

Guidance notes on application for Modification Order to modify the Definitive Map and Statement of Public Rights of Way in Cambridgeshire ('making a claim')

NOTE: These notes are intended for guidance only and do not represent a complete statement of the law

1. The Definitive Map and Statement

The Definitive Map and Statement make up the legal record of all the *registered* public rights of way in the County. They were produced as a result of the 1949 National Parks and Access to the Countryside Act. The Map shows the route of each right of way and the Statement gives a description, sometimes including details such as the width of the path and the location of stiles, gates, etc.

The Map and Statement are maintained by the Rights of Way and Access Team of the County Council. They may be viewed at the County Council offices in Cambridge. Each District Council should also have a copy of the Map covering its area available for inspection.

2. Definitive Map Modification Orders

The particulars shown on the Definitive Map and/or Statement may only be altered or 'modified' by means of a Definitive Map Modification Order. The Wildlife and Countryside Act 1981 sets out the procedure by which these changes take place. Detailed information is provided in the Natural England booklet 'A guide to definitive maps and changes to public rights of way'.

1. Paths can be added to the Definitive Map and Statement if there is evidence that a right of way has been created as a result of the public using a route (generally for 20 years but sometimes less depending on the circumstances of the case) without being challenged and believing it to be a path for the public to use. Paths can also be added where documentary evidence shows a path to exist.
2. The status of paths shown on the map can be altered if evidence of use or documentary evidence shows that a path is incorrectly registered on the Definitive Map.
3. Paths can also be deleted from the Definitive Map and Statement if evidence is produced which shows that no right of way should have been registered along a particular route.
4. Other details, such as the registered width of a path, can also be modified using this procedure.

If a member of the public considers that a path should be extinguished because it is no longer necessary for public use, or that a path should be diverted onto an alternative route, an application should be made for a public path extinguishment order or a public path diversion order respectively, and not a Definitive Map Modification Order.

3. The application process

An application should be made on the appropriate forms, available from the County Council. An application pack will consist of (* indicates that completion of this form is essential for the application to be complete):

Form MOD 1*

This form should be sent to the County Council with the evidence substantiating the application and a plan of the claimed path or the route to which your application refers. Those parts that are not relevant to the application should be crossed out and details such as the start and end points of the path/route should be added.

Form MOD 2*

This form should be used to serve notice of the application upon all owners and occupiers of the land affected by the application. Applicants are advised to send the notice by recorded delivery, and keep proof of posting, or to deliver it by hand.

Form MOD 3*

This form should be used to certify to the County Council that notice has been served on the landowners/occupiers. A list of the names and addresses of everyone who has been served with form MOD2 should also be supplied. The date on which this form is received by the County Council will be the formal start date of the application.

Form of application for permission to erect site notices

This form is for use in cases where the applicant has been unable to discover who is the owner of land crossed by the claimed path. It should be returned to the County Council with details of the attempts made to discover the ownership of the land. The Council should direct that Notice of Application (a copy of form MOD2 and a map) be posted on the land if it is satisfied that reasonable enquiries into the ownership of the land have been made by the applicant.

Public rights of way evidence forms

These are to be completed by people who state that they have used the claimed route, and form part of the evidence to support the application. They should be returned to the County Council with form MOD1.

Documentary evidence checklist

If the applicant wishes to draw the County Council's attention to documents which they believe supports the application, they should list the documents on this form.

4. Maps

When sending form MOD1 back to the County Council the applicant must also forward to the Council a map showing the route which is the subject of the Modification Order application. The scale of this map should be not less than 2 1/2 inches to the mile, or 1:25000. However, this map should preferably be at a larger scale of 1:10000 or ideally 1:2500. **Please note that by using any third party materials, such as maps, deeds, historical documents, extracts from books and other publications, you may be breaking the law and so before using any third party materials you should first check with, and where necessary, obtain the informed consent of the owner to that use.**

5. Evidence

An application for a Modification Order of any type must be based on evidence. The applicant is required to provide sufficient evidence to support their claim.

Where an application for an order is based on public use of a route, written evidence from people who have used the route must be produced. Standard public rights of way evidence forms are available for this purpose (included in application pack). People who have used
Cambridgeshire County Council guidance notes for applicants – Modification Orders – s53 Wildlife and Countryside Act 1981 *Updated Jan 2010*

the route should fill in a form, or write a statement covering all the questions included in the form. There is no minimum number, as each case is considered on its merits, but generally speaking the more forms the stronger the case may be. Each person completing a form should also draw onto a map of the area the route they themselves have used.

Written statements from local residents about their knowledge of the area are also important if a claim is made to have a path removed from the Map and Statement. Standard landowner evidence forms are also available from the County Council for this purpose.

