

## Guidance notes on applying to modify the Bracknell Forest Definitive Map and Statement

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## Introduction

The [Definitive Map](#), which is accompanied by a Statement, is a legal record of the public's rights to use footpaths, bridleways, restricted byways and byways open to all traffic.

[Wildlife and Countryside Act 1981 \(schedule 14\)](#) sets out procedures by which public rights of way may be added or removed from the Definitive Map and Statement, or have their status changed or route altered. The changes are brought about because there is sufficient evidence that the Definitive Map and Statement is incorrect or incomplete.

Anyone can apply for a Definitive Map Modification Order (DMMO) and there's no charge for doing so. This is because it represents an attempt to correct the legal record and Bracknell Forest Borough Council has a duty to ensure that the Definitive Map and Statement is an accurate and up to date document. Once a surveying authority has received a DMMO application and a certificate of service of notice, it has a duty to investigate the matters in the application.

A surveying authority can use evidence from an application to make an order, known as a Definitive Map Modification Order (DMMO), to amend the map and statement to ensure that it is a correct record of the public's rights. The changes, which are brought about to the Definitive Map and Statement are made via a **Modification Order**.

## Step 1 – Complete and submit the forms

The first steps to apply to modify the Definitive Map and Statement are for the applicant to complete and submit four separate forms, along with the relevant supporting information. These include:

- A. Application for a Modification Order
- B. [User evidence form for claimed public right of way](#) - each form should have an attached map signed and marked with the claimed route by each claimant.
- C. Notice of application for a Modification Order
- D. Certificate of service of notice of application for a Modification Order

Copies can be obtained from our rights of way web pages, or via our [rights of way team](#).

Forms A, B and D need to be completed and sent to us, along with the required supporting information. Form C needs to be completed and sent to the landowner.

If completing the form by hand, please use BLOCK CAPITALS for the section about your personal details. Please also ensure you provide the required information where indicated. Failure to do so, could lead to delays in your application, due to needing to recomplete these steps.

Further notes about completing each form are provided below.

### A. Application for a Modification Order

This must be completed by the applicant and returned to us at the address at the end of the form.

These are the three options set out in the form, but it is only necessary to complete one of these:

1. Where it is believed there is conclusive evidence that the route should be **deleted** from, or the route should be **added** to the Definitive Map and Statement
2. Where it is believed there is conclusive evidence that the **status** of the route shown on the Definitive Map and Statement is **incorrect** and should be either upgraded (e.g., a bridleway should be a byway) or downgraded (e.g., a bridleway should be a footpath)
3. Where it is believed there is conclusive evidence that the **details** set down in the Definitive Statement are **incorrect** and require amending, and/or the position of a public right of way on the Definitive Map is not shown correctly

Other useful evidence to support applications include tithe maps, parish records and a schedule describing the route would be of assistance.

The details provided on this form will be kept in a public register that is available on the internet.

This is as per the terms of the Public Rights of Way (Register of Applications under Section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005.

For further information about how we use your data, see our **[Rights of Way and Access Privacy Notice](#)**.

## **B. User evidence form for claimed public rights of way**

Please use this form to give us your evidence of use of any public right of way in Bracknell Forest that's not recorded on the Definitive Map and Statement, but is claimed to exist.

The form can also be used to provide evidence of any route for which a public right of way is claimed to be recorded incorrectly, such as type or position.

Please note, the information provided by witnesses may pass into the public domain during the processing of the application and therefore cannot be treated as confidential. It is important the applicant informs all witnesses of this fact, so they are aware of this point before providing their personal details. Please make sure all witnesses read the important notice at the top of within the user evidence form before completing it.

The information provided by witnesses must be true and accurate to the best of their knowledge. Proceedings for contempt of court may be brought against anyone who makes or causes to be made a false statement in a document verified by a Statement of Truth without an honest belief in its truth. [See practice guide 73: statements of truth.](#)

If you dishonestly enter information or make a statement that you know is or might be untrue or misleading and intend by doing so to make a gain for yourself or another person or to cause loss or the risk of loss to another person, you may commit the offence of fraud under Section 1 of the Fraud Act 2006. The maximum penalty for which is 10 years imprisonment or an unlimited fine or both.

We advise witnesses to retain a completed copy of their statement.

### C. Notice of application for a Modification Order

Notice must be served on all landowners and occupiers of the land affected by this claim. Failure to serve the necessary notices may prove fatal to the application.

It is the applicant's responsibility to find all the owners and occupiers of the land upon which the claimed right of way is situated, and to serve the relevant notices. Bracknell Forest Borough Council recommends that if you are uncertain as to who owns the land you should complete a Land Registry Search.

The Land Registry will assist with landowners but not with occupiers. Therefore, if you were uncertain about if there are any occupiers of the land, then you must apply in writing to post Notices to the unknown landowners and occupiers.

If the applicant can clearly demonstrate that extensive research has failed to reveal any known owners or occupiers, then a written statement indicating this fact should be submitted with the application. In this case, notices will need to be posted on the land. Our rights of way team may be able to help with this if sufficient notice is given.

The applicant must ensure they serve completed **forms on each owner and occupier** together with an appropriately marked copy of the map submitted with the application.

Each form should be individually addressed in the space provided and should indicate the date upon which the application was made.

### D. Certificate of service of notice of application for a Modification Order

The applicant must complete this form and submit it to us, along with their application form.

It should list the names and addresses of all the owners and occupiers upon whom the applicant has served a Notice of Application for a Modification Order.

## Your privacy

In some cases, we will be legally required to allow other persons to have access to completed forms and documents relating to a Definitive Map claim. This means that your personal details could become accessible to the public.

We are committed to protecting your personal data and ensuring that it is processed fairly and lawfully. Information you provide to us will be processed in accordance with the General Data Protection Regulations, The Data Protection Act 2018 and subsequent legislation. The basis on which we process your information is in accordance with the legal obligation under the Wildlife and Countryside Act 1981. [See our privacy notice.](#)

## Step 2 – We review the evidence

We will carry out additional historical research. In some cases, this research may indicate a status that differs from that which is being claimed. For example, a route being claimed as a footpath, may prove to carry bridleway rights. We are obliged in such cases to make a Modification Order which takes these higher rights into account, thus 'upgrading' the applicant's original claim.

We may request to interview selected individuals to clarify the information given in their evidence forms. Landowners and potential objectors may also be interviewed. In some cases, this process may cast doubt on the validity of the claim, for example a new piece of evidence may have been found.

Please note, the legislation concerning the establishment of public rights of way is a complex area and the simplest of applications can take up to a year or more to complete.

### **Step 3 – We recommend a decision**

A committee report is prepared by our rights of way officers that is based on the information discovered or supplied. This is used as a basis for a decision by the Executive Director of Place, Planning and Regeneration whether to proceed with the application.

The applicant, and all landowners/tenants affected by the claimed public right of way, are informed of the decision.

You are entitled to apply to the Secretary of State for the Environment Food and Rural Affairs if your application is not dealt within 12 months of receipt.

### **Step 4 (Optional) – Right to appeal**

The applicant has a right of appeal to the Secretary of State if the claim is rejected by the Executive Director.

If the Planning Inspector appointed by the Secretary of State decides that there is sufficient evidence, a Modification Order (DMMO) is made.

The DMMO is the prescribed legal document that allows the Definitive Map and Statement to be changed in some way. It will refer to:

- (a) the legislation granting the power to make the DMMO (the Wildlife and Countryside Act 1981);
- (b) the reasons for making the DMMO (for example, “the discovery of a right of way which subsists or is reasonably alleged to subsist over the land situated at.....”);
- (c) the route of the path, