

**Application for Modification Order
WILDLIFE AND COUNTRYSIDE ACT 1981
Blackburn with Darwen Council
DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY**

To: The Director of Regeneration, Housing and Neighbourhoods,
Town Hall, Blackburn, BB1 7DY

I/We (name of applicant) _____

of (address of applicant) _____

hereby apply for an order under Section 53 (2) of the Wildlife and Countryside Act 1981
modifying the Definitive Map and Statement for the area by (iii):-

(a) **Deleting** the *footpath / bridleway / byway open to all traffic* * which runs

from:

to:

(b) **Adding** the *footpath / bridleway / byway open to all traffic* * which runs

from:

to:

(c) **Upgrading/downgrading** to a *footpath / bridleway / byway open to all traffic* * the
footpath/bridleway/byway open to all traffic which runs

from:

to:

(d) **Varying/adding** to the particulars relating to the *footpath / bridleway / byway
open to all traffic* *

from:

to:

by providing that

and shown on the map annexed hereto (see notes overleaf).

I/We attach copies of the documentary evidence (including statement of witnesses)
as set out overleaf in support of this application.

Signed: Date:

(i) Delete as appropriate
* Delete as appropriate

NOTES FOR GUIDANCE

1. TO THE APPLICANT

1.1 Schedule 14 to the Wildlife and Countryside Act 1981 establishes a procedure whereby applications may be made to the surveying authority (i.e. the Council) for a modification to be made to the Definitive Map and Statement of rights of way. A number of forms are involved in the procedure and it is important that you comply with the various guidelines included with this pack to avoid invalidating your application

2. APPLICATION FORM - FORM A

2.1 This form, correctly completed, describes the modification that is being sought for the map. You should read through all the options and decide which is the most appropriate. Definitions of the different types of right of way are given below. If (b) describes your proposed modification for example, you should cross through the other options and then complete (b) in full. An example is given below:

(b) **Adding** the *footpath / bridleway / byway open to all traffic* which runs
from: Scratchy Face Lane [SU 2345 6789]
to: Cut Throat Lane [SU 2376 6745]

2.2 Definitions

Footpath: A highway over which the public have a right on foot only, other than such a highway at the side of a public road.

Bridleway: A highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway.

Byway: (i.e. byway open to all traffic) A highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used mainly for the purpose for which footpaths and bridleways are so used.

2.3 Map

One of the most important requirements of this form is for a map, with the subject route of the application marked **clearly** and **precisely**. You are strongly advised to use a map of 1:2,500 scale or larger. If you are submitting more than one application, a separate map will be required for each route.

2.4 Documentary Evidence

The Schedule requires that an application should be accompanied by **copies** of any documentary evidence (including statements of witnesses), which the applicant wishes to adduce in support of the application. Copies of documents should include certified photocopies (coloured photocopies where the originals are coloured or the detail unclear) or photographs. Exemption will be made where photocopying or photography is prohibited by the document custodian, but this should be confirmed in writing. The documents submitted in evidence should be listed, together with their sources and reference.

3. DETERMINATION OF APPLICATION

If the Council has not determined the application within 12 months of receipt of **FORM A** the applicant may refer the matter to the Secretary of State and he, after consulting the Council, may direct the latter to determine the application within a specified period. Appeal may also be made to the Secretary of State and the Council within 28 days if the latter decides not to make an Order.

**WILDLIFE AND COUNTRYSIDE ACT 1981
BLACKBURN WITH DARWEN COUNCIL**

**NOTICE OF APPLICATION
FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT
NOTES FOR GUIDANCE OVERLEAF - PLEASE READ CAREFULLY**

Section A

To (insert name of Landowner (s)):

Of (insert address of Landowner(s)):

Section B Notice is hereby given that on (insert date):

I/We (Insert Your Name)

Of (Insert Your Address):

have made an application to Blackburn with Darwen Council that the Definitive Map and Statement for the area be modified by:

Section C (* Delete as appropriate)

(a) **Deleting** the *footpath / bridleway / byway open to all traffic** which runs

from:

to:

(b) **Adding** the *footpath / bridleway / byway open to all traffic** which runs

from:

to:

(c) **Upgrading/downgrading** to a *footpath / bridleway / byway open to all traffic** the *footpath / bridleway / byway open to all traffic** which runs

from:

to:

(d) **Varying/adding to** the particulars relating to *the footpath / bridleway / byway open to all traffic** which runs

from:

to:

by providing that:

.....

Signed: **Dated:**

NOTES FOR GUIDANCE

[Please read carefully]

1. TO THE APPLICANT

1.1 These notes are for your guidance and help in applying to the Council for an Order modifying the borough's Definitive Map and Statement of Public Rights of Way.

