

**Definitive Map Modification Order
Section 53 Wildlife and
Countryside Act 1981**



CAPITA SYMONDS

GUIDANCE NOTES

Introduction

Blackburn with Darwen Council holds and maintains the Definitive Map and Statement for the Borough. The Definitive Map and Statement form the legal record of the Public rights of way network. The Wildlife and Countryside act 1981 places duties on the council to keep the record under continuous review. This involves the updating of the map and statement when confirmed orders require this.

These guidance notes explain:

- Evidence of Public rights of way
- How to apply for a Definitive Map Modification order?.
- What happens when an application is received?
- Further information

Evidence of Public rights

Public rights of way come into existence in two ways,

- Legal Oder
- Use as of right.

There are a number of legal processes which can create public rights of way, such as enclosure awards, private acts of parliament, creation orders. The legal premise of “once a highways always a highway” means that when a public right of way has been created it remains until a legal process is carried out to extinguish or divert it.

Evidence of historic status of a route may be found in the following sources:

- Enclosure Award and Map
- Tithe Appointment and Maps
- Finance Act 1910 maps and record books
- Ordnance Survey Maps and other historic maps
- Railway / Canal /Reservoir survey maps and schedules
- Estate maps and records

- Quarter Session Rolls
- Sale Catalogues
- Highways board Minute books.

Sometimes documentary evidence will be sufficient in its own right to prove that a right of way exists, but it is worth bearing in mind that documents may be open to more than one interpretation. If there has been recent public use of the right of way you're claiming, it's worth submitting user evidence as well.

Before you start doing lots of research and hard work it's worth checking with the surveying authority whether the right of way you're claiming has been extinguished by a legal order. Any evidence of right of way status before an extinguishment order will have been invalidated if the order was confirmed.

In order to make a claim for a right of way based on public use you'll need to be able to demonstrate all of the following:

- A period of at least 20 years uninterrupted use by the public, counted backwards from the date when the public's right to use the way was called into question. If the public's right to use the path has not been called into question the 20-year period should be calculated backwards from the date of your application.
- Use should be 'as of right', which means without secrecy, force or the permission of the landowner. But there's no need for the public to have believed it was a right of way they were using.
- Use must be by the public at large, not just certain tenants or employees of an estate.
- Use must follow a linear route.

How to apply for a Definitive Map modification Order to update the legal record?

To apply for a Definitive Map Modification Order (DMMO) you must do the following:

1. Submit to the appropriate surveying authority:
 - a. An application form (Form A)
 - b. A map showing the claimed path to a scale not less than 1:25000
 - c. Evidence to back up your application
 - i. If your claim is based on user evidence you'll need witnesses to complete an evidence form confirming that they used the route. The evidence forms should be accompanied by a map/plan which shows

the route of the claimed right of way and has been signed by the witnesses.

- ii. If your claim is based on documentary evidence you'll need to submit copies of the documents on which your claim relies.
 - d. A certificate of service of notice (Form C)
Confirming that you have served notice of your application on every landowner or occupier affected by it (see below).
2. Serve on every landowner or occupier affected by the application A notice of application (Form B)
- a. Finding out who the owner of the land is can be difficult. One way of doing it is by carrying out a search with Land Registry, but be aware that not all land is registered - particularly in rural areas. If you can't serve a notice of application because you don't know who to serve it on, you can ask the surveying authority to authorise the placing of the notice on the land itself, usually on a fence or tree where it can be easily seen (Form D).

What happens when an application is received?

The council will first check the application is correct and add the application to the record of applications, notifying the applicant of receipt of the application.

As the surveying authority, the Council has 12 months from the date of application, to investigate the evidence and make a decision whether or not there are sufficient grounds to make an order.

If the decision is to refuse the application and the order is not made, as the applicant you will be notified and have the opportunity to appeal to the Secretary of state.

If the decision supports the application an order will be made. This is then advertised, and there is a minimum period of 42 days where representations and objections to the order can be made. If no objections are received during this time the order is confirmed as an unopposed order, and there is a further 42 day period for objections to be made raising problems in the statutory process. After this time the Map and statement are modified in accordance with the order.

If objections and representations are received the Council will considered the new issues that have been raised. The council may try to negotiate with the objectors to withdraw the objections; if the objections are formally withdrawn then the council may confirm the order as unopposed.

If the objections are held the council must submit the order to the secretary of state for a decision, a planning inspector will be appointed to oversee the case. This may require a public inquiry to be held.

Further information

There are a number of publications which provide further information of the process and the value of different sources of user evidence and where to find evidence. A good overview to the process is given in *A guide to definitive maps and changes to public rights of way - 2008 Revision* Published by Natural England and Available on the website.

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