

DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS

GUIDANCE NOTES B:

EVIDENCE TO SUPPORT YOUR APPLICATION

As Definitive Map Modification Order applications are based purely on evidence, you will need to compile sufficient user and/or historical documentary evidence to support your application.

User Evidence

User evidence is evidence provided by people who have used a claimed route. This is done by the completion of forms (User Evidence Statements) included with the Application Pack. This type of evidence can be used for ways to be added to the Definitive Map, or for ways already recorded on the Definitive Map to be upgraded.

Occasionally under common law it can be shown that a landowner has in effect given the public a right of way; however, most claims involve user evidence and are based on Section 31 of the Highways Act 1980 which states:

(1) “Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This means that the public will have acquired a right of way in circumstances where:

- i) It does not appear that the landowner has given the public a right of way under common law,
- ii) The public have continuously used a way for at least 20 years without being stopped in any way,
- iii) There is insufficient evidence to show that the landowner did not intend to let the public use the path as a right of way.

The Act further states:

(2) “The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise”.

This means that the 20 year period is counted backwards from the moment when members of the public were challenged or stopped from using the way. For example, if a route had been used regularly by members of the public since the 1970s, and the landowner padlocked a gate preventing public access on 1 January 2004, we would investigate the evidence showing the public’s use of the path from 1 January 2004 backwards to 1 January 1984. This is often referred to as the ‘statutory’ 20-year period of use.

In order to make a claim to add to or upgrade a right of way on the Definitive Map you will need to collect evidence from people who have used the way. It is not always necessary for everyone to have used the claimed route for the whole of the statutory 20-year period; if numerous people have used a route for less than 20 years and their periods of use overlap it may amount to sufficient continuous public use over the statutory 20 years.

As many User Evidence Statements (WCA Form D) as possible should be completed by those people (witnesses) who have used the way. The witness should also mark the route they have used on the plan included in the form.

A Definitive Map Modification Order application is a public process, therefore any evidence submitted in support of the application may be made available for public inspection. For example, completed forms may be used to formulate a recommendation in a report to the appropriate County Council decision-making panel, and as such would be designated 'background papers' and become available for public inspection. 'Witnesses' who fill out User Evidence Statements should also be prepared to attend any future local public inquiry to support their evidence if called upon to do so.

It is also necessary to show that the landowner has not, within the statutory 20 year period, ever taken any steps to prevent the public's access or otherwise given any indication that they did not intend to let the way become a right of way. Landowners can successfully rebut a claim if they can prove that:

- i) The way was used with their express permission only, or
- ii) They have otherwise prevented access during the 20 year period by physically restricting access e.g. by locking gates, fencing across the way, or
- iii) Notices were erected e.g. stating that the way was private/not public, or stating that there was no intention to dedicate the route as a public right of way, or
- iv) They have given notice of their lack of intention to dedicate a right of way by making a formal declaration and depositing a plan with the Highway Authority.

It is important to note that:

- i) The public cannot claim a right to wander at random over an area of land. A claim can only be made for specific route.
- ii) The route being claimed must, of course, link at both ends to a public highway, i.e. a public footpath, public bridleway, a byway open to all traffic or a road. There are exceptional circumstances where a public right of way may end in a cul-de-sac, for example at a point of interest such as a hilltop viewpoint or lakeside viewpoint.
- iii) A public right of way is a route over which the general public has a right to pass and re-pass at any time. It should not be confused with a private right of way, which is a right that exists between two or more private individuals. Nor should it be confused with use of a route "by licence" where there is presumed permission granted to, for example, postal workers and other delivery services, or family and friends of the landowner.

Historical Documentary Evidence

"Once a highway, always a highway"

Once public rights of way have been created they remain in existence unless legally changed by order. So where historical evidence shows that a public right of way came into being in the past, the rights will still exist even if the route is no longer suitable for the purpose for which it was created or is no longer passable.

How much a document will influence the determination of a route's status depends on the nature of the document, the information it contains, the purpose for which it was produced and for whom.

