

Pre Application Information

Amending Public Rights of Way



Contact details for the Rights of Way Definitive Map Team

Web: www.somerset.gov.uk/somerset/ete/rightsofway/

Email: modifications@somerset.gov.uk

Telephone: 01823 358254

If you are interested in making an application to modify the Definitive Map a member of the team will be happy to speak to you to advise of the most appropriate course of action.

This document is also available in Braille, large print, on tape and on disc and we can translate it into different languages. We can provide a member of staff to discuss the details.



A Guide to Modifying the Definitive Map and Statement

The Definitive Map and Statement is a legal record of all known public rights of way in Somerset. If you believe you have the necessary evidence you may apply to have the records amended.

Alternative means of legally amending the Definitive Map and Statement exist and landowners may apply to divert, create or extinguish rights of way.

Modification Orders can have several effects, they can amend the status of a way, delete a way that is currently shown on our records or add a way that is not

currently shown on our records. Modification Orders are the formal process for altering the records if relevant evidence is found. The purpose of the Modification Order process is to establish whether public rights exist, not whether it is desirable for them to be newly created or removed due to practical concerns.

Applications can be based on two types of evidence, **user** and **historic (or documentary)**. An application could be based on either type or both. If there is sufficient evidence to prove a public right



of way exists which is not recorded or that the Definitive Map shows a route incorrectly, then an Order may be made to amend the records. Similarly, if there is enough evidence to demonstrate that a way shown on the Definitive Map and Statement should not be shown and was incorrectly recorded, then a way may be deleted.

occurred mean that a way may not become public. Alternatively, rights can be acquired at common law which requires a period of use in conjunction with acquiescence by the landowner. It is very important that the evidence forms are filled in accurately and correctly in order to avoid problems occurring later on during the process.

User Evidence

The County Council will supply on request 'User Evidence Forms' for completion by members of the public who have used a way. User evidence forms must be accompanied by plans that clearly show the route used.

If use of a route has continued for a period of 20 years or more and this has been without force, without secrecy and without permission then the way may be deemed to have become a public right of way. If a way has been blocked at some point in the past or notices have been erected stating a route is private then use of the route has been challenged. Such a challenge may, depending on when it

Documentary Evidence

Historic, or documentary evidence can help to indicate whether a route was considered to have public status and what the status was as well as providing valuable supporting evidence to any claim. Applicants are encouraged to look at evidence sources themselves and to supply copies with reference numbers of any relevant documents they may have seen. The officer dealing with the case will need to check the records themselves. Many of these records are held at the Somerset Records Office in Taunton and a guide explaining the main documents that can be of value is included in the application pack that is provided to

applicants. It will help the process greatly if applicants (or volunteers/agents) do pre application research. If you wish to apply to have a byway open to all traffic recorded please contact a rights of way officer on the number shown overleaf.

The **Rights of Way Improvement Plan (RoWIP)** is a document that identifies how SCC proposes to improve the provision of public rights of way and other access in Somerset for walkers, cyclists, equestrians and those with visual or mobility difficulties. Applications to modify the Definitive Map and Statement will be prioritised under the RoWIP scoring system and will be given weight according to various criteria including whether the

route that has been applied for is part of a circular route, provides safe routes for people away from roads and whether there is a need for the application route in that community. The need for a claim to modify the Definitive Map identified as part of the RoWIP process may be removed if the route in question is secured through another means.





Applying to Amend the Definitive Map and Statement

If you decide to apply for a Modification Order it is important that you contact Somerset County Council's Rights of Way Definitive Map Team (using the contact details on the back of this guide) who will be able to supply an application pack and give detailed guidance on the general process. Several important points should be borne in mind when considering making an application, as the process is often complex and a single application to modify the Definitive Map can take several years from start to completion.

The applicant will be the promoter of the application and will be required to

support it through its various stages. The applicant may be requested to carry out further investigation into the evidence, to answer queries, to serve required notices and in the event of objections to the proposal be called as a witness at a public local inquiry.

Please undertake the following before submitting an application

- Speak to the landowner(s) over whose land the way passes, as an informal approach can often result in an amicable solution, removing the need for a modification application.

- If you wish to apply to modify the Definitive Map, you will be required to serve notice of your application on the affected landowners and occupiers and this will include information regarding your own details as the applicant. Details of how to do this formally are in the application pack
- Speak to users of the route. Consider whether the landowner/s is/are aware of public use of the route
- Find out whether the landowner has made a Statutory Declaration under Section 31 of the Highways Act. This is a formal declaration that has the effect of acknowledging the existence of all recorded public rights of way on land owned by the person making the declaration. It has the effect of preventing any further public rights of way coming into existence through usage during the time following the declaration. It does not operate retrospectively, therefore it does not affect any public rights that have

accrued through use in the past. The presence of such a declaration could negate the existence of a way, depending on when the declaration was made

- Find out whether users of the route would be willing to provide written evidence of their use via forms provided with the application pack
- Consider whether the way is used by the public or for business purposes, e.g. to get to work or for pleasure
- If you or other users have used the way with the permission of the landowner, this may invalidate your claim
- Consider whether the route has ever been obstructed or have notices ever been displayed saying 'Private - No Public Right of Way' or similar
- Examine any available historical evidence sources in an effort to find



out the status (if any) of the route in the past

- Look at the County Council's Modification Application register which is available online or at the County Council's Offices to check whether the route is already subject to an application
- Look at the County Council's Rights of Way Improvement Plan to see what may already be planned in your area which could affect your claim (see page 3)
- Check whether your route is in Somerset - it may lie wholly or partly within an area covered by another Council

The above points relate to the upgrading of an existing way or the addition of one that is not shown on the Definitive Map and Statement. If you wish to apply to delete a public right of way you will need to find sufficient evidence. If you need

further advice please ring the number shown on the back of this guide.

When SCC receives an application it is registered and given a unique reference number that should be quoted on all subsequent correspondence. The application will be scored under the Rights of Way Improvement Plan and prioritised accordingly. You will be advised as to the state of your application and informed when an officer begins the investigation of the application.

