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Ms Amanda Campbell  
Senior Regeneration Lawyer (Locum)  
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Your ref: Legal/  
Our ref: ROW/3215923

24 January 2019

Dear Ms Campbell

**Town and Country Planning Act 1990 – Section 257**

**Order Making Authority:** London Borough of Ealing

Title of Order: The Ealing Public Path Stopping Up (Oldham Terrace Bye-law Footpath)  
Order 2018

I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to the above named Order, which was submitted to him for confirmation on 5 November 2018.

Careful examination and consideration of the Order and its map indicates that the Order has been incorrectly drafted, in that the incorrect notation has been used to depict the footpaths to be stopped up.

Schedule 1, Form 1 of the Town and Country Planning (Public Path Orders) Regulations 1993 (SI 1993 No. 10) require that the route to be stopped up should be shown by a bold black line. Additionally, I note that in writing to you on 9 May 2018 following the Secretary of State's rejection of The Ealing Public Path Stopping Up (Oldham Terrace Bye-law Footpath) Order 2017, my colleague Yvonne Oddy mentioned that the map for a remade Order would need to feature a bold black line in the centre of the path that was to be stopped up.

In this respect, Defra's letter of 12 February 2007 to all Order Making Authorities in England providing non-statutory guidance on the recording of widths on public path, rail crossing and definitive map modification Orders, identifies that:

The regulations require that ways affected by orders are shown by specified line styles on the order plan according to both the type of order and the effect on the way. It is normally assumed that the line marks the centre-line of the way only; the width of the line does not represent the width of the way. Care should therefore be taken to ensure, as far as possible, that the line drafted on the order does represent the centre-line of the way, accepting the limitations imposed by the scale of the plan.

A copy of the Defra letter is enclosed here for ease of reference; it is also available from the Gov.uk website at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434605/rights\\_of\\_way\\_16\\_extra.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434605/rights_of_way_16_extra.pdf).

When making the Order your Council appears to have used a bold black line around the path boundary of each route or section of the route to be stopped up as opposed to a bold black line along the middle of the routes, in effect a group of black lines that would indicate a right of way proceeding along a rectangular route.

Our *Advice Note 22 - Use of Correct Notation on Definitive Map Modification Orders and Public Path Orders*, available from the Gov.uk website at <https://www.gov.uk/government/publications/rights-of-way-advice-note-22-use-of-correct-notation-on-definitive-map-modification-orders-and-public-path-orders> explains that we consider public path Orders to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the Order. We will therefore reject any Order containing incorrect notation.

The Secretary of State takes the view that the issue identified above constitutes a fundamental error which is fatal to the validity of the Order. As he cannot purport to use his power of modification to correct such an error, he has decided not to exercise his power of confirmation. The sealed Orders are returned herewith and a copy of this letter is being sent to the objectors and all other interested parties identified in your Order submission.

Additionally, if your authority were seeking to now remake the Order, in the interests of the best practice identified in the Defra letter mentioned above I would draw your attention to the advice not only in that letter but in our proceeding *Advice Note 16 - Widths on Orders* (available from the Gov.uk website at <https://www.gov.uk/government/publications/rights-of-way-advice-note-16-widths-on-orders>)

Nonetheless, a minimum or approximate width should not be used in an order. Including a minimum or approximate width in an order can lead to uncertainty regarding the position, area, maintenance and obstruction of a right of way. If Inspectors come across orders where a minimum or approximate width is shown then the Inspector should modify the order and put in an actual width.

I note that the 2018 Order features approximate widths in its Schedule. I should explain that in the event that a remade Order received objections and was referred to the Secretary of State, and an Inspector appointed by the Secretary of State ultimately found that that remade Order should be confirmed, if the remade Order featured approximate widths for the route(s) to be stopped up, the Inspector would have to consider modifying that remade Order. Potentially, any such modifications might need to be advertised and a further procedural stage might then be necessary if any further objections were received at that juncture.

Yours sincerely

*David Bourton*  
Rights of Way Section