Below is a summary of historical documents which are often consulted for evidence of public rights of way and which can be found in County Record Offices in Northallerton (mainly for records for the former North Riding area), Wakefield (for the former West Riding area) and Beverley (for the former East Riding area). In addition some documents may be found at the West Riding Archive Service at Morley near Leeds, at York City Archives, and at the Borthwick Institute in York. It is worth contacting the Record Offices to see which records are held, as some documents were not deposited in what might now seem to be the most likely archive. (See below for contact numbers.)

It would be difficult to recommend precisely how much research should be done towards any one application, as the more evidence that has been collected, the stronger the application will be. For applications relying particularly on historical evidence, the documents most commonly initially referred to are; Inclosure Awards and Plans, Tithe Awards and Plans, Railway Deposited Plans (where the route is crossed by a railway), 1910 Finance Act documents, and early maps.

The summary below is a guide to the material available; it is not exhaustive, nor is it in order of importance. Individual claims may demand the research of other or additional information.

County Maps

Before the advent of Ordnance Survey mapping, small scale commercially-produced maps of counties provided a source of travel information to the public, or at least to those members of the public who could afford them. By 1800 County Maps at scales of 1 inch or 2 inches to 1 mile covered most of England and Wales. County Maps can be found in most of the archive offices.

Many map makers carried out their own original surveys, whilst some plagiarised the work of others and later the Ordnance Survey. The earliest maps depicted features of interest, later ones included details of the post roads, turnpike roads, "cross roads" and later, railways. All were essentially topographic maps portraying what the surveyors saw on the ground, and increasingly came to provide greater levels of detail. With regard to old maps, please note:

- The term "cross road" is generally presumed to mean a public road connecting two other public roads, but it is doubtful whether map-makers checked status and this definition is open to question.
- Private estate road and cul-de-sac paths are sometimes depicted as "cross roads."
- There are known errors on many map makers' work.
- Even on reputed 'original surveys' the minor, connecting roads were frequently not surveyed or the alignment is often inaccurate.
- Content of the map is likely to be biased, reflecting the subscribers' interests e.g. over-emphasis on the depiction of private estates, and with information gaps.

Named Roads

It is a common assertion that a named road is a public highway. This arises from section 69 of the Highways Act 1773, and later the Highways Act 1835, which specified that common highways had to be named before an indictment for obstruction or disrepair could take place. Private roads were not liable in this way so they did not need to be named; however, please note:

- Many public highways are not named and some private ones are
- Names can be corrupted over time or disappear
- New names or local names may appear, with no legal significance, and may be referred to on Ordnance Survey maps, the List of Streets, etc.

The inference of public status of routes on old maps must be thoroughly tested.

Ordnance Survey

Small scale 1" to 1 mile (1:63,360): this was the earliest to be published by the Ordnance Survey. Surveyors Drawings were produced by the Ordnance Surveyors for their first survey of England and Wales from around 1801. Most of the information on the drawings was eventually reproduced on the published one inch maps. Mapping was originally for military purposes, to record all roads and tracks which could be used in time of war. This included both public and private routes. In 1820 an instruction was given to surveyors that "no existing road shall be omitted". These maps accurately record the physical road network, developing a descriptive categorisation over time.

During the 19th Century the practical value of accurate maps, not only for the management and transfer of land but also for military and civil engineering purposes, came to be more fully appreciated. The Ordnance Survey Act of 1841 laid the foundation of the modern Ordnance Survey in providing the surveys and maps of Britain required for government, military and public use alike.

Large scale 25" to 1 mile (1:2500) Ordnance Survey Maps, known as the County Series, are useful in providing accurate topographical detail including all administrative boundaries, both civil and ecclesiastical, roads, field boundaries, streams, buildings, antiquities, minor place names and so forth. The first edition 25" scale was introduced 1853-4 and covered all of what was considered the cultivated part of Great Britain by 1896. From 1855 to the mid-1880s the first edition was accompanied by a separate "Book of Reference" which gave acreages and land use details for each numbered parcel of land including roads. The book may sometimes distinguish between "road" and "occupation road" in the description, but there was a subjective element in data collection and it was not subject to close control.

Object Name Books also contain information about natural and manmade features and the accepted local spellings of their names, including roads.

