

A Guide to Definitive Map Modification Orders (and 'claimed paths')

This guide is a simple introduction to the Definitive Map and to the Modification Orders which add paths to it. If you want to learn more about this, then some publications which go into greater detail are listed at the end of this guide.

The Definitive Map

Nottinghamshire's Definitive Map is a map maintained by Nottinghamshire County Council which shows the public rights of way (PROW) that the County Council knows exist. There are four types of PROW recorded on the Definitive Map:-

- | | |
|----------------------|-------------------------------|
| 1) footpath; | 2) bridleway; |
| 3) restricted byway; | 4) byway open to all traffic. |

The Definitive Map dates back to the National Parks and Countryside Act 1949. Before that there were no comprehensive records of where public footpaths existed. Surveys were carried out by Parish Councils in the 1950s and the Map went through Draft and Provisional stages before the Definitive Map was published.

The Definitive Map is a legal document and if a path is shown on the map, that is legal proof that the public have the right to use it. However, not every public right of way is known to the County Council

so the Definitive Map cannot be used to prove that a public right of way does not exist simply because it is not shown on the Definitive Map.

Keeping the Definitive Map up to date

A need to add paths to the Definitive Map which are not already on it arises in two ways:

- 1) Although the process to produce the Definitive Map was rigorous, some old paths were missed and needed to be added at a later date.
- 2) It is also possible for a new path to be created by unchallenged use by the public. This is known as 'presumed dedication'.

The County Council is under a statutory duty to keep the Definitive Map up to date by recording changes made to the path network, and by adding existing but unrecorded public rights of way to it when we become aware of them.

Members of the public, landowners and organisations like the Ramblers' Association and Parish Councils can apply to the County Council asking that what they think are public rights of way but which are not recorded on the

Definitive Map are added. This is called 'claiming' a public right of way.

Updating the Definitive Map

There is a set statutory process which the County Council has to follow before the Definitive Map can be altered. The chart below shows the steps to take if a path has been claimed.

These steps involve both the **making** of a Definitive Map Modification Order (DMMO) and then the **confirmation** of that Order. A DMMO only takes effect when it is confirmed. When it is made, it shows that it is intended to add a path to the Definitive Map and invites objections and representations in relation to the existence or non-existence of that path.

Abbreviations used in the chart

DMMO	-	Definitive Map Modification Order
NCC	-	Nottinghamshire County Council
PINS	-	Planning Inspectorate
SoS	-	Secretary of State

Stage	Who	Action	Time
Application Stage			
1	Public	The Applicant writes or phones to say they believe that a path is a right of way and should be added to the Definitive Map.	
2	NCC	The Applicant is sent an application pack.	1 week
3	Public	The Applicant sends the evidence to NCC and a notice to landowner saying that the route has been claimed and then certifies to NCC that the notices have been served on the landowner/s.	
4	NCC	Considers application and investigates further evidence concerning the existence (or not) of the path.	12 months allowed
4a	NCC	Contacts landowner for any evidence to support or rebut the claim.	
4b	NCC	Carries out informal consultation with other local councils and user groups and utility companies.	
4c	NCC	Interviews claimants.	
Committee Stage			
5	NCC	Officers write committee report assessing evidence and a recommendation to make or not make a DMMO to add the path to the Definitive Map. In order to make the DMMO, NCC must only be convinced that there is a reasonable case for the existence of the path. The evidence does not have to be sufficient to prove the path exists at this stage.	
6	NCC	Committee report is published 5 days before the meeting.	
7	NCC & Public & Landowner	ROW Committee considers report and decides to make or not make a DMMO (bearing in mind there only needs to be a reasonable case for the existence of the path). Some public speaking is allowed at the Committee, but only by prior arrangement. If making DMMO, go to 11. If not making DMMO, to 8.	Committee cycle is every 6 weeks
8	NCC	Advises Applicant of decision not to make DMMO.	
9a	Public	Applicant accepts decision. End of process.	
9b	Public	Applicant doesn't accept decision & appeals to the Secretary of State	
10	Secretary of State	An Inspector considers the evidence and decides whether the evidence reasonably alleges that the path exists. If yes, NCC is instructed to make the DMMO (go to 11). If not, the applicant is informed and the process ends.	
Order Stage			
11	NCC	Officers write DMMO, and send DMMO for sealing.	1-4 months
11a	NCC	The DMMO is put on deposit, advertised in a local paper, sent to interested parties & served on landowner/s, and site notices put up. We must allow 6 weeks minimum for responses.	6 weeks minimum
12	NCC	Resolution of objections, site meetings discussions and exchange of letters. If no objections or objections are withdrawn go to 13. If objections remain go to 14	1 year
Determination (of Order) Stage			
13	NCC	No objections – NCC Confirm DMMO. Go to 18.	1 month
14	NCC	Objections remain – Statement of Case prepared and copies of evidences collated – Full legal 'bundle' submitted to PINS.	1 year
15	PINS	Decide whether to hold a full Public Inquiry, a Hearing or to conduct the matter by Written Representations.	3 months
15a	PINS	Await a Public Inquiry or Hearing date from PINS.	9 months

16	NCC	Hold a Public Inquiry, Hearing or send written representations. It is at this point that the evidence for and against the existence of the path is thoroughly tested.	1 to 5 days duration
17	PINS	Wait for the Inspector's decision. If the Inspector is satisfied that the path is a public right of way, s/he confirms DMMO. Go to 18. If Inspector is not satisfied, the DMMO is not confirmed. In this case notify consultees and interested parties that the path has not been found to be a PROW. End of process.	3 months
18	NCC	Confirmation advertised; place notices in local paper and on site. Paperwork sent to landowners, occupiers and applicant.	2 months
Implementation Stage			
19	NCC	Resolve practical issues before completing works to bring the path into use.	
20	NCC	Complete works and open path. End of process.	

