

Dear Sir/Madam

**WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53
APPLICATION FOR MODIFICATION OF THE DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY**

I enclose the County Council's standard pack for making an application for an Order to modify the Definitive Map and Statement of Public Rights of Way for Cumbria. 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 the addition, deletion upgrading or downgrading of a route. 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.

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 20 years uninterrupted use of the way, believing that they had the right to do so. Evidence forms [WCA 8] are 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. The witness should be aware that the completed form will be used to formulate a recommendation in a report to the appropriate Committee. As such it would be designated a “background paper” and become available for public inspection. The witness should be prepared to attend any future local Public Inquiry to support their evidence, if called upon to do so.

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 and maps, old Ordnance Survey maps, finance act maps, railway/canal survey maps and schedules, estate maps and records, quarter session rolls, sale catalogues, highway board minute books 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 burdensome, 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 County 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 read the “Explanatory Notes for Applicants” and complete the appropriate forms. These should be returned to the Countryside Access Team, Cumbria County Council, The Parkhouse Building, Kingmoor Business Park, Carlisle, CA6 4SJ. If you require further information or extra forms, please contact countryside.access@cumbria.gov.uk.

The County Council will undertake a consultation procedure with interested parties including the local Authorities, landowners, occupiers and certain prescribed

organisations. The County Council may carry out its own research and investigations. A report will be prepared summarising the evidence and considered by the Council's Development Control and Regulation Committee. There is a right of appeal/objection if you or any person is not satisfied with the decision.

Please note, following the enactment of the Natural Environment and Rural Communities Act 2006, new BOATS (Byways Open to All Traffic) can only be added to the Definitive Map in a very limited number of cases. The Act effectively restricts the creation of new vehicular rights of way in the countryside.

Yours faithfully

Countryside Access Team
Highways, Assets and Strategy