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council



Telford & Wrekin

C O U N C I L

**PROCEDURE AND POLICY FOR DEFINITIVE MAP MODIFICATION
ORDERS**

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1. Introduction

- 1.1. This policy has been devised having regard to the Wildlife and Countryside Act 1981, in particular Section 53 and Schedule 14.

2. Background

- 2.1. The Definitive Map and Statements (DMS) are an extremely important record of PRoW. These records are held and maintained by Telford & Wrekin's Rights of Way Section. The Statement, which accompanies the Definitive Map, may contain a description of the position and width of a path or any limitation or condition affecting the right of way. Together, they provide conclusive evidence as to the existence and status of the public right of way shown.
- 2.2. Under the provisions of the Wildlife and Countryside Act 1981, Telford & Wrekin Council as Surveying Authority has a duty to keep the DMS under continuous review.
- 2.3. Continuous review, in essence, means that when evidence becomes available that there is an error, inaccuracy or omission on the DMS, that the DMS should be modified as soon as is reasonably practicable by means of a legal order (known as Definitive Map Modification Order [DMMO]).
- 2.4. Thus, a Surveying Authority can make a DMMO whenever it discovers new evidence which requires the map to be amended. But in addition to this, any person may apply to the Surveying Authority for a DMMO to be made. Landowners may, for example, believe that a path recorded on the Definitive Map is not public, or that a public right of way is shown on the incorrect line or has the wrong status. Likewise, there are often cases where paths not recorded on the Definitive Map actually exist on the ground, and may have been openly used and enjoyed by the public for a considerable time. In such cases there may be a basis for that route to be added to the legal record, if public rights have been established.
- 2.5. Whoever seeks a DMMO, the same basic principle applies. The most important of these is the need for factual evidence and whether or not public rights exist. There are two main types of evidence which applicants should seek when making an application – *evidence of use* and/or *documentary evidence* such as historical maps and records. Evidence will need to be well-founded and convincing – merely asserting that a right of way exists without supporting evidence is unlikely to result in an Order being made. The whole exercise is concerned with resolving uncertainty over what rights actually exist not what rights are desirable from any particular viewpoint. See Appendix 2 for a list of the type of evidence required.

- 2.6. In order to achieve the correct results, consistent with facts and legislation, officers previously investigated such claims undertake thorough and detailed research into the relevant evidence, in each case, making a substantial commitment in time and resources. Due to the complexity of researching such applications, this would take longer than 12 months, causing a significant back log.
- 2.7. Although not stated explicitly, the legislation envisages that claims will be determined within 12 months. It does this by providing that an applicant may apply to the Planning Inspectorate for a direction requiring the local authority to determine a claim if it has not done so within 12 months of the date of receipt of the completed application. The Planning Inspectorate will have regard to the Council's policy for dealing with DMMO's in considering requests for direction.
- 2.8. A further material consideration is the Countryside and Rights of Way Act 2000 (CROW Act). In order to bring some certainty to users of the countryside and landowners about what rights actually exist, a cut-off date of 1st January, 2026 has been introduced, after which it will not be possible to apply for footpaths, bridleways or higher rights to be included on the Definitive Map based purely on historical documentary evidence (historical is classed as pre-1949). Thus after this date it will only be possible to claim rights based on user evidence. However, it is envisaged that the backlog will grow due to an anticipated increase in DMMO applications as 2026 approaches.
- 2.9. The Natural Environment and Rural Communities (NERC) Act 2006 extinguished every public right of way for mechanically propelled vehicles unless that way i) was already shown on a Definitive Map and Statement as a Byway Open to All Traffic (BOAT) or ii) was subject to one of a number of exemptions contained in Sections 67(2) or 67(3). One of these exceptions is if the right to use motorised vehicles had come into existence prior to 1930. Another would be if the main use in the period of 5 years before 11th May, 2006 was by motorised vehicles.

3. The Policy

Form of Application

- 3.1. In accordance with paragraphs 1 and 2 of Schedule 14 of the 1981 Act (see Appendix 1), all applications shall be made in the prescribed form and shall be accompanied by a map to a scale of not less than 1:25000 showing the way or ways to which the application relates.