1.2 In order to comply with Paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 it is necessary for you, the applicant, to send one of these notices to anyone affected by the proposed modification. If you do not know the names and addresses of all the people affected by the proposal, you may apply to the Public Rights of Way Team, Blackburn with Darwen Council, The Bungalow, Davyfield Road, Blackburn, BB1 2LX, for permission to post a notice at each end of the path concerned. Every effort should be made to identify all interested parties.

1.3 Once notice has been served on all the interested parties you should complete the Certificate of Service of Notice of Application, **FORM C**, sign and date the form, and return it to the address given at the top of **FORM A**. Guidance on how to complete the Notice of Application is given below:

2. Section A

2.1 The name and address of the individual affected by the proposal should be entered in this section. Separate notices should be sent to all interested parties, and a list of names and addresses of all those on whom notice was served should be included on **FORM C**.

3. Section B

3.1 The date on **FORM A** of your modification application form should be entered in this section, together with your name and address.

4. Section C

4.1 This section describes the modification being requested. You should read through all the options and decide which is the most appropriate. If (b) describes your proposed modification for example, you should cross through the other options and then complete (b) in full. An example is given below:

(b) **Adding** the *footpath / bridleway / byway open to all traffic* which runs
from: Scratchy Face Lane [SU 2345 6789]
to: Cut Throat Lane [SU 2376 6745]

The completed form should be signed and dated by the applicant and sent to the Individual named in **Section A**.

5. TO THE RECIPIENT

5.1 If you should receive a Notice of Application for a Modification Order it means that someone is proposing a change to the public rights of way on land in which you may have an interest. The Council will contact you to discuss the proposal, but not immediately. If you have any queries relating to the application, please contact the Public Rights of Way Team, Blackburn with Darwen Council, The Bungalow, Davyfield Road, Blackburn, BB1 2LX.

**BLACKBURN WITH DARWEN COUNCIL
CERTIFICATE OF SERVICE OF
NOTICE OF APPLICATION FOR MODIFICATION ORDER
WILDLIFE AND COUNTRYSIDE ACT 1981**

To: Director of Regeneration, Housing and Neighbourhoods
Of: Town Hall, Blackburn, BB1 7DY

I/We(name of applicant(s)) _____

of (address of applicant(s)) _____

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed: Date:

NOTES FOR GUIDANCE

This certificate should only be completed when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be provided below. Please indicate if you have been unable to identify all owners and occupiers affected by the proposal.

Name and address of Landowners Notified

- 1.
- 2.
- 3.
- 4.
- 5.

Method of Service

Details of Modification

Blackburn with Darwen Council

**APPLICATION FOR PERMISSION TO NOTIFY LANDOWNERS
BY SITE NOTICE
WILDLIFE AND COUNTRYSIDE ACT 1981**

To: Public Rights of Way Team, Blackburn with Darwen Council, The Bungalow,
Davyfield Road, Blackburn, BB1 2LX

PATH DETAILS

PARISH: _____

CLAIMED STATUS OF WAY: Footpath/Bridleway/Byway Open to All Traffic *[delete as appropriate]*.

DESCRIPTION OF PATH *[include a map]:*

FROM: _____

TO: _____

I/WE (Name of Applicant(s))

OF: (Address of Applicant(s))

have carried out an investigation in an attempt to discover the owners and occupiers of the land over which the alleged way runs. I/ we have made enquiries of: *[delete those that are not applicable]*.

- * Adjoining landowners
- * Local inhabitants
- * Post Office
- * Parish Council
- * Register of Electors
- * Land Registry
- * Other appropriate sources *[please state]*.

I/ we have been unable to discover ownership of the land, and I/ we request the Council to direct that Notice may be served by posting said Notices at either end of the way claimed.

Signed: _____

Date: _____

Blackburn with Darwen Council

NOTES

**APPLICATION FOR PERMISSION TO NOTIFY LANDOWNERS BY SITE NOTICE
WILDLIFE AND COUNTRYSIDE ACT 1981**

1. It is a requirement of Para 2 of Schedule 14 to the Wildlife and Countryside Act 1981 that an applicant for a Modification Order shall serve a Notice stating that the application has been made on every owner and occupier of any land to which the application relates.
2. The form of Notice, defined by the regulations, is set out in the Council's **FORM B**, which should be addressed and sent to every owner and occupier of land over which the alleged way runs.
3. It is the duty of the applicant to investigate the ownership and occupation of the land so that the necessary Notice may be served.
4. Where it proves impossible for the applicant to discover the owner and occupier, **if after reasonable enquiries have been made**, the Council is satisfied that it is not practicable to ascertain the name and address of all the owners or occupiers, the Council may direct that the Notice may be served by addressing it to the owner or occupier of the land [describing it] and by affixing it to some conspicuous object or objects at either end of the route concerned.
5. Before the Council can direct that a Notice be posted on the land, the Council must be satisfied that reasonable enquiries have been made. The applicant must, therefore, give details of the enquiries made, which may be conveniently done by completing the details overleaf **[FORM D]**.
6. Failure to serve Notice on any owner and occupier may invalidate the application.

