Guidance notes on making an application for a 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 National Parks and Access to the Countryside Act 1949. 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 or other such information.

The Map and Statement are maintained by the Asset Information Definitive Map 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. A digital version of the Map is available on our website at: https://www.cambridgeshire.gov.uk/residents/libraries-leisure-&-culture/arts-green-spaces-&-activities/definitive-map-and-statement/

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. Further guidance is available on the Planning Inspectorate website: https://www.gov.uk/government/publications/definitive-maps-of-public-rights-of-way-change-the-legal-records

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 without force, secrecy or permission (generally for 20 years but sometimes less depending on the circumstances of the case) without being challenged. 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’ under the Highways Act 1980, not for a Definitive Map Modification Order.

3. The application process

An application should be made on the appropriate forms, available from the County Council. It is important that the application is correctly made, as it could, by law, fail if it is not. An
application pack consists of ( * indicates that completion of this form is essential for the application to be complete):

**Form MOD1*** (item 1 on Application Check-List)
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 MOD2*** (item 2 on Application Check-List)
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 MOD3*** (item 3 on Application Check-List)
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 (item 5 on Application Check-List)**
This form is for use in cases where the applicant has been unable to discover the owner of land crossed by the subject path. It should be returned to the County Council with details of the attempts made to discover the ownership. The Council will 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 have been made by the applicant.

**Public rights of way evidence forms (item 6 on Application Check-List)**
These are to be completed by people who 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 (item 7 on Application Check-List)**
If the applicant wishes to draw the County Council’s attention to documents which they consider supports the application, they should list the documents on this form and provide a copy of the document(s) with the application.

**4. Location Map (item 8 on Application Check-List)**
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 two and a half inches to the mile, or 1:25,000. However, this map should preferably be at a larger scale of 1:10,000 or ideally 1:2,500. 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.

**Public Use/Knowledge**
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 the route should fill in this 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 evidence you have, the stronger your case may be. Each person completing a form should themselves also draw onto a map of the area the route they have used. Applicants are advised that providing a template for responses for any part of the evidence form will may render the evidence legally invalid. Any applications including templated responses will be returned without processing.

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.

Documentary evidence
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 copies of every document being relied upon.

6. What the County Council will do
Preparatory work
The County Council will acknowledge the application, giving the name and contact number of the case officer who is dealing with 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. Please note that Definitive Map Modification applications can take some years to process if contested. Therefore, depending on the circumstances, we may at this stage consult with the interested parties before taking an application forward to see if a workable local solution can be agreed.

Processing an application
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 Infrastructure & Management Operations, who considers applications at regular meetings.

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, and any other relevant parties.

Any information or evidence provided by any party cannot be treated as confidential if it is to play a valuable part of the investigation. Evidence will not usually be shared with any other party before a decision report is written (if this is considered desirable, personal details will be removed or consent of the witnesses sought first); however, once the report has been submitted to the Director 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 decision 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 Infrastructure & Management
Operations. The report will be revised as appropriate to take account of any comments received in response, and then finalised. If significant changes have been made, a further copy will be sent to the parties. The Director is required by law to 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.

Refusal
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 and comments
Please do contact us if you would like advice on any of the above processes. We aim to keep all parties informed of the progress of an application, and welcome any comments, relevant information and evidence that may help determination of Modification Order applications.

7. Applicant Consent Form (item 9 on Applicant Check-List)
Finally, we are required by law to hold for public inspection a Register of all Definitive Map Modification Order applications as a paper list in the office and as a list on our website. This includes the applicant’s name and address. We appreciate that some people may not wish their details to be made publicly available, and there is provision in the legislation not to do so if we are 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.’

Please complete the Applicant Consent Form appropriately, stating the reason(s) for your request if you do not wish your details to be included in the Register.

Who to contact
Laurence Smith (Asset Information Definitive Map Manager), (01223) 507239, Box SH1313, Highways Service, Cambridgeshire County Council, STA2101, Stanton Way Depot, Huntingdon, PE29 6PY; HighwaysAssetManagement@cambridgeshire.gov.uk

Other useful addresses
- Cambridgeshire Archives - Cambridge, Box SH1009, Cambridgeshire County Council, Shire Hall, Castle Street, Cambridge, CB3 0AP - telephone (01223) 699399; email cambs.archives@cambridgeshire.gov.uk; web www.cambridgeshire.gov.uk/archives
- Huntingdonshire Archives – Huntingdon Library & Archives, Princes Street, Huntingdon, PE29 3PA - telephone (01480) 372738; email hunts.archives@cambridgeshire.gov.uk; web www.cambridgeshire.gov.uk/archives
- Bedfordshire and Luton Archives and Records Service, Riverside Building, Borough Hall, Bedford, MK42 9AP - telephone (01234) 228833; email archive@bedford.gov.uk; web http://bedsarchives.bedford.gov.uk/ArchivesAndRecordOffice.aspx
• The National Archives – Kew, Richmond, Surrey, TW9 4DU – telephone (020) 8876 3444; web www.nationalarchives.gov.uk
• Peterborough District Land Registry – telephone 0300 006 0411; web www.gov.uk/government/organisations/land-registry