

GUIDANCE NOTE: APPLICATIONS FOR MODIFICATIONS TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY



**WOKINGHAM
BOROUGH COUNCIL**

WILDLIFE AND COUNTRYSIDE ACT 1981: SCHEDULE 14

This guidance note has been developed to assist members of the public in making applications to modify the definitive map (more commonly known as public rights of way 'claims'), and forms part of the Council's standard pack for making an application for an Order to modify the Definitive Map and Statement of Public Rights of Way for Wokingham Borough Council.

Under the provisions of the Wildlife and Countryside Act 1981, a Modification Order may be applied for by any person who wishes the Definitive Map to be amended by either the addition, deletion, upgrading or downgrading of a route. In addition, the Statement containing the particulars of a right of way may be varied. Claims can be based on usage [user evidence] and/or documentary evidence.

Details submitted as part of an application, including the applicant's name and address will be published on the Council's Register of Definitive Map Modification Order applications in accordance with The Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005. All other personal data will be redacted prior to any third party disclosure.

If you would like more information about how the Council uses your data, please see our Privacy Notices, which are available: <http://www.wokingham.gov.uk/privacy/>

User Evidence

Although a presumption of dedication can arise under common law, most claims involving user evidence are based on Section 31 of the Highways Act 1980, which states:

- (1) *"Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- (2) *The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise".*

As you will see, it is necessary under the Highways Act to show that the public have used the way **as of right** and **without interruption** for a period of 20 or more years, running retrospectively from the date when the public's right to use the way was first challenged. It is important that the way claimed follows a specific route and is not simply based on the public wandering at large.

Landowners can successfully rebut a claim if they can prove that either the way was used with their express permission only, or that they have otherwise prevented the 20 year period from accruing by effectively restricting access, or by erecting notices to counter any suggestion that

there was any intention to dedicate the route as a public right of way. They could also have given notice of their lack of intention to dedicate a right of way by making a formal declaration and depositing a plan with the Highway Authority.

In order to establish a claim, it is necessary to collect evidence from witnesses who can demonstrate a period of use which, when assessed with other users, shows a collective period of at least twenty years uninterrupted use of the way, believing that they had the right to do so.

An evidence form [**FORM E**] is included in this pack for that purpose. As many forms as possible should be submitted, with a marked map attached to each form indicating the exact route the witness has used.

In some cases the Highways Act will not apply - examples are where the path crosses Crown Land or if there has been no challenge to public use. In such cases Common Law will be relevant. The test is whether the public have been using the route for long enough (there is no specific period) and in such a manner that the landowner must have been aware that the public thought it was a right of way, yet did nothing to correct that impression.

Documentary Evidence

With regard to claims based on documentary evidence, it is necessary to supply historical and archival information gleaned from documents such as tithe maps, enclosure awards, old ordnance survey maps etc, which when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates.

In an application for an order to delete or re-grade a right of way it is necessary to show that the definitive map is wrong by the discovery of evidence which, when considered with other relevant evidence, clearly shows that a mistake was made when the right of way was first recorded. It is not for the Authority to demonstrate that the map is correct but for the applicant to show that an error was made.

The applicant will be the promoter of the application and will be required to support it through its various stages. If the process seems too onerous, other interested parties or bodies (eg the Parish Council) may be interested in assisting.

It may be necessary to contact the applicant to carry out further investigations into the evidence, to answer queries, to serve required notices, and in the event of objections, to be called as a witness at a local Public Inquiry. The applicant's responsibility does not stop with the submission of the application form. However, should the Council decide to make an Order, the necessary work to publish and defend it will be undertaken by the Authority.

To apply formally for a Modification Order, you will need to do the following:

1. Complete **FORM A** [Notes for Guidance are on the reverse].
2. Complete **FORM B** [notes are on the reverse] and send it to all affected landowner(s).
3. Complete **FORM C**.

4. Complete **FORM D** [if you are unable to establish the affected landowner(s)].
5. If the claim is based on user evidence, your witnesses must complete **FORM E**.
6. If the claim is based on documentary evidence, the applicant should complete **FORM F**.

The Council is required to determine applications as soon as reasonably practicable and we aim to deal with all new claims within a maximum period of 12 months.