Definitive Map Modification Order Section 53 Wildlife and Countryside Act 1981



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 consider 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.

Contact us:

Public Rights of Way Team
The Bungalow
Davyfield Road
Blackburn
BB1 2LX

Tel: 01254 585114

PUBLIC RIGHT OF WAY EVIDENCE FORM

NB The object of this enquiry is to reach the truth of the matter, whatever it may be. You are therefore asked to answer the questions as fully as possible and not keep back any information, whether for or against the public claim. This is important if this information is to be of real value in establishing the status of the path.

Please note that the information given in this form (including your name, address and other personal information) together with any accompanying drawings and documents will be made publicly available.

NAME: Mr/Mrs/Ms _____ **DATE OF BIRTH:** _____

ADDRESS: _____

_____ **POST CODE:** _____

e-mail: _____ **TEL:** _____ **OCCUPATION:** _____

PATH DETAILS: PARISH _____ **DISTRICT** _____

DESCRIPTION OF PATH *[please attach a map on which you mark the route **clearly and precisely**]*

The path starts at: _____

The path ends at : _____

1. What do you believe to be the status of the path?

[a] footpath [b] bridleway [c] byway open to all traffic *[see definitions below - circle as appropriate]*

[a] foot only [b] foot, horse & bicycle [c] a right of way for all traffic but mainly used as a footpath or bridleway

2. Have you used the above path?

Yes/No (delete as

appropriate)

If so: a. During which years? _____

b. How many times a year? _____

c. Where were you going to and from? _____

d. For what purpose? [e.g. pleasure, business, work] _____

e. By what means? [e.g. on foot, on horseback, with a vehicle] _____

3. Why do you think the path is public? _____

4. Has the path always run over the same route?

Yes/No (delete as

appropriate)

5. Has it been diverted at any time?

Yes/No (delete as

appropriate)

If it has been diverted, give the details and dates: _____

6. Have there to your knowledge ever been on the path any:

a. Stiles? [state location] _____

b. Gates [state location, dates or times when locked] _____

c. Notices? [location, when were they put up and what did they say?]

d. Other obstructions? [state nature and location and when they were in place]: _____

7. If you know who owns the land crossed by this route please give details.

8. Were you working for, or were you a tenant of, any owner or occupier of land crossed by the route at the time when you used it? Yes/No (delete as appropriate)

appropriate)

If so:

a. Give particulars and dates _____

b. Say whether the owner or occupier ever gave you instructions as to the use of the way by the public and, if so, what those instructions were. _____

9. Have you ever obtained permission to use the route? Yes/No (delete as appropriate)

If so, from whom? _____ When? _____

10. Have you ever been stopped or turned back when using the route? Yes/No (delete as appropriate)

a. If 'yes', give dates and details. _____

b. Were you ever told by an owner or tenant of the land crossed by the route, or by anyone in their employment, that it was not public? **Yes/No** (delete as appropriate)

If 'yes', give dates and details:

c. Do you believe the owner or occupier was aware the public was using the path?

Yes/No (delete as appropriate)

If 'yes', why? _____

d. Have you ever seen such notices as "Private", "No road", "No thoroughfare", "Trespassers will be prosecuted" or "This is not a Right of Way". **Yes/No** (delete as appropriate)

If 'yes', state when and give details: _____

e. Do you know of anyone else having been prevented from using it? **Yes/No** (delete as appropriate)

11. Have you ever had a private right to use the route in question? Yes/No (delete as appropriate)

If 'yes', please give details _____

12. Any additional information about the route and your use of it: _____

If necessary, continue your answers on a separate sheet of paper.

DECLARATION

Are you willing to attend a hearing, public inquiry or court to give evidence on this matter, should this prove to be necessary? **Yes/No** (delete as appropriate)

I have attached to this form a map marked with the route I used. **Yes/No** (delete as appropriate)

I acknowledge that this form will be made publicly available and may be published on the Council's website.

I hereby certify that, to the best of my knowledge and belief, the facts that I have stated are true.

Signature: _____ **Date:** _____

Person taking this statement [if applicable] : _____ **Date:**