Boundary Reference Books and Sketch Maps produced between 1841-93 by surveyors in the field may depict paths and tracks in close proximity to boundaries. They are available at the National Archives, Kew, London.

The O.S disclaimer: "*the representation on this map of a road track or footpath is no evidence of a right of way*" has appeared on maps since 1889 and may be presumed to apply to earlier ones (R. Oliver, *ibid.*). The implication is that these maps cannot be regarded as conclusive evidence of status of routes - although they are strong evidence of the physical existence of a path or track at the date of survey.

"F.P" for footpath & "B.R" for bridle road may be found on large-scale maps after 1883/4. An instruction to surveyors (1883) stated the object "being that the public may not mistake them [footpaths] for roads traversable by horses or wheeled traffic". It is unclear whether any inquiry was made as to legal status and it is only indicative of a route capable of use (and presumably actually in use) by pedestrians and/or horse riders at the date of survey.

Colouring of roads: until about 1880 all roads, paths and ways were coloured sienna. In 1884 an instruction to surveyors was that "All metalled public roads for wheeled traffic kept in good repair by the highway authority will in future be shaded". In 1905 "Good repair" was defined as "it should be possible to drive carriages and light carts over them at a trot". The practice ceased in 1912.

Casing: depiction of a road by means of shading or a thickening of the line on one side. In 1896 roads were classified either first or second class depending on whether they were Main or District roads as classified by the Rural District Councils. In 1905 an instruction to surveyors was that "both first and second class roads are shown on the published maps in the same way, by shading on one side". (R. Oliver, *ibid.* p67).

[Ref: "Ordnance Survey Maps- a concise guide for historians", R.Oliver, Charles Close Society, 1993]

Ordnance Survey Maps can be found in most of the archive offices.

Inclosure or Enclosure Awards

The purpose of inclosure was to replace the communal system of open field cultivation and common grazing with a system of land divided into individual plots and fields, redistributed amongst the existing owners. There were three methods of inclosing land: informal inclosure, inclosure by agreement (but often confirmed by a court of law) and inclosure by Private or General Act of Parliament. None of these belong to a strict period in time. By the end of the 18th century all processes were in use. Non-parliamentary enclosure was nationally the dominant form. Parliamentary inclosure was effectively halted in 1876. Early 18th century inclosure awards were usually the result of Private Acts of Parliament or agreements sponsored by individuals. The General Inclosure Acts of 1801 and 1845 provided a standard set of clauses, speeding up the procedure and reducing costs. Inclosure documents are usually in three parts: the empowering Act, the handwritten award and the accompanying plan. The Commissioners responsible for producing the document were empowered to stop up, divert and create public highways and private roads through and to enclosed land. Particular attention should be paid to the wording of the award, and the whole document should be read in conjunction with the accompanying map and the relevant Act(s) of Parliament. They vary greatly in quality, scale and detail.

Inclosure Awards and the associated Award Plans can be found at some of the main record offices. Archivists at any of the main offices should be able to advise whether an Award and Plan exists for a particular Parish, and at which Archive Office the documents can be found.

General Acts: 1801 & 1845

Under the 1801 Act Commissioners were required to set out and appoint: -

1. "Public Carriage Roads and Highways" (s. 8). New roads were to be a minimum 30 feet wide and fenced by owners of adjacent lands. They became maintainable at public expense once two justices had inspected them and declared them fully and effectively formed and completed and in a good state of repair. Road certificates were issued at special sessions.
2. "Private roads Bridleways, and Footways ... as they shall think requisite." These were to be made and repaired at the expense of the allottees. (s.10).
3. Public paths and bridleways, as described in the relevant award.
4. Paths not set out (except turnpike roads) were stopped up and extinguished.

Under the 1845 Act: -

1. "Valuers" were required to set out and make public roads and ways...and to stop up, divert or alter "existing roads and ways"
2. Public Carriage Roads were to be set out in accordance with the 1835 Highways Act. The widths specified were: -
 - 20 feet for a public cartway
 - 8 feet for a public horseway
 - 3 feet for a public footway beside a carriageway or cartway.
3. "Private or Occupation Roads and Ways" to be set out as valuers think requisite.