Claiming a path (stages 1-3)

There are two main reasons why people may think that a path should be on the map. They may have been walking a route for some years in the belief that they are using a public path, or they may have found an old map or document which shows the path on it.

Assessing a claim (stages 4-7)

The Council has first to decide if there is a reasonable case that the PROW does exist, by looking at the evidence supporting the claim.

If the evidence is based on use (presumed dedication), then a number of people will need to assert that they have been using the path, and the evidence will need to add up to a continuous period of at least 20 years. The landowner can 'rebut' this assertion if they can show that they took steps to prevent the path from becoming a PROW. Traditionally this was done by putting up a notice declaring a route was not a public right of way, or by closing the path for one day each year. It can also be achieved by telling users that the path is not public, or by lodging a Section 31 declaration. Section 31 of the Highways Act allows landowners to deposit a map and statement with the County Council, showing all the paths

they accept to be public rights of way. This must be renewed no later than every ten years.

If the evidence is documentary, then all relevant documents have to be shown to the County Council. Not all old maps and documents carry equal weight as evidence, so the County Council has to consider their relative value in each case. The County Council will also have to search for any evidence within its own records which may show that the path has been legally closed or diverted.

The County Council has a Rights of Way Committee which considers the officer's report and decides if the evidence demonstrates a reasonable case for the existence of the path. If the committee decides the evidence is sufficient they will instruct officers to make a Modification Order which may ultimately add the path to the Definitive Map. If the committee decides the evidence is insufficient they will instruct officers not to make a Definitive Map Modification Order.

Making an Order (stages 11-12)

When a Modification Order is made it has to go through a public consultation so it will be advertised on site and in the local paper. Any affected landowners will be sent a letter.

If there are no objections to the Order and the evidence shows that the path exists, the County Council can confirm the Order and the path is added to the Definitive Map. It is now recognised as a public right of way by the world at large and the County Council will have a duty to make sure it is open (and stays open) for use by the public. Usually, some works will be needed to make the path usable; though it can be as simple as putting up a signpost.

If there are objections made to the Order and not withdrawn, the County Council will have to send it to the Planning Inspectorate (representing the Secretary of State) who may hold a Public Inquiry, a Hearing or will ask for written representations regarding the evidence.

Frequently Asked Questions

- **This path hasn't been used for many years - hasn't it ceased to exist?**

Once a path has come into existence, it remains forever whether it is used or not. A path can only cease to exist when it is officially closed by a legal process such as a stopping-up or extinguishment order, or if it is moved by a diversion order.

- **Is there any help available for me to fight the claim?**

There are a number of experts in the field (solicitors etc), who you can engage on your behalf (at your own cost) and who can be found on the internet or (if you are a member of the following organisations) by asking the CLA, IPROW, NFU and other representative organisations

- **This path hasn't been used for many years and isn't needed;**
- **There is already a path in this direction;**
- **The path doesn't go anywhere;**
- **What about my security or privacy?**

The County Council has a statutory duty to process claims made for the existence of a path. By law, we can only consider whether the path is a public right of way or not. We are not allowed to take into consideration other factors like how desirable the path might be. The Definitive Map Officer will be able to advise you on this. However, if the path is found to exist it may be possible to then divert the route to one more suitable for the current situation, although there is a cost to applicants and a successful diversion application cannot be guaranteed. The Area Rights of Way Officer will be able to advise you on this.

- **Can I get rid of the path?**

Although there is a statutory process by which a path can be extinguished or stopped-up, these can only succeed in limited circumstances, and are subject to public consultation and possible objection. Extinguishment of a path is not likely to be possible where a path has been claimed. However, it may be possible to divert the route to one more suitable for the current situation, although there is a cost to applicants. Again, your Area Rights of Way Officer will be able to advise you on this. Please note that obstruction of a public right of way is an offence for which the offender can be prosecuted.

- **Who sent this letter/notice?**

The initial notice is served by the applicant for the DMMO. Later correspondence will come from one of the Definitive Map Officers at the County Council.

- **Can I see the evidence?**

A summary of the evidence will be included as part of the Committee Report, which is published five days before the Rights of Way Committee meeting at which the DMMO application will be considered. The Council may be able to provide an outline of the evidence at an earlier date, subject to the Data Protection Act.

Contact information:

Tel: 08449 80 80 80 (Monday to Friday: 8am to 8pm, Saturday: 8am to 12 noon).

Email: enquiries@nottscc.gov.uk

Website: www.nottinghamshire.gov.uk

Minicom: 01623 434993

Calls cost 3p/min from BT landlines. Mobile costs may vary.

Please contact us if you need the information in a different language or format.

Further information is available at:

More information about Rights of Way in Nottinghamshire can be found at:
<http://www3.nottinghamshire.gov.uk/enjoying/countryside/countryside-access/rights-of-way/>

Department for Environment, Food and Rural Affairs – General information on procedures relating to public rights of way:
<http://www.planningportal.gov.uk/planning/countryside/rightsofway/rightsofway>

Countryside Agency- A guide to definitive maps and changes to public rights of way:
<http://www.figheldean.org/attach.pl/2/9/CA142.pdf>
Ramblers' Association Website:
http://www.ramblers.org.uk/rights_of_way/take_action/claim_an_unrecorded_right_of_way