



DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS

GUIDANCE NOTES A:

AN INTRODUCTION TO DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS

Information about making an application to have a route recorded on the Definitive Map

These notes contain information about the formal application process that would need to be undertaken to take the first steps towards recording a public right of way. The information is intended as a guide to help you decide whether the route that you have in mind fits the criteria that is required for a formal application to be made. If you decide to make an application, an 'Application Pack' will be provided, containing the application forms, guidance notes on how to complete the forms, and detailed information on the evidence required to support your application.

The Definitive Map and Statement is the legal record of Public Rights of Way (PRoW), showing all those routes where the public have the right to walk, ride, cycle and drive. If you believe that a route should be added to the Definitive Map and Statement, or that the Definitive Map and Statement is incorrect, and if you have evidence to support your belief, you may apply for a **Definitive Map Modification Order (DMMO)**.

Making such an application is commonly referred to as 'claiming' a public right of way. Under the provisions of the Wildlife and Countryside Act 1981, an application for a Definitive Map Modification Order may be made by any person, or body (such as a Parish Council), who believes that a route which is not currently recorded as a public right of way should be recorded as a public right of way, or where it is believed that a route that is recorded on the Definitive Map is recorded incorrectly, and therefore needs amending.

Applications for a Definitive Map Modification Order must be accompanied by evidence to support your application, this can be (either or both) user evidence i.e. evidence of modern and/or past use of a route, and documentary evidence.

Important Notes

Definitive Map Modification Orders are about whether rights already exist, not about whether new routes should be created or recorded rights taken away. Issues such as suitability, safety and nuisance cannot be taken into account when considering the evidence.

Applications for Definitive Map Modification Orders are not a "quick fix", and are often controversial and can lead to local ill-feeling. There is a waiting list of applications to be dealt with, and even once investigations begin it can take many months (or even years) for a case to be completed, as the case may involve the gathering of additional evidence, witness interviews, Committee reports, public consultations, and in cases where there are objections the matter may end up having to be resolved at a Public Inquiry. For these reasons it may be worth exploring other options initially, to see if the matter can be resolved without submitting a Definitive Map Modification Order application. There is no time limit for submitting a Definitive Map Modification Order application, so delaying a formal application whilst other options are considered will not adversely affect any application you later submit.

If you are stopped from using a route you and other members of the public have been using for years, before submitting a formal Definitive Map Modification Order application it may be worth making initial enquiries locally as to the reasons behind the closure of the route (this could be done via a Parish Council or other local group if you do not wish to approach a landowner individually). In some cases it may be that the landowner is willing to either dedicate a public right of way, or grant permissive access.

If the route the public has been using is threatened by development, you should consider contacting the Planning Authority and/or the developer to draw their attention to the fact that the proposed development affects a route being used (the County Council will only notify Planning Authorities when a proposed development affects a recorded right of way or a route already subject to a formal Definitive Map Modification Order application). The developer may then be able to incorporate a suitable through-route within the development at the planning stage, which may resolve the matter more quickly than by submitting a Definitive Map Modification Order application, and without the need for you to gather evidence. It should be noted that the submission of a Definitive Map Modification Order application is highly unlikely to result in planning consent being refused.

A Definitive Map Modification Order application can only be made for a specific route (a route from A to B), and must link to public highways at both ends. In exceptional circumstances we can accept an application for a cul-de-sac route, for example a route leading to a viewpoint or public space. An application cannot be made for a right to wander over an area of land; in this case an application to record the land as village green may be more appropriate (you can contact the County Council's Common Land and Village Greens team for further information)

User Evidence

User evidence is evidence provided by people who have used the route, by the completion of User Evidence Statements, which will be provided if you decide to make an application. 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 based on Section 31 of the Highways Act 1980, which states that public rights of way can come into being through long uninterrupted use (usually over a period of more than 20 years).

In order to make a claim to add a right of way to the Definitive Map, you will need to collect evidence from people who have used the way to demonstrate a collective minimum of 20 years usage. It is not necessary for each of the people to have used the way for 20 years themselves, but that when everybody's evidence is put together, it shows that the way has been continuously used for a span of 20 years.

As many forms 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 a plan which will be attached to the form.

It will also be necessary to show that the landowner has not, within that 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 prevented access during the 20 year period by physically restricting access, e.g. by locking gates, fencing across the way, or
- iii) Notices were always in place 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 legal declaration and depositing a plan with the Highway Authority.

It is important to note that:

- i) The public cannot claim a right to wander over an area of land. A claim can only be made for specific route.
- ii) The route being claimed must link at both ends to a public highway, ie a public footpath, public bridleway, restricted byway, 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 i.e. at a point of interest e.g. a hilltop viewpoint or lakeside.
- 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 for use by, for example, the postman and other delivery services, or by family and friends.

Documentary Evidence

Historical documentary evidence can be relevant for claims to add, delete or alter ways on the Definitive Map. It would not necessarily be relevant to routes that may have arisen from recent use only. With regard to claims based on documentary evidence, you will need to supply copies of historical and archival information collected from documents such as tithe maps, enclosure awards, old Ordnance Survey maps, property deeds, documents relating to the building of railways (if there is a railway near the claimed route), Parish Council Minutes, aerial photography etc. Many of these documents are available at local public record offices.

Further information on historical evidence will be provided with the 'Application Pack'.

The Application

The applicant will be the promoter of the application, and will be required to provide the evidence to support the application being made, and may be required to support the application through its various stages. The applicant's responsibility does not necessarily stop with the submission of the application form, as it may be necessary for us to contact the applicant to carry out further investigations into the evidence, to answer queries, and, in the event of objections to the claim, to call on them, and other witnesses, to give evidence at a local Public Inquiry. However, should the County Council decide to make an Order, the necessary work to publish and defend it at any subsequent Public Inquiry will be undertaken by the Authority.

If you decide to make a formal application you will need to:-

- i) Complete formal application forms, including a plan of the route
- ii) Identify and serve notice on all affected landowners and occupiers to inform them that you have submitted the application
- iii) Provide evidence to support your application; i.e. User Evidence in the form of completed User Evidence Statements, and/or historical documentary evidence

If the application is for a Modification Order to delete a right of way from the Definitive Map, or re-grade a right of way it is necessary to provide evidence to prove that a mistake was made when the right of way was first recorded in the 1950s. The Authority does not need to demonstrate that the map is correct; it is for the applicant to show that an error was made.

Please note: Definitive Map Modification Order applications are 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.

What happens after an application is submitted?

The County Council is required to determine applications as soon as reasonably practicable and if it has not done so within a year, the applicant may make representations to the Secretary of State. Unfortunately however, there is currently a backlog of these applications awaiting investigation, and for this reason all applications are prioritised and are dealt with in the order determined by their prioritisation score. Those applications with a higher score will be dealt with before those with a lower score. Because of the high number of outstanding applications, some applications, especially the lower-scoring ones, can take many years before they are started. It is therefore important that you include as much evidence as possible in support of your application, to get the best possible score. Details of the prioritisation scoring system are included in the Application Pack.

When the application reaches the top of the priority list the case is started. All the available evidence is reviewed, and an initial consultation (also known as an informal consultation) with the applicant, affected land owners, other local councils (usually district and parish), and user groups (the Ramblers, British Horse Society etc) is carried out.

In the light of the initial consultation the County Council determines whether or not a Definitive Map Modification Order will be made to record (or delete or amend) the route. If the County Council decides that no Order will be made, we will write the applicant informing them and setting out the reasons for the rejection. The applicant has 28 days from this letter to appeal to the Secretary of State.

If the County Council decides to make an Order, legal Notices are published on site, in a local newspaper, and on the County Council's website. Notices are also sent to the applicant, all affected land owners, user groups, and all other affected local councils. Anybody may make representations about or objections to the Order within 42 days of this Notice.

If no objections are received or all objections made are subsequently withdrawn, the County Council can confirm the Order and publish a legal Notice to this effect. Any party aggrieved by the Order may appeal to the High Court within 42 days of the date of the Notice, however at this stage an appeal may only be made on a point of law. Once the Order is confirmed the route is recorded on the Definitive Map as a public right of way and (in due course) signs are erected on the ground.

However, if there are objections to the Order, the case must be sent to the Secretary of State for determining. Please note that there may be a delay at this stage, and that the process is quite long (it involves preparing and submitting documents to a strict timetable, organising and holding public inquiries etc.). Opposed Orders are sent to the Secretary of State in chronological order ie the oldest ones are sent first.

The Order is submitted to the Planning Inspectorate, who act on behalf of the Secretary of State. An inspector will be appointed to determine the Order, and they will decide how to deal with the Order. It may be via written representations only, a local hearing, or a local public inquiry. A strict timetable for the submission of documents to the inspector is then set out and must be adhered to by all parties. If the County Council is supporting the Order, we will prepare the necessary documents for submission, however the applicant may be expected to assist with this by for example gathering further local evidence or helping identify potential witnesses to give evidence at a public inquiry. If the County Council is not supporting the Order, it will be the applicant's responsibility to prepare and submit all documents.

Once the inspector has seen/heard all the available evidence (e.g. following a public inquiry) a formal decision will be made and issued. In the decision letter the inspector will set out the reasons for coming to that particular conclusion. If the inspector decides to confirm the Order (with or without modifications) the County Council publishes a legal Notice to this effect in a local newspaper, on the Council's website, and on site. Any party aggrieved by the Order may appeal to the High Court within 42 days of the date of the Notice, however such an appeal may only be made on a point of law. Once the Order is confirmed the route is recorded on the Definitive Map as a public right of way and (in due course) signs are erected on the ground.

Creation Agreements / Landowner dedications

In occasional instances landowners may know the public are using a route, and would be unconcerned if the route were to become a public right of way. In these circumstances it may be that the landowner would be prepared to dedicate the route as a public right of way without the provision of evidence that rights had been acquired. In these circumstances the landowner can contact the County Council to discuss the possibility of entering into a Creation Agreement.

How to make an application

Full Guidance Notes on making an application for a DMMO will be sent out with the Application Pack.

If you wish to make an application or would like further assistance please contact us:

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