

## **Guidance notes on applications for Derbyshire definitive map modification orders made under the Wildlife and Countryside Act 1981**

### **Making, or opposing, an application to change the Definitive Map**

#### **Changing the Definitive Map and Statement**

Under Part III of the Wildlife and Countryside Act 1981 Derbyshire County Council has the task of keeping an official record of public rights of way in its administrative area. This record is called the Definitive Map and Statement (DMS).

These notes are intended to provide basic information and guidance about the process under the 1981 Act for applying for orders to amend the DMS, as it operates for Derbyshire. Therefore they do not provide any full account of relevant law and practice. Whilst the content is believed to be correct as at 8 July 2019, no responsibility is accepted for any errors, inaccuracies or omissions. Anyone who requires legal advice on their position concerning such an application should seek advice from an independent solicitor.

The DMS can be changed if evidence becomes available which shows it requires amendment. Anyone can apply to amend the DMS if they have evidence which proves that the Map or Statement is inaccurate or incomplete. For instance, rights may exist over a way not shown on the Map, or a path regularly used by horse riders may be shown as a footpath instead of a bridleway.

### **Making an application**

#### **Who can apply?**

An application to amend the DMS can be made by an individual or an organisation, such as a Parish Council, or a user group.

#### **How to apply**

An application pack can be obtained from the County Council's Legal Services Division [contact details below]. The completed forms must be returned to us, with a map or plan at a scale of not less than 1:25,000 showing the claimed route and copies of the evidence that supports the application.

Applicants must serve a notice stating that the application has been made on every owner and occupier of affected land, and certify to the County Council that this has been done. Landowners' details may be available from the Land Registry or be obtained by local enquiry. If landowners or occupiers cannot be identified, we may direct applicants to post notices at each end of the claimed path instead.

We may not be able to investigate each application immediately owing to the volume of applications we are dealing with. In order to be fair to all applicants and affected parties, applications are largely dealt with in chronological order of receipt. Applications are recorded on a register of applications published on the County Council website.

## Collecting your evidence – supporting an application

### Documentary Evidence

If you believe that the claimed route is a historical right of way your evidence may include historical information such as Ordnance Survey maps, enclosure awards and maps, tithe awards and maps, title deeds, statutory orders and plans, parish council minutes, photographs, railway and canal plans, reference books and published material that refers to the route in question. All maps and written records should be copied, and references given. You will need to tell us where the original records can be found, and which parts are relevant to the application.

### User Evidence

If you believe that a right of way has been enjoyed by the public over a number of years, you will need to collect evidence from people who have used the route concerned. We can supply forms asking how, and when, the route was used, and what users may have seen. Witnesses are asked to give full answers to the questions and not to hold back information, whether it appears to be for, or against, the application. They should also mark the route they have used on a map, and sign and date it and attach it to the form. You should not mark the route on the map for them.

We may interview the witnesses personally, to obtain more detail about use of the path. User forms and statements can be inspected by landowners and other interested members of the public.

## Opposing an application

An application to change the Definitive Map and Statement may not be supported by others in the locality. For example, a landowner or other local people might choose to oppose the application. We will ask landowners and other local authorities in the area if they have any comments or evidence relevant to the application (whether for or against) and we also welcome relevant evidence from any other parties who are interested in the matter.

Relevant evidence is that which relates to the existence, status or extent of the right of way. Matters such as privacy or suitability cannot be taken into account because they do not demonstrate whether a legal right of way exists. We do need to know, for example, if a landowner has taken steps to stop the public using a path by turning people away, or putting up signs saying 'No Public Right of Way'. There may be deeds or other documents in private papers which refer to the land over which the public right of way has been claimed. Alternatively, opponents may wish to present an alternative interpretation of the applicant's evidence.

We will take into account all material supplied both in support and opposition to the application to help us to reach a fair and balanced decision if it is given to us during our investigations.

## Investigating the Application

When the claim is investigated, we will look at the evidence that has been submitted with the application, any evidence submitted in opposition to the claim, and carry out any additional research that may be necessary to assess whether the DMS needs to be amended. Once all the available evidence has been collated a report will be produced and a determination reached by the County Council which will decide whether the evidence is sufficient to justify making an Order to amend the DMS.

A PDF copy of the report will be available to download from the relevant page of the County Council's online register of applications for rights of way.

The decision will be based on the evidence available about the history or current or past use of the route (not on whether the change proposed is desirable), and it may not reflect the claimed status or exact route set out in the application. If the decision is that the evidence does not support the application, we notify the applicant and advise them of any right to appeal against the decision.

If the decision is that the evidence does support the application, the applicant will be notified by the Legal Services Division that an Order to amend the DMS will be made.

## After an Order is made

We will advertise the Order by putting notices at each end of the path affected, and in the local press. Similar notices are sent to the landowners and occupiers. Anyone may object, or make representations, to the Order by writing to the Council during the 42 days following the advertisement.

If any objection to the Order is made and not withdrawn, we must refer the Order to the Secretary of State for determination. Arrangements will then be made for the Order and the objections to be considered by an Inspector appointed by the Planning Inspectorate, either at a local public inquiry, hearing, or by exchange of written representations. The Inspector will decide whether or not to confirm the Order, and will only take into account evidence that is relevant to the Order. Statutory objectors have a right to be heard in these proceedings. Other objectors, and supporters of the Order, may also be involved at this stage.

The Order must be confirmed before any change can be made to the DMS. When confirmed, it will amend the DMS to the extent specified in the order.

## Access to information

Please note that documents and correspondence sent to us in connection with an application to amend the DMS may be disclosed to other people outside the Council.

## Further information

If you have any questions about the applications procedure, please contact the Legal Services Division at County Hall, Matlock, Derbyshire, DE4 3AG (email:- [dmmo.register@derbyshire.gov.uk](mailto:dmmo.register@derbyshire.gov.uk), telephone:- 01629 539262).

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