

This guidance is aimed at land owners and occupiers who have received a notice and map informing them that somebody has made an application for a definitive map modification order (DMMO).

What is a DMMO application?

The definitive map and statement is the legal record of public rights of way (PROW), showing all those routes where the public have the right to walk, ride, cycle and drive. Public rights of way on the definitive map are all recorded with a status which relates to who can legally use them:

- Public Footpaths can be used by walkers only
- Public Bridleways can be used by walkers, horse riders and cyclists
- Restricted Byways can be used by walkers, horse riders, cyclists and non-motorised vehicles
- Byways Open to All Traffic can be used by walkers, horse riders, cyclists, non-motorised vehicles and motorised vehicles.

Under the Wildlife and Countryside Act 1981, an application for a DMMO can be made by any person, or body (such as a parish council), who believes that a route which is not currently recorded as a public right of way should be recorded as a public right of way. Alternatively a DMMO application can be made where it is believed that a route that is already recorded on the definitive map is incorrect and therefore needs amending.

Applications must be supported by evidence; this can be user evidence (evidence of modern and/or past use of a route), and/or documentary evidence (old maps, inclosure award documents and other records). DMMO applications are not about creating new rights of way; they are the mechanism by which ways omitted from the original definitive map can be recorded or routes that were recorded incorrectly can be amended.

As part of the legal process of applying for a DMMO, the applicant must serve notice on all affected landowners and occupiers. If you have received a City of York Council form titled NOTICE it is because someone has made a DMMO application to us because they believe that you own or occupy land affected by the application.

You do not have to make any response to the application immediately, the NOTICE is merely to let you know that an application has been made. However, if you want to submit evidence to the council now, or at any time after receiving the Notice, it will be kept on the relevant file until the case is complete.

What do I do if I have no objection to the proposal?

In occasional instances you as a landowner may know the public have been using a route, and would be unconcerned if the route were to become a public right of way. In these circumstances you can contact the council to discuss the possibility of entering into a creation agreement to record the route as a public right of way. You should also do this if

you are willing to acknowledge the existence of a right of way but would prefer it to be on a different alignment.

How do I object to the application?

If you would like to object to the application, you will need to provide evidence to show why you believe the route is not a public right of way, or why the route is a different status to that being alleged in the DMMO application.

Please note that the legislation does not allow issues such as desirability, suitability, security or safety to be taken into account when determining DMMO applications. The council can only take into consideration evidence of what rights legally exist. We appreciate that this may cause concern, however, there may be actions we can help with to address these issues if the route is recorded as a public right of way.

The following paragraphs describe the type of evidence we are looking for to successfully challenge a definitive map modification order application.

For applications supported by user evidence, applicants will usually have to provide evidence of unchallenged and uninterrupted use by the public for a period of more than 20 years. You can oppose this by providing evidence of:

- Verbal challenges to people using the route - telling them that the land is private and there is no public right of way. Please give dates and names if possible and as much detail about the circumstances of the challenge as you can.
- Physical challenges to use e.g. locking gates, closing gaps etc. Again, include dates and as much detail as possible particularly regarding how you communicated to the public that the gate was locked to prevent dedication of a public right of way as opposed to being locked during movement of livestock, for example.
- Notices you as land owner put up that let users of the application route know that it was not public ("no public right of way" signs or similar). Details of the location of the notices, the exact wording of the notice, and the dates they were in place are all vital to support your case.
- Names of anyone who you gave express permission to use the route. Please include the dates you granted the permission and, if possible, their address.
- Any Highways Act 1980 Section 31(5) or Section 31(6) deposits submitted by you or previous landowner. Please give dates when the deposits were made and to which local authority.

For applications supported by historical documentary evidence:

- Evidence that an old road or path is no longer public e.g. relevant stopping up orders, diversion orders, or extinguishment orders.
- Documents showing that the route is private (e.g. inclosure award documents).
- Documents showing that the status of the route is different to the status the applicant is claiming (e.g. inclosure awards documents, legal orders etc).

You can submit your evidence either as soon as you have received your NOTICE, or you can wait until council has decided whether or not an order will be made. All evidence will then be held on file until such time as the case is complete. You can submit additional evidence at any time if you come across further evidence at a later stage. In addition, if you own or rent the land directly affected by the application route it is strongly

recommended that you complete a land owner evidence statement. You can request one from the council; contact details are at the end of this guidance.

Please note: DMMO applications are a public process, therefore any evidence or correspondence submitted in support of or opposing an application will be made available for public inspection as part of the formal process. If you submit evidence you should also be prepared to attend any future local public inquiry to support your evidence if called upon to do so.

What happens after a DMMO application is submitted?

City of York Council has a legal duty to determine applications as soon as reasonably practicable and if it has not done so within a year, the applicant may make representations to the secretary of state.