Historical documents can also provide evidence relating to Rights of Way. Many are available for inspection at the County Record Offices at Cambridge and Huntingdon, and a leaflet describing the relevant types of documents has been produced by the County Archivist. An application for an order based on documentary evidence should provide a list of all the relevant documents, and photocopies if possible.

6. What the County Council will do

The County Council will acknowledge the application, giving the name and contact number of the case officer who is dealing it. The County Council will write at the same time to the landowner and occupier as set out on form MOD3 with the same information.

Under Schedule 14 of the Wildlife and Countryside Act 1981, properly made applications should be determined by the County Council (i.e. the Council should reach a decision on whether to make a Modification Order) within 12 months of receipt of the application. The Council has delegated authority to determine Modification Order applications to the Director Highways & Access, who considers applications at monthly meetings. Officers provisionally plan the consideration of the application for the meeting nearest to 12 months ahead of the date of receipt of application. If this date has to change at a later date, the applicant and affected landowners/occupiers will be advised as soon as possible.

The case officer will:

- invite the landowner/occupier to provide any information or evidence they may have about the route.
- contact those people who have given written evidence to interview them about their knowledge of the route.
- Visit as much of the site of the claimed route to which they can gain access.
- look for documentary evidence relating to the route (including historic evidence which may be found in the local Records Office, current and historic Ordnance Survey maps, historic aerial photography, copies of previous correspondence, Parish Council minutes, etc.).
- consult the local Parish and District Councils, user groups such as the Ramblers' Association and the British Horse Society.

Any information or evidence provided by any party cannot be treated as confidential. Evidence will NOT be shared with any other party before a report is written; however, once a report has been submitted to the Director of Highways & Access any supporting documents such as evidence forms or letters giving information will be available for public inspection.

When all the evidence has been collected the case officer will draft a report which will be copied to the landowners/occupiers and applicant for comments approximately 4 weeks prior to the report being submitted to the Director Highways & Access. Any comments received in response to the report will be passed directly to the Director so that he may consider them alongside the report. The Director will decide on the balance of probabilities whether or not a Modification Order should be made. All parties will be advised of the Director's decision whether or not to make an Order.

If an order is not made the applicant may appeal to the Secretary of State for the Environment Food and Rural Affairs, who may uphold the County Council's decision not to

make an order, or who may instruct the County Council to make an order. If an order is made there will be a period of 6 weeks during which the public has the opportunity to object to the order. If objections are received then the order will be sent to the Planning Inspectorate who will decide the case by means of a public inquiry, a local hearing or by an exchange of written representations. If the order is confirmed by a planning inspector, any person aggrieved by the confirmation of the order may question its validity at the High Court. If no objections are received the order will be confirmed by the County Council and the change will come into effect.

Further advice on any of the above processes is available on request.

The County Council aims to keep all parties informed of the progress of an application, and welcomes any comments, relevant information and evidence that may help its determination of Modification Order applications.

7. Applicant Consent Form

Finally, as a result of recent legislation the County Council now has to comply with a statutory requirement to make available for public inspection a formal register of all such applications, both a paper list in the office and a list on our website. One of the requirements is to list the applicant's name and address. The County Council appreciates that some people may not wish their details to be made publicly available, and there is provision in the legislation not to include such details if:

'the Authority is satisfied that:

53(5)(3)(a) the inclusion or retention of an applicant's name and address on the register would, or would be likely to cause substantial damage or substantial distress to the applicant or another person; and

(b) such damage or distress is or would be unwarranted.'

You should therefore complete the Applicant Consent Form appropriately; please note that if you do not wish your details to be included in the Register that you should state the reason(s) for your request.

Who to contact

Camilla Haggett (Definitive Map Team Leader) (01223) 715621, Rights of Way & Access Team, Box CC1305, Highways & Access Directorate, Cambridgeshire County Council, Shire Hall, Castle Street, Cambridge, CB3 0AP
camilla.haggett@cambridgeshire.gov.uk

Other useful addresses

County Record Office - Cambridge, Box RES1009, Cambridgeshire County Council, Shire Hall, Castle Street, Cambridge, CB3 0AP. Telephone (01223) 699399.

County Record Office - Huntingdon, Prices Street, Huntingdon, PE29 3PA. Telephone (01480) 372738.

Bedfordshire and Luton Archives and Records Service, Riverside Building, County Hall, Bedford, MK42 9AP. Telephone (01234) 228833 or 228777 or 363222 ext.2833

Peterborough District Land Registry – telephone (01733) 288288. You will need an application form from the Land Registry in order to search their records.