objection and makes provision for compensation to be paid to the landowner.	Landowner is likely to object.
Creating a Right of Way through a Creation Agreement (Highways Act 1980 Section 25)	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.	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).  Once the agreement is made, the fact has to be advertised through publication of a notice in at least one local newspaper.  It is good practice to consult with other likely interested parties so as to be informed as to the support or concern that may exist within the local community. Careful consideration will be given to all responses received.	Landowner is unlikely to agree to enter into the agreement.
Diverting a Right of Way through a Diversion Order (Highways Act 1980 Section 119)	Section 119 of the Highways Act 1980 makes provision for the diversion of <b>a footpath or bridleway</b> if it can be shown that by doing so it is beneficial to the landowner, lessee or occupier of the land crossed by the right of way and the public.	This would require an acceptance by the Landowner that the path exists. The entire route would need to be part of the diversion to enable the entire route to be recorded. Order is open to objection.	Landowner and public likely to object.
Modification order to add a way to the definitive map: section 53(3)(c)(i)	Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the right of way exists, or has been reasonably alleged to exist.	A surveying authority can make a modification order without receiving an application. Alternatively anyone can apply to a surveying authority for a modification order to be made <ul style="list-style-type: none"> <li>• An application is sent to the surveying authority.</li> <li>• Notice must be sent to every landowner or occupier affected by the application.</li> <li>• Certificate of service of notice is served on the Surveying authority to say that notice has been sent to all landowners</li> <li>• The application must be investigated and the authority must decide whether to make the order (within 12 months)</li> <li>• If the authority decides not to make an order the applicant can object (within 28 days)</li> <li>• If the authority makes an order then objections must be made within 42 days</li> </ul>	Orders can be objected to. If objections not removed, orders are referred to the SOS. Decisions made by written representation or a public inquiry.
Legal Action Noncompliance with s106 Agreement	If the Council decides that there is a breach of a planning obligation (e.g. a financial contribution has not been paid or required works have not been carried out within the timescale specified within the legal agreement), there are options available:	The Council can apply to the Court for an injunction to force the obligation(s) to be complied with. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment;	The Legal Action would be against the landowner (now residents) and not against the developer. (Reputation Impact)