[For further information please refer to Planning Inspectorate ROW Advice Note No. 13]

Tithe Awards

Tithes were a local payment "in kind" of one tenth of the produce of the land which was originally levied to maintain the incumbent of the parish church. Wide variations in payment

and frequent disputes led to the Tithe Commutation Act of 1836 which replaced payments in kind with a rent charge levied in accordance with land value. Commissioners conducted surveys detailing the land, its ownership, occupation and use. These details were recorded in the Tithe Apportionment. Each plot or parcel of land was given a unique reference number relating to its position on the accompanying plan, the tithe map. Maps were produced independently by parishes and the quality of maps varies considerably. There was resistance to new surveys on cost grounds and in July 1837 the Act was amended to permit existing maps to be adopted. Two classes of tithe map were established: first class (sealed) and second class (unsealed). First class maps are those submitted to the commissioners and which were considered sufficiently accurate to serve as legal evidence of boundaries and areas.

Of 11,800 tithe maps produced only 12% were sealed as first class. Second class maps are not necessarily inferior cartography or “failed” first class maps. It is estimated that 75% of maps were never intended to be submitted for inspection* (J. P. Kain, below).

The depiction of public highways and private occupation roads, which often formed the boundary of a tithed area, is incidental to the tithe information recorded in these documents. Sometimes private or occupation roads are numbered and recorded in the apportionment within a landowner’s ownership. Tithes may or may not have been payable. Public highways not subject to tithe may or may not be included in the apportionment within a total acreage of “public roads”, or sometimes within the ownership of the “Surveyor of Highways”. Frequently they are not referred to in the apportionment at all. Like the enclosure documents, tithe records vary in quality, scale and detail. Also please note:

- It should not be assumed that if a tithe is levied on land forming a track that it did not carry public rights. It is possible that the tithe related to hay crop or grass crop which could be taken from the verges or surface of the track.
- Non-depiction of a path does not mean that it did not exist, merely that it did not affect the tithe charge. Cross-field footpaths are frequently not shown.
- Colouring of a track may or may not be significant in determining status. Reference must be made to the context within the document. It was a loose convention at the time and may relate more to the nature of the surface, than public/private status.

* *Reference: Interpreting Tithe Map Evidence, Prof R J P Kain, Rights of Way Law Review, June 1998 s9.3*

Tithe Awards and the associated plans can be found at some of the main record offices. Archivists at any of the main offices should be able to advise whether an Award and Plan exists for a particular Parish, and at which Archive Office the document can be found.

Deposited Plans

These relate to turnpikes, railways and canals, each of which required an Act of Parliament to authorise construction. Detailed plans were submitted showing the effect on the land, highways and private accesses crossed by the proposed routes. The Acts, plans and accompanying books of reference should be considered together.

Turnpike trusts were set up by various statutes from 1711. Each trust had a licence to create and repair roads and levy tolls, usually for a fixed term of 21 years, which was renewable. They created few new roads, but straightened and surfaced many existing main roads, improving the overall standard of construction. There were no powers of compulsory purchase. When a new alignment was created, the old rights over the old road were usually stopped up automatically, without need for a separate order, but the Act of Parliament specific to each turnpike trust must be consulted. From 1865 the turnpike trusts were gradually dissolved and the last toll was levied in 1895. The turnpike roads were usually designated “Main Roads.”

Railway and canal developments also required authority conferred by Acts of Parliament. From 1794 onwards it was a requirement for detailed plans of the proposed development to be drawn up and placed on deposit for public consultation. Plans were accompanied by a Book of Reference which itemised properties (fields, houses, roads etc) on the line of the utility and identified owners and occupiers.

These documents are generally regarded as strong evidence where there is reference to a highway or right of way; however, there was intense competition between railway companies in the mid-1840s and many proposed lines were never constructed. This in itself does not reduce the value of evidence in the documents providing that the parliamentary process was completed. Be aware that proposals could have failed or been rejected because of poor and inaccurate plans.