As an affected landowner or occupier you will be consulted at every stage of the process.

When an application is started all the available evidence is reviewed, and an initial consultation (also known as an informal consultation) with the applicant, affected landowners and occupiers, parish councils, and user groups (the Ramblers, British Horse Society etc.) is carried out.

In the light of the initial consultation the council determines whether or not a DMMO will be made to record (or delete or amend) the route. If the council decides that no order will be made, we will write the applicant informing them and setting out the reasons for the rejection. The applicant has 28 days from this letter to appeal to the secretary of state.

If the council decides to make an order, legal notices are placed on site and published in a local newspaper. Notices are also sent to the applicant, all affected land owners and occupiers, user groups, and all other affected local councils. Anybody may make representations about or objections to the order within 42 days of this notice. Please note that the 'making' of an order is stage 1 of a 2 stage process – although an order is initially 'made' it does not necessarily mean it will eventually be 'confirmed' (at stage 2 of the process).

If no objections are received or all objections made are subsequently withdrawn, the council can confirm the order and publish a legal notice to this effect if the evidence indicates that the order is correct on the balance of probabilities. Any party aggrieved by the order may appeal to the High Court within 42 days of the date of the notice, however at this stage an appeal may only be made on the grounds that the correct legal processes have not been adhered to or the law has been misinterpreted by the council. Once the order is confirmed the route is recorded on the definitive map as a public right of way and (in due course) signs are erected on the ground.

However, if there are objections to the order, the case must be sent to the secretary of state for determining. This stage may take some time, as the process is quite long (it involves preparing and submitting documents to a strict timetable, organising and holding public inquiries etc). Opposed orders are sent to the secretary of state in chronological order i.e. the oldest ones are sent first.

The order is submitted to the Planning Inspectorate, who acts on behalf of the secretary of state. An inspector will be appointed to determine the order, and he/she will decide how to

deal with the order. It may be via written representations only, a local hearing, or a local public inquiry. From this point, affected landowners receive correspondence/requests for information directly from the Planning Inspectorate. A strict timetable for the submission of documents to the inspector is then set out and must be adhered to by all parties.

Once the inspector has seen/heard all the available evidence (eg following a public inquiry) a formal decision will be made and issued. In the decision letter the inspector will set out the reasons for coming to that particular conclusion. If the inspector decides to confirm the order (with or without modifications) the council publishes a legal notice to this effect in a local newspaper and on site. Any party aggrieved by the order may appeal to the High Court within 42 days of the date of the notice, however such an appeal may only be made on the grounds that the correct legal processes have not been adhered to or the law has been misinterpreted by the inspector. Once the order is confirmed the route is recorded on the definitive map as a public right of way and (in due course) signs are erected on the ground.

If the application is successful and the route is recorded as a public right of way, what will it mean to me as a landowner / occupier?

Private access rights: The recording of public rights of way on the definitive map has no effect on any private rights which exist along the application route; if you currently have private rights of access along the route these rights will remain unchanged. The status of a public right of way only applies to members of the general public using the route, not to anyone using the route with private rights, so if, for example, you have the right to access the route with a motor vehicle this would not change if the route were to be recorded as a public footpath, public bridleway or restricted byway as well.

Maintenance: Generally speaking, the council is responsible for the surface of public rights of way, and landowners are responsible for the maintenance of furniture (gates and stiles), for keeping cross-field paths clear of crops and all paths free from obstructions and overhanging branches.

However, if a public right of way is recorded via the DMMO process then the surface of that path does not become the maintenance responsibility of the council but remains the responsibility of the landowner (the exception to this is for routes which are shown to have been public highways prior to the drawing up of the original definitive map i.e. paths with historic evidence). In practice however, the council may be able to assist with maintenance (depending on budgets at the time), but any assistance would only be relative to the status of the route. This means that if the route was recorded as a public footpath the council would only consider assisting with maintenance up to a standard suitable for walkers. The council would not be in a position to help maintain the route for private vehicle access.

Public liability: Landowners and occupiers have a duty of care under the Occupiers' Liability Acts to people who come onto their land, whether it be people using public rights of way, visitors or trespassers. It is the duty of landowners to make sure that any stiles and gates on public rights of way are kept in good condition. This is because landowners and occupiers may be liable for injuries caused by their negligence e.g. if a walker is injured using a collapsed stile or broken gate, or by trying to cross an obstruction across the path.

The most important point to remember from this guidance.

If you wish to oppose the application you must support ALL your objections with evidence.

Contact details

If you need more information you can get in touch with us in the following ways:

By email: rightsofway@york.gov.uk

By telephone: 01904 551550

By letter: The Rights of Way Officer, Rights of Way, City of York Council, West Offices, Station Rise, YORK, YO1 6GA.