Definitive Map and Statement Modification Orders
Information for Landowners and Occupiers

This information provides details about public rights of way and the Definitive Map and Statement.

It explains what the Definitive Map and Statement is and why the County Council has written to you about a proposal to change the map which may affect your property.

If, after reading this, you have further questions please contact the case officer whose details are provided in the enclosed letter.

What is the Definitive Map and Statement?

- The Definitive Map and Statement records the existence of known public rights of way.
- These are public footpaths, bridleways, restricted byways and byways open to all traffic.
- All County Councils and Unitary Authorities in England and Wales must maintain a Definitive Map and Statement for their area.

Not all public rights of way are shown on the Definitive Map and Statement. Those not shown are often called "unrecorded public rights" and there is a procedure, which must be followed to add these to the Definitive Map and Statement. The procedure is set out in the Wildlife and Countryside Act 1981.

Getting a public right of way recorded

- Anyone who thinks that a public right of way is missing from or incorrectly recorded on the Definitive Map and Statement can make an application to the Council to change the Definitive Map and Statement..
- An application must be supported by evidence. Evidence could be of recent public use (i.e. user evidence forms completed by members of the public) and/or documentary sources (old maps or other records).

The Council will occasionally propose making a change to the Definitive Map and Statement. A proposal is made where officers discover documentary evidence that suggests the existence of public rights of way or where evidence has been presented to the Council but not in a formal application. The procedure for recording these public rights is the same as the ones made by application.

Procedure by the Council prior to making a decision

Before making any decision on an application to change the Definitive Map and Statement the Council will conduct a consultation exercise.

- This may be the first time you become aware of the proposal unless you have received a notification from the person making the application.
- The consultation letter provides information about the application and requests information from you, which may help the Council to make a decision.
- A minimum period of 4 weeks is allowed for replies. Officers will also carry out additional research of documents and maps at the Northumberland Record Office.

Next, officers will prepare a draft report, which contains a recommendation for the Rights of Way Committee. If you responded to the consultation exercise, a copy of the draft report will be sent to you. Replies are incorporated in a final report for consideration by the Rights of Way Committee.

The report to the Rights of Way Committee contains an assessment of the evidence both for and against the existence of additional public rights. The Committee will consider all the evidence available and decide whether additional public rights have been reasonably alleged to exist.

- If the Committee **does not believe** that additional public rights have been reasonably alleged the application is rejected.
- If the Committee **does believe** that additional public rights have been reasonably alleged to exist, they will instruct officers to make a Definitive Map Modification Order.

In either case, if new evidence becomes known the matter can be re-considered by members of the Rights of Way Committee so long as a Modification Order has not yet been made.

If the Committee rejects an application, the applicant has a right of appeal to the Secretary of State.

Procedure for a Definitive Map Modification Order

- The Council makes the Definitive Map Modification Order and advertises it both on site and in the local press.
- Owners and occupiers of land, path user organisations, public utilities and relevant parish and district councils are served with notice of the Order.
- A statutory minimum period of 42 days is allowed for objections which must be submitted in writing.
- Anyone may object to the Order.

If no objections to the Order are received, the Council will confirm the Order as unopposed adding the route to the Definitive Map and Statement. If objections are received, and following further consultation the objections are not withdrawn, the Order and objections are submitted to the Secretary of State for determination. The Secretary of State will appoint an Inspector who will consider all the available evidence and decide whether, on the balance of probabilities, the claimed public rights exist. The Inspector will contact all parties to the Order and will consider the evidence through either written representation or public inquiry.

It is not possible for either side to object to or contest the Inspector's decision because they do not like it. A decision can be challenged in the High Court on procedural and/or legal grounds. Challenges are not common.

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Frequently Asked Questions

Q1 Why is the Council doing this?

The Council has a statutory duty to make sure that the Definitive Map and Statement is reviewed regularly. The Council must also make sure that all public rights of way are recorded. The Wildlife and Countryside Act 1981 sets out the procedures that the Council follows.

Q2 How long will the process take?

It depends on the applications complexity and the objections it attracts. If the application has to be submitted to the Secretary of State for determination, it may take a number of years. Once the process is underway, it will be completed and either the Council or the Planning Inspectorate will inform you of the next stages.

Q3 An applicant can appeal to the Secretary of State if the Council decides not to make a Modification Order. Why?

Where the Council decides not to make a Modification Order, the applicant has a right of appeal. This appeal will help to ensure that the Council's original decision is reasonable and based on a fair and balanced assessment of the evidence.

This means that the process of recording public rights of way can often take a long time and involves consultation with many interested parties.

The right of appeal also helps to demonstrate that it is important for the Council not to take sides when considering evidence – it must always look at the evidence fairly.

Q4 My solicitor carried out a search when I bought the property and this claimed right of way did not show up.

A solicitor can only do a search by referring to the Definitive Map and Statement. Because not all existing public rights are recorded, some particular rights of way may not show up in the search.

Q5 I did not receive a notice from the applicant explaining that he/she was making an application for a modification order. Is the application invalid?

No. The Council still needs to look at all the evidence that has been brought to its attention. However, if the formal application procedure is not followed when the applicant submits evidence to the Council, then the applicant has no right of appeal.

Q6 The path serves no purpose/has not been used for many years. Why do you still have to investigate its status?

The Council has a legal duty to investigate a path if it believes an unrecorded public right exists. Public rights exist even if no-one is using the route or if the route is unused.

Sometimes a route is unused because people do not know it exists. By looking at the evidence, and if necessary, recording the public right of way, people might start to use it again.

The Council can seek to remove the right of way (extinguish it) from a public footpath or bridleway if it feels it is not necessary or needed for public use. The Council can also apply to the Magistrates Court for a BOAT to be extinguished. These decisions are not made lightly and the Council must be satisfied that the grounds for making the changes are valid. Where this does happen, there must be public consultation and if objections are received, this could lead to a Public Inquiry.

Q7 The application was for a footpath, but now it is proposed as a byway. Why?

When an application is received, the Council undertakes further research which may produce evidence that the route has a different status than the applicant believed. Where this is the case the County is under a duty to consider that evidence and, where necessary, make an order to record the correct status.

Q8 Can I make objections to the Council's Order?

Yes. The process is designed to enable people who oppose the Order to have their objections heard. However, objections based on the grounds of amenity, public safety or environmental impact are unlikely to succeed. Evidence which shows that the public right of way was never created or was subsequently extinguished provides a good basis for an objection.

Q9 If a public right of way exists across my land, will the Council have to pay me compensation?

No, because a new public right of way will not have been created. The Council is looking to see if rights of way already exist, not creating new ones.

If a right of way has occurred because the public have used it without being challenged by anyone, then it may be the lack of action by the landowner that has led to this particular route becoming a right of way.

Q10 Whose responsibility is to maintain the public right of way?

If the evidence suggests that the public footpath or bridleway came into being before 1949, it is likely to be the Council's responsibility.

If the route came into being after 1949, then it is likely that no-one will have a responsibility.

Roads created before 1835 must be maintained by the Council. Roads created after 1835 might not be maintainable if the highway authority refuse to accept responsibility.

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