The Railway Clauses Consolidation Act (1845) specified criteria for the maximum gradient and minimum bridge dimensions for particular categories of road:

Private road bridge:	minimum 9 feet high 12 feet wide
Public Carriageway:	minimum 15 feet high 25 feet wide
Turnpike Road:	minimum 16 feet high 35 feet wide

Level crossings were acceptable on private roads but required the permission of the magistrates on public roads.

Quarter Sessions

Prior to the creation of County Councils, the administration of roads and bridges was the responsibility of the judiciary, and diversions and extinguishments were dealt with at the Quarter Sessions. Records were kept of legal events associated with highways. Up to the creation of the Crown Court, copies of all the “stopping-up” orders made by Magistrates Courts were deposited at the Quarter Sessions.

In addition, information about the maintenance and repair of county bridges and the failure of parishes to maintain their roads properly can be found in these records. Justice’s certificates in respect of the completion of the setting out of roads should also be found here.

Quarter Session Records for C18th, C19th and early C20th can be found at the main record offices, particularly Northallerton and Wakefield. These can be searched to establish that a route that is believed to be an ancient highway had not been subsequently stopped-up by Magistrates. Also routes can be identified as being considered public where there is a record of formal diversions having been undertaken.

The Finance Act 1909/10

In 1910 the Inland Revenue levied an incremental value duty on land when ownership was transferred. A national survey was required to assess all private land in the UK and to ascertain the site value of all land as at 30 April 1909. It was the most comprehensive record of land and was referred to as the “Second Domesday” or “Lloyd George’s Domesday”. Owners could claim tax relief in respect of land crossed by a highway. The deduction was made “for the amount by which the gross value would be diminished if sold subject to any public rights of way”, (s.25 (3) of the 1910 Act). The Act was repealed in 1920.

Two sets of plans were produced: the Working Plans for the original valuation and the Record Plans once the valuation process was completed. These were made on OS 25” to the mile 3rd Series 1909/10 base sheets. Two sets of books were produced to accompany the maps, the Field Books which record what the surveyor found at each property, and the so-called “Domesday Book” which was the complete register of properties and valuations.

Working plans and “Domesday” books may be archived in the county record office; however not all documents survive.

Although the existence of a public right of way may be admitted it is not usually described or the route shown on the plan. Private easements are sometimes referred to. The survey was carried out by a public body under statutory powers. It was a criminal offence to knowingly make a false statement to obtain a reduction in duty, with penalties on conviction. The documents are strong evidence as to what they contain.

Individual land holdings or “hereditaments” are identified on the map and outlined in colour. Roads and tracks incorporated within the coloured boundary are usually construed as being within private ownership. Roads and tracks excluded from hereditaments on each side may be construed as not being within private ownership and public rights *of some description* may be inferred. Please note:

- Avoid a simplistic interpretation of the documents. Surveys and documents were produced at a time when major disruption was caused by war. The Inland Revenue experienced major problems with a high staff turnover and a decline in numbers due to “call-up”, providing greater potential for inconsistencies between individuals and working practices.
- Increasingly, alternative interpretations are being accepted by the Planning Inspectorate: an occupation road over which a number of landowners had access may be excluded from hereditaments as well as a public highway
- As with all documents, seek confirmation of your contention through other documentation.

Finance Act Record Plans and Field Books are held at the National Archives at Kew, London. Some of the Field Books are held at Northallerton Record Office, but unfortunately these are difficult to refer to without the information recorded on the Record Plans. Researchers can be hired to examine documents at the National Archives to help to reduce the costs.

Estate Papers

Estate documents were commissioned privately. They were essentially working documents and their purpose was largely concerned with the day-to-day management of the estate. They will not have been exposed to public inspection in the course of production so must be viewed with caution. Documents may include estate maps and plans, title deeds and conveyances, sale catalogues, estate records, surveys and rentals. There may also be copies or extracts of tithe maps and inclosure awards pertinent to the estates landholdings and related correspondence. Access to research and/or to reproduce copies of these documents may require the owner’s agreement.

Estate papers may be privately held only, but some are deposited in record offices though not necessarily at the most local record office to the estate. Again, archivists will be able to advise whether their office holds records from any particular Estate.