- 3.2. It shall include copies of all documentary evidence (including statements of witnesses) which the applicant wishes to offer in support of the application, even if the documents are already in the possession of the Council.
- 3.3. The applicant shall serve notice on every owner and occupier of the land covered by the application. The notice shall state that the application has been made. If the applicant does not know the name and address of the owner or occupiers, he shall make reasonable inquiries. If the reasonable inquiries do not discover the name and address of the owner or occupiers, the applicant shall inform the Council of this fact and describe the inquiries made. At its discretion, the Council may allow the applicant to serve the notice by addressing it to “the Owner” or “the Occupier”, as appropriate, and fixing it to a conspicuous object or objects on the land. When the notice has been given to the owner or occupier the applicant shall certify that to the Council in the prescribed form.
- 3.4. The Council will provide all the necessary documentation to enable an application to be made in the prescribed form.
- 3.5. The number of evidence statements which an applicant needs to submit is not specified in the relevant legislation, although Telford & Wrekin Council generally regards 7 statements as being desirable.
- 3.6. The Council will not investigate the application until all these preliminary steps have been complied with. Any application that is not in the prescribed form with copies of supporting evidence, as set out in paragraphs 1 and 2 of Schedule 14, will normally be returned to the applicant with an explanation of its formal deficiencies.

4. Register of DMMO applications

- 4.1. Within 28 days of the receipt of a valid application, the Council will record the application on its register of DMMO claims which the Council is required to keep and maintain under Section 53B of the 1981 Act.
- 4.2. Priority for dealing with applications: Telford & Wrekin's default priority in determining the application is that of the date of receipt of the application. Applications may receive a higher priority if one or more of the following apply.
- 4.3. DMMO applications will normally be assessed by the PRow Section and priority given in accordance with the following criteria:
 1. The good use of public resources.
 2. The degree of public benefit.
 3. Obstruction of the route.
 4. The likelihood of the land over which the route runs being developed.
 5. Clarity of the evidence submitted.
 6. Where a substantial proportion of the user witnesses are elderly.
 7. Expediency in order to facilitate the resolution of rights of way.
 8. The availability of nearby alternative routes which offer the user a similar or enhanced experience to the claimed route.

5. Consideration of the evidence

- 5.1. If an application meets the formal requirements, but after a brief investigation of the evidence accompanying it shows that there is no reasonable prospect of it succeeding on the evidence submitted, then the application will normally be rejected with an explanation of the further evidence which would be required for it to be reconsidered.
- 5.2. Where there is incontrovertible evidence that the landowner had no intention during the claim period to dedicate the way to the public, for example by the landowner complying with Section 31(6) of the Highways Act 1980, then the decision should be that no right of way as claimed subsists and the application will thus be rejected.
- 5.3. If, however, there is no incontrovertible evidence that the landowner had no intention during the claim period to dedicate the way to the public the PRow officers will investigate that evidence, together with all other relevant evidence available to the Authority.

- 5.4. In investigating the application, a preliminary consultation will be conducted with the Ward Member, Town & Parish Councils and other relevant organisations (e.g. Rambler's Association, Local Access Forum).
- 5.5. The evidence contained in the application will be submitted to all "owners" or "occupiers" asking if they wish to make objections or any representations regarding the application. A reasonable time will be allowed for any such representations or objections to be made.
- 5.6. If user evidence is corroborated by other evidence, there may be no need for interviews to be undertaken by officers. However, if there is evidence casting doubt upon the user evidence (such as contradictory evidence from a landowner) then interviews of the landowner and a selection of user witnesses by an officer may be appropriate to determine whether the Authority should proceed with the application.

6. Determination of the application

- 6.1. Having considered all the evidence and representations made, a report will be prepared and considered in accordance with the Council's Rights of Way Scheme of Delegation.
- 6.2. When the Council has determined the application, the applicant and the landowner or occupiers who were served with the Notice of Application will be notified of the decision.
- 6.3. If the Council decide to refuse the application after assessing the evidence available at that time, the applicant has 28 days from service of the Notice of Decision to appeal to the Planning Inspectorate, who will appoint an Inspector to consider the appeal.
- 6.4. If, after 28 days, no appeal has been made, the file can be closed.
- 6.5. If the Council decide to grant the application to modify the Definitive Map, officers will continue the process and publish the DMMO.

