



EAST RIDING

OF YORKSHIRE COUNCIL

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Extracts from “the guidance pack for making an Application for a Modification of the Definitive Map and Statement of Public Rights of Way under section 53(5) Schedule 14 of the Wildlife and Countryside Act 1981”

If you decide to make an application please contact the Definitive Map Section (at the above address) who will send you the full application pack (please specify if you would like your application pack as a paper copy or on CD)

Introduction

The Wildlife and Countryside Act 1981 provides a process that any person may follow to apply to the Council for a modification order to be made to amend the Definitive Map and Statement of Public Rights of Way. An application can only be made if the applicant has evidence to show that either a public right of way exists which is not shown on the definitive map and statement or that a route shown on the definitive map and/or statement is recorded incorrectly.

You, as the applicant, will be the promoter of the application and will be required to support it through its various stages. It might be useful to contact the Parish Council to see if they are interested in assisting. The applicant's responsibility does not stop with the submission of the application form and you may be required to answer queries, serve required notices and possibly be called as witness at a local Public Inquiry if an Order is made and objections received. However, should the East Riding of Yorkshire 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 undertake these three stages:

Stage One - complete an application form following the procedure.

Stage Two - serve 'notice' on affected landowners/occupiers.

Stage Three - complete a 'certificate of service of notice.'

Background Information

The Definitive Map and Statement of Public Rights of Way is the legal record of the existence of the public rights of way shown on it. However public rights of way may exist that are not currently shown on the map and routes that are currently shown may be incorrect. The definitive map can only be changed using a legal procedure. To modify the map because of an omission or error a Definitive Map Modification Order is required.

A Definitive Map Modification Order can only be made if sufficient evidence is available to prove that a modification is required. An application may be made under Section 53(5) of the Wildlife and Countryside Act 1981 “The 1981 Act” application allows you to apply to the Council, requesting that the Council consider the evidence you have collected to prove that the definitive map requires modification. This application must be made using the provisions of Schedule 14 of The 1981 Act.

You may find the booklet produced by Natural England 'A guide to definitive maps and changes to public rights of way' (Ref: NE112) useful. This booklet is included on the Schedule 14 Guidance CD or can be downloaded free of charge from www.naturalengland.org.uk.

Evidence to support an application

The key to making a good application is the supporting evidence. Evidence can be in two forms; user evidence or documentary evidence, it can also be a mixture of the two. Copies of all the evidence you are using to support your application must be submitted with the application. Most evidence is only indicative and so the more evidence you can provide, the stronger your case will be.

User Evidence

Presumed Dedication is the process of gaining a public right of way by regular uninterrupted use of a route, by the public. 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:

“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 of 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.”

Common Law may be relevant if the landowner is aware that the public think a route over their land is a right of way, yet have done nothing to correct that impression. If this is the case there is no specific period of use but it may be difficult to prove the landowners acceptance.

To prove a route under the Highways Act you must show that the **public** have used the way **as of right** and **without interruption** for a period of 20 or more years, up until the route was first challenged or brought into question. If use of the route has not been challenged, you can make a Schedule 14 Application and the date of your application will be used as an end date for the 20 year period of use.

Use must be by the **public** at large, any use by the landowners employees, customers, friends or relatives, does not represent use by the public.

As of right means using a route:

- without force - not breaking a lock on a gate or breaking a fence to gain passage,
- without secrecy - the owner must have been in a position to object and if they never saw anyone using the route it could have been used in secrecy,
- without permission - if a landowner can prove that the way was used only with their permission or they have erected a sign saying that the route is a 'permissive footpath' it would not give rise to a public right.

Interruption or challenge to use of a route can be in many forms, a few examples are; a verbal request not to use the route by the landowner, a sign indicating that the public does not have a right of way or a locked gate thus showing the landowners intention not to dedicate. The landowner could have given notice of their intention not 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 shows at least 20 years uninterrupted use believing that they had the right to do so. It may be that the 20 years is shown by a number of witnesses' accounts collectively. It is important that the way claimed follows a specific route and it is not based on the public wandering at large.

Documentary Evidence

Documentary evidence can indicate that public rights exist. However it should be noted that documents can be interpreted in different ways and evidence can be contested by a different interpretation. It is likely that a number of documents indicating a public route will be required to prove its existence. If you think the evidence you have collected proves a route's existence you should check to make sure that a legal order has not been made to stop up or divert the route.

There are many sources of documentary evidence. The following are a good starting point:

- Inclosure Awards, Acts and Agreements
- Tithe apportionments
- Deposited plans where work was authorised by statute such as an Act of Parliament eg railways, canals, drainage channels, major roads – these have Acts, plans and books of reference
- Increment value duty (Finance Act 1910) – maps and registers
- Highway Orders (to see if the route has been stopped up or diverted)
- Parish records
- Estate maps
- Ordnance survey maps, current and old, and other historical maps

Defining the Status of Route

Below are descriptions of those highways that are recorded on the definitive map.

A **Footpath** is a highway over which the public have a right on foot only, other than such a highway at the side of a public road.

A **Bridleway** is a highway over which the public have a right of way on foot or horseback, or leading a horse. Pedal cyclists also have a right of way, but must give way to walkers and horse-riders.

A **Restricted Byway** is a highway over which the public have a right of way on foot, on horseback or leading a horse and with vehicles other than mechanically propelled vehicles (in some instances with a right to drive animals of any description along the highway), but no other rights.

A **Byway open to all Traffic (BOAT)** is a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used mainly for the purpose for which footpaths and bridleways are so used.

Once your research is complete you will need to consider your evidence to determine the status of the route you are proving. If your evidence is based on user evidence the following applies:

- Use on foot will give rise to a footpath
- Use on a horse will give rise to a bridleway
- Use with a non-mechanically propelled vehicle (pedal cycle or horse and cart) may give rise to a restricted byway.
- Use by a mechanically propelled vehicle does not create a public right of way.

If your evidence is documentary, the documents need to prove the status of the route you are claiming. If the evidence proves vehicular rights, it may be that the right for mechanically propelled vehicles has been extinguished by the Natural Environment and Rural Communities Act 2006. The Council will consider this when they determine the application.