Parish and Highway District Maintenance Records

Prior to 1835 highways were maintained by the parish vestry and although the General Highway Act 1835 permitted the combining of parishes for highway purposes, few took advantage of this. The Public Health Act 1848 required new local boards of health to administer highways in urban areas. In rural areas the parish remained responsible. Highways districts were set up under the Highways Act 1862 but many parishes chose to form their own local boards of health under the Local Government Act 1858 to avoid highway board control. After 1878 Highway Districts lost powers to the Sanitary Districts. Responsibility for maintenance of roads can often be found in the minute books and account books of parish highways surveyors or highway or sanitary boards. Highway powers were

eventually transferred by the Local Government Act 1894 to rural district councils, boroughs and county councils.

Parish Records

Parish Minute books and other papers may contain references to repair and maintenance of rights of way. There may also be references to the original survey carried out in the 1950's following the National Parks and Access to the Countryside Act 1949. They may provide insight into a right of way but can only show the parish council's perception at a given date.

Many Parishes have sent their old Minute Books to the local Archive Office. Current Minute Books should be held by the Parish Clerk, and should be made available for inspection if required.

Road Maps, Atlases and Guides

These can be of interest, and include maps aimed at cyclists reflecting the increased interest in outdoor leisure pursuits and free time available. For example:

- Gall and Inglis produced a half inch series of maps of England for cyclists, tourists, etc from the last quarter of the 19th century. These maps were based on Cary's work on county maps (see above). These continued to be printed until the First World War.
- Bartholomew produced a half-inch series of maps to cover England between 1896 and 1903. These were direct reductions from the Ordnance Survey one-inch maps. Bartholomew surveyed selected roads and obtained additional information from engineers, surveyors and local authorities. Again these maps were aimed at motorists and cyclists, and from 1900 until the late 1920's included a collaboration with the Cyclists Touring Club who provided information on the suitability of roads for cyclists.
- Michelin maps were aimed specifically at motorists and published from 1914 onwards. They were based on the Third Edition Ordnance Survey one inch maps and included a ground survey providing additional information.

Other sources:

Solicitors' papers, manorial papers, court books, court rolls, glebe terriers, local histories and guide books, newspapers, County Council Committees minutes etc.

Where to find these records:

County maps, inclosure awards, tithe, Ordnance Survey, Finance Act (working sheet/ "domesday book"), Quarter Sessions, Estate Papers, Minute Books, Parish Records and deposited plans should be available in the County Record Offices.

However, some inclosure, tithe and Finance Act material e.g. record plans and field books information may only be found at The National Archives at Kew. Ordnance Survey surveyors' drawings, maps and books of reference are located at the British Library, and Ordnance Survey boundary remark books & sketch maps are also at the National Archives at Kew. Inclosure Acts, deposited plans and turnpike records are at the House of Lords Record Office, although some may also be held more locally.

Contact details [last updated January 2014]:

- North Yorkshire Archive Service, County Record Office, Malpas Road, Northallerton DL7 8TB. Tel: 01609 777 585. Email: archives@northyorks.gov.uk
- West Yorkshire Archive Service, Wakefield Office, Registry of Deeds, Newstead Road, Wakefield WF1 2DE. Tel: 01924 305 980. Email: wakefield@wyjs.org.uk

- West Yorkshire Archive Service Leeds, West Yorkshire Joint Service, Nepshaw Lane South, Morley, Leeds LS27 7JQ. Tel: 0113 939 9788. Email: leeds@wyjs.org.uk
- East Riding Archives and Local Studies Service, County Hall, Beverley HU17 9BA. Tel: 01482 392 790. Email: archives.service@eastriding.gov.uk
- York City Archives: CLOSED due to relocation of premises from June 2013. Contact City of York Council Customer Services for updated information Tel: 01904 551 550
- Borthwick Institute for Archives, University of York, Heslington, York YO10 5DD. Tel: 01904 321 166. Email: borthwick-institute@york.ac.uk
- The National Archives, Kew, Richmond, Surrey TW9 4DU. Tel: 020 8876 3444.
- The British Library, 96 Euston Road, London NW1 2DB. Tel: switchboard 0843 208 114, Customer Services 01937 546 060. Email: Customer-Services@bl.uk

Local Authority Records

Please note that not all old Local Authority records were kept or may not have survived.