7. Publication of DMMO

- 7.1. If the Council decide to grant an application, an Order will be made and published in a local newspaper and posted on site. The owners and occupiers of land affected and the Town/Parish Council will also be served with a copy of the Order. There will be a period of not less than 42 days for representations and objections to be made.
- 7.2. If there are no such representations and objections, the Council will confirm the Order, and notify the applicant.
- 7.3. However, if there are representations or objections or any amendment to the Order is necessary then the matter will be referred to the Planning Inspectorate who will appoint an Inspector to consider the issues and evidence in the form of written representation or a public inquiry. He may then confirm the Order with or without amendments.
- 7.4. After an Order is confirmed, a further Notice will be published in a local newspaper and posted on site and all interested parties will be notified. Any person aggrieved by the confirmation of an Order may question its validity in the High Court within 42 days of the notification. The grounds for such an application must be that the Order is not within the powers of the 1981 Act or that the Act has not been complied with. The High Court may quash an Order in whole or in part if it is satisfied that this is the case.
- 7.5. If the Modification Order is confirmed and not quashed by the High Court, it will become part of the DMS for the area and read with it as one document. A separate Legal Event Order (LEO) is required to effect a change on the Definitive Map and Statement. This LEO will be undertaken by the Council. The Ordnance Survey is automatically provided with a copy of the Order so that they can take the changes into account on the next edition of their relevant maps.
- 7.6. Other than signposting and waymarking there will normally be little effect on the ground. There will be no change in landownership and the Authority is not obliged to accept any liability for maintenance. If, however, the route is obstructed, steps will be taken to remove the obstruction.

8. Public Inquiries

- 8.1. It is the Council's policy to take a neutral stance at any Public Inquiry that may arise as a result of an objection other than in exceptional circumstances. This means that the Council's role will be limited to facilitating the process, i.e. by the provision of a venue etc.
- 8.2. All Applicants must be prepared to present a case at a Public Inquiry in support of any Modification Application that they may make.

- 8.3. Applicants are advised to read the guidance on the Planning Inspectorate website at <https://www.gov.uk/government/publications/rights-of-way-guidance-booklet>. This guidance explains what is expected of the parties at a Planning Inquiry. Applicants are strongly advised to read this before making any application.
- 8.4. Once a date for a Public Inquiry has been set the Council will contact the Applicant to inform them that they will be responsible for presenting the case at any Inquiry. The Council will provide the Applicant's details to the Planning Inspectorate so that the Applicant may correspond directly with the Planning Inspectorate regarding the relevant timetables for the presentation of evidence.

9. Guidance

- 9.1. The Council has produced guidance notes to assist applicants which will be provided free of charge to anyone who seeks to make an application to modify the DMS.
- 9.2. The guidance notes are also available on the Council's website.
- 9.3. The Council recognises that the procedures set out in the policy may need to be amended in the light of experience and any subsequent representations that might be received following its implementation. The policy will be updated periodically to reflect current judicial decisions.

WILDLIFE AND COUNTRYSIDE ACT 1981

SCHEDULE 14: APPLICATIONS FOR CERTAIN ORDERS UNDER PART III

Form of applications:

An application shall be made in the prescribed form and shall be accompanied by — a map drawn to the prescribed scale and showing the way or ways to which the application relates; and copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications:

- (1) Subject to sub-paragraph (2), the applicant 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) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
- (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
- (4) Every notice or certificate under this paragraph shall be in the prescribed form.

Determination by authority:

- (1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall—investigate the matters stated in the application; and after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the Order to which the application relates.

- (2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.
- (3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

Appeal against a decision not to make an Order:

- (1) Where the authority decide not to make an Order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.
- (3) If on considering the appeal the Secretary of State considers that an Order should be made, he shall give to the authority such directions as appear to him necessary for the purpose.

Evidence Required – Documentary

An Inspector conducting a Public Inquiry to determine whether a Public Right of Way has been established over land, will expect the following to have been researched and copies supplied (where relevant) as a matter of course:

- Mapping, ranging from First Edition Ordnance Survey (c.1835) to the latest relevant edition, including both large and small scale mapping.
- Old County and private maps.
- Title Map and Schedule Enclosure Awards and Schedule.
- 1910 Finance Act maps and Schedule.
- Relevant private Bills or Acts of Parliament or Orders (e.g. railway) plans and schedules.
- Relevant Guide books, maps and leaflets.
- Title deeds.
- Court Judgements.
- Dated photographs.
- Relevant correspondence (e.g. between landowners and tenants or alleged trespassers)
- Any other documentary evidence that may exist which is relevant to the matter.

User Evidence

An Inspector will normally expect to be able to question those supplying user evidence and for those people to be subject to cross-examination. Evidence not subject to this test may be discarded or degraded.

- Statements on prescribed forms Sworn Affidavits
- Relevant, dated photographs or other media
- Recordings of interviews with users

Note: Failure to produce as much relevant evidence as is applicable in each case, may seriously delay consideration and determination of any application. It is therefore in the applicant's interest to make the best case possible in order to achieve a speedy and successful outcome.

