



DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS

GUIDANCE NOTES D:

**ADVICE FOR LANDOWNERS / OCCUPIERS WHO HAVE
RECEIVED WCA FORM B**

These notes contain information for landowners and occupiers who have been sent WCA Form B: Notice of Application for a Definitive Map Modification Order

What is a Definitive Map Modification Order 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. Public rights of way on the Definitive Map are all recorded with a status which relates to who can legally use them:

- Public Footpaths can be used by walkers only
- Public Bridleways can be used by walkers, horse riders and cyclists
- Restricted Byways can be used by walkers, horse riders, cyclists and non-motorised vehicles
- Byways Open to All Traffic can be used by walkers, horse riders, cyclists, non-motorised vehicles and motorised vehicles.

Under the Wildlife and Countryside Act 1981, an application for a Definitive Map Modification Order can 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 must be supported by evidence; this can be user evidence (evidence of modern and/or past use of a route), and/or documentary evidence (old maps, Inclosure Award documents and other records). Definitive Map Modification Order applications are not about creating new rights of way; they are the means of recording routes which already have public rights, but were omitted from the Definitive Map when it was drawn up in the 1950s, or were recorded incorrectly, or of recording routes which have acquired public rights through long, unchallenged use (over 20 years use).

As part of the legal process of applying for a Definitive Map Modification Order, the applicant must serve Notice on all affected landowners and occupiers. This is done by sending affected landowners WCA Form B and a plan to show the route the application relates to. Therefore if you have received a North Yorkshire County Council WCA Form B it is because someone has made an application to the County Council and believes that you own or occupy land that is affected by the application.

You do not have to make any response to the application at the moment, the Notice is merely to let you know that an application has been made. The application will not be investigated in the immediate future due to a backlog of similar applications. However, if you want to make comment to the County Council now, or at any time after receiving the Notice, your correspondence will be kept on the relevant file.

What do I do if I have no objection to the proposal?

In occasional instances you as a landowner may know the public have been using a route, and would be unconcerned if the route were to become a public right of way. In these circumstances you can contact the County Council to discuss the possibility of entering into a Creation Agreement to record the route as a public right of way.

How do I object to the application?

If you would like to object to the application, you will need to provide evidence to show why you believe the route is not a public right of way, or why the route is a different status to that claimed in the application.

Please note that the legislation does not allow issues such as desirability, suitability, security or safety to be taken into account; when determining Definitive Map Modification Order Applications the County Council can only take into consideration evidence of what rights legally exist. We appreciate that this may cause concern, however, there may be actions we can help with to address these issues if and when the route is recorded as a public right of way.

The following paragraphs describe the type of evidence we are looking for to successfully challenge a Definitive Map Modification Order application.

For applications supported by user evidence, applicants will usually have to provide evidence of use by the public for a period of more than 20 years, unchallenged and uninterrupted. You can oppose this by providing evidence of:

- Verbal challenges to people using the route - telling them that the land is private and there is no public right of way. Please give dates if possible and as much detail as you can.
- Physical challenges to use eg locking gates, fencing up gaps etc. Again, include dates and as much detail as possible.
- Notices you put up to let people know the route was not public (“No public right of way” or similar). Details of the location of any notices, the wording of the notice and dates they were in place would be useful.
- Names of anyone who you gave express permission to use the route (and dates if applicable)
- Any Highways Act 1980 Section 31(6) deposits submitted by you or a previous landowner (legal declarations to the County Council regarding public rights of way across your land)

For applications supported by historical documentary evidence:

- Evidence that an old road or path is no longer public eg Stopping Up Orders, Diversion Orders, Extinguishment Orders
- Documents showing that the route is private (eg Inclosure Award documents)
- Documents showing that the status of the route is different to the status the applicant is claiming (eg Inclosure Awards documents, legal Orders etc)

You can submit your evidence either as soon as you have received WCA Form B, or you can wait until the application is investigated by the County Council. As the County Council has a large number of Definitive Map Modification Order applications to investigate (see below) it may be a number of years before a particular application is investigated. For this reason it may be advisable to submit your evidence at an early stage, whilst it is fresh in your mind. All evidence will then be held on file until such time as investigations into the application begin. You can submit additional evidence at any time, should you come across further evidence at a later stage.

Please note: Definitive Map Modification Order applications are a public process, therefore any evidence or correspondence submitted in support of or opposing an application may be made available for public inspection as part of the formal process. If you submit evidence you should also be prepared to attend any future local public inquiry to support your evidence if called upon to do so.

What happens after a Definitive Map Modification Order application is submitted?

The County Council has a legal duty 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. The prioritisation score is based on the amount and type of evidence submitted with the application, challenge to public use and type of route applied for. 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.

As an affected landowner or occupier you will be consulted and/or informed at every stage of the application process.

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 landowners and occupiers, 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. Please note that the 'making' of an Order is stage 1 of a 2 stage process – although an Order is initially 'made' it does not necessarily mean it will eventually be 'confirmed' (at stage 2 of the process).

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 the grounds that the correct legal processes have not been adhered to or complied with. 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. This stage may take some time, as 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. From this point, affected landowners receive correspondence/requests for information directly from the Planning Inspectorate. A strict timetable for the submission of documents to the inspector is then set out and must be adhered to by all parties.

Once the inspector has seen/heard all the available evidence (eg 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 the grounds that the correct legal processes have not been adhered to or complied with. 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.

If the application is successful and the route is recorded as a public right of way, what will it mean to me as a landowner / occupier?

Private Access Rights: The recording of public rights of way on the Definitive Map has no effect on any private rights which exist along the application route; if you currently have private rights of access along the route these rights will remain unchanged. The status of a public right of way only applies to members of the general public using the route, not to anyone using the route with private rights, so if, for example, you have the right to access the route with a motor vehicle this would not be changed if the route were to be recorded as a public footpath, public bridleway or restricted byway.

Maintenance: Generally speaking, the County Council is responsible for the surface of public rights of way, and landowners are responsible for the maintenance of furniture (gates and stiles), for keeping cross-field paths clear of crops and all paths free from obstructions and overhanging branches.

However, if a public right of way is recorded via the Definitive Map Modification Order process then the surface of that path does not become the maintenance responsibility of the County Council but remains the responsibility of the landowner (the exception to this is for routes which are shown to have been public highways prior to the drawing up of the original Definitive Map ie. paths with historic evidence). In practice however, the County Council **may** be able to assist with maintenance (depending on budgets at the time), but any assistance would only be relative to the status of the route ie. if the route was recorded as a public footpath the Council would only consider assisting with maintaining it to a standard suitable for walkers, and **would not** be in a position to help maintain the route to vehicle standard.

Public Liability: Landowners and occupiers have a duty of care under the Occupiers' Liability Acts to people who come onto their land, whether it be people using public rights of way, visitors or trespassers. It is the duty of landowners to make sure that any stiles and gates on public rights of way are kept in good condition, as landowners and occupiers can be liable for injuries to path users caused by their negligence eg if a walker is injured using a collapsed stile or broken gate, or by trying to cross an obstruction across the path.

Contact us: for further assistance or advice on Definitive Map Modification Orders:

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