Local Government Act 1929: “Handover maps” or “Transfer Maps”

These are records of roads maintained by Rural District Councils before the 1929 Act which then became the responsibility of the County Council. It includes lists of Class 1 and Class 2 roads and other unclassified scheduled roads, all listed by district. The documents should comprise maps and a ledger identifying the roads and bridges to be transferred and expenditure over the previous three years. Materials and personnel are also listed.

Pre- Definitive Map records

Early records and files relating to path maintenance before the 1950's may exist within highway authority offices. They can provide evidence as to the physical existence of a path and the council's view as to status. If it was maintained at public expense (or the liability to maintain was accepted) then there is a presumption that it was a public path at that time.

National Parks and Access to the Countryside Act 1949:-

Original Parish Surveys & Schedules

Description and condition of stiles, bridges, gates, notices, obstructions etc, a general description and condition of the path, details of old maps, agreements, minutes and other records, details of any disputed sections, and finally the names and addresses of the surveyors and date of the survey.

Draft, Provisional and Definitive Maps and Statements

The Draft Maps were produced parish by parish. Notice of their publication was made in the London Gazette and the local paper, and posters displayed in parish and local council offices. In addition, the Draft Maps and Statements were placed on deposit for a minimum of 4 months during which time anyone could inspect the documents and make representations about what was or was not shown on them. Once objections or representations had been made, local hearings were arranged in different parts of the County. Once resolved, the Provisional Maps and Statements were advertised in the same way as the Draft Map. The only people who could object at this stage were landowners, occupiers and lessees and they could only do so by formally appealing to Quarter Sessions for a determination.

The Definitive Map and Statement are conclusive evidence that, at the relevant date, a highway of the specified status ran along the route depicted on the Map, without prejudice to the existence of any other rights. The Definitive Map and Statement records public footpaths and bridleways together with those tracks used mainly as footpaths and bridleways, but does not record carriageways or reputed carriageways.

Other records held within Public Rights of Way Section is likely to include parish maintenance files, diversion and modification files, Side Road Orders, Special Review and Limited Special Review files and bridge records.

Highways Record Plans

Highway Authority plans are likely to include Ordnance Survey maps showing highways dating to around 1950, and adopted highways post the 1974 local government reorganisation onwards.

This is a statement of adopted highways organised by district and detailing the lengths of highways maintained. They may be in a map form. The statutory requirement to maintain a list of streets was placed on urban districts by the Public Health Act 1925 and is now prescribed by section 26 of the Highways Act 1980. It is a public document, available for public inspection but there is no mechanism for challenge. It is not in itself a definitive document but may provide strong evidence of public status.

Inclusion on the list does not prove public vehicular status but is merely indicative of it. There is variation between Highway Authorities as to the interpretation and function of the document. Commonly, highway engineers regard it as a list of adopted streets and it may not include public streets which existed prior to the 1835 Highway Act and which automatically became maintainable at public expense even if not adopted. At present Highway Authorities will not adopt a road until it is brought up to a prescribed standard of construction etc. It is generally a comprehensive record of paved and surfaced routes, including urban footpaths.

Adding a previously unrecorded route to the list of streets as an “ancient highway” (i.e. in existence pre-1835 Highways Act) cannot be used to circumvent the making of a Definitive Map Modification Order to determine status. Adding a route is an administrative exercise with no means of challenge or debate. However, the evidence on which a council relies could be challenged, requiring the council to defend its position under s. 53 of the Wildlife & Countryside Act 1981.

Other Useful Local Authority Sources:

Sites and Monuments Record held by the Historic Environment Team, Waste & Countryside Services, North Yorkshire County Council.

Aerial Photographic Survey held by the Historic Environment Team, Waste & Countryside Services.

Register of Town and Village Greens held by the County Searches Information, Business and Environmental Services, North Yorkshire County Council

If you would like further assistance please contact us:

Definitive Map Team
Waste & Countryside Services
North Yorkshire County Council
County Hall
Northallerton
North Yorkshire DL7 8AH
email: paths@northyorks.gov.uk
tel: 01609 780780