

WILDLIFE AND COUNTRYSIDE ACT – SECTION 53

Definitive Map Modification Orders

What is a Modification Order?

- [i] It is possible to apply for a Modification Order to change the Definitive Map and Statement of Public rights of Way. Such an application has to be made on the basis of evidence that the map should be amended. Public rights may exist over a route that is not shown on the Definitive Map or higher rights may exist over a route that is already shown. On the other hand, rights may be shown which have been recorded in error.

- [ii] Modification Orders are not about whether it is a good thing or a bad thing that the path should be added or deleted, but about whether particular rights exist. The suitability of a claimed path for people likely to use it is irrelevant. If someone wishes to divert a path, there are separate procedures for this. [For example, if a landowner wishes to re-route a path for a valid reason then they would have to apply for a Diversion Order under the provisions of the Highways Act 1980 or the Town and Country Planning Act 1990.]

- [iii] There is no charge for making a Modification Order application as, if it is successful, it becomes in effect a correction to the Definitive Map. However, an applicant would be expected to submit proper evidence with the application.

Who may apply?

Anyone may apply for a Modification Order. This includes both individuals and groups of people such as the Ramblers' Association or a Parish Council.

When can an application be made?

An application may be made for the addition of a right of way to the Definitive Map or for the realignment or deletion of ways already shown. An applicant may also apply for a right of way to be shown differently (for example if the applicant considers that a footpath should be shown as a bridleway) or application may be made for any other particulars contained in the Map and Statement to be amended. However it is very important to realise that where the application seeks to secure a change in the location or even the deletion of an existing right of way that this claimed revision must be supported by cogent evidence. The mere assertion that the Definitive Map is incorrect is not enough.

Evidence

It is important to submit as much evidence as possible in support of the application as the decision whether or not to make an Order will be based on the evidence provided and any other available evidence. There are two kinds of evidence which may be submitted: user evidence and documentary evidence.

- [i] User Evidence – if a path is not shown on the Definitive Map but the public have been using it as of right for a continuous period of twenty years or more, it may have become a public right of way, unless there is sufficient evidence that there was no intention during that period to dedicate it to the public. (This is contained in Highways Act 1980 Section 31) “The public” is taken to be just that, rather than any “special” group of people such as employees of the landowner. The term “as of right” means that the public used the path as if it were a highway; that is to say openly without secrecy or the use of force and not needing to seek or be granted the permission of the landowner. The period of twenty years is counted back from the date when the public’s right was first brought into question. However, it is also possible for a dedication of a right of way to occur under the Common Law where the period of use is less than the twenty years stipulated in the Highways Act. The Living Environment Programmes Team supply Path User Forms for completion by members of the public as part of the application pack. These forms should be accompanied by a map marked by each path user to show the position of the path they are referring to in the form. These Forms and Maps should be submitted with the application.
- [ii] Documentary Evidence - documentary evidence may consist of, for example: old maps, parish Records, Inclosure Awards, or Tithe Maps. Such documents may be found in the Cornwall Records Office and whilst Cornwall Council will carry out a search of primary sources as part of its investigation of an application, it may well be worth an applicant researching available records for the area in question.

How to apply

- [i] The Applicant should apply to:
Cornwall Council, Environment & Heritage, Programmes Team, St Clement Building, Old County Hall, Truro, Cornwall, TR1 3AY
Tel: 0300 1234 202
in the first instance for the relevant application forms. They are:

FORM 1 [Application for Modification Order] is to be completed and returned to the Living Environment Section. The Application must be accompanied by a map to a scale of not less than two and one half inches to one mile – larger if possible – which should clearly show the path or way in question.

FORM 2 [Notice of Application for Modification Order] is to be completed and then sent to every owner or occupier (including those with a private right over the way in question) of any land to which the application relates. A map clearly showing the effect of the application should accompany the Notice.

FORM 3 [Certificate of Service of Notice of Application] must be completed by listing the names and addresses of those owners and occupiers who have been served notice of the application. It should be returned to the Living Environment Programmes Team together with FORM 1.

- [ii] If, after reasonable inquiry has been made, the applicant is unable to trace any owner/occupier affected by the application, they may apply to the Living Environment team [by completing and returning **FORM 4**] to dispense with a personal notice and serve notice instead by addressing it to the owner or occupier and affixing it to some conspicuous object on the land. The Certificate that notice has been served is essential: without it the Cornwall Council is under no obligation to consider the application.

What happens next?

- [i] Once confirmed as legally valid any application made will be held on file until such time as it can be dealt with in accordance with the Council's published policy statement. However, in the meantime, Cornwall Council will consult the appropriate Parish and District Councils, the local County Councillor and relevant users groups. In order to investigate the application fully and come to a decision based on all the available evidence, a full copy of the user evidence together with copies of any responses received from the above consultations will be sent to the landowners/occupiers affected and an opportunity will be given for them to submit their evidence. Any responses received, together with the consultation responses will then be sent to the applicant for their comments.
- [ii] The application will normally be determined by Cornwall Council's Solicitor in consultation with the Chairman and Vice Chairman of the Modification Orders Panel. If the decision is that an Order should be made, the Order will be published at a later date. Copies of the Order will be served on the applicant, landowners/occupiers and other interested parties. Notices will also be posted on site and in the local newspaper. A period will be allowed for objections or representations to be made. If objections are received, then the matter has to be passed to the Secretary of State for the Environment who normally determines the matter by holding a Local Public Inquiry.
- [iii] If the decision is taken not to make an Order, the applicant has a right to appeal to the Secretary of State who will consider all the evidence and direct Cornwall Council whether or not to make an Order accordingly.

ENVIRONMENT, PLANNING AND ECONOMY ENVIRONMENT SERVICE

ENVIRONMENT AND HERITAGE

Cornwall Council, St Clement Building,
County Hall, Truro, Cornwall, TR1 3AY Tel: 0300 1234 222 www.cornwall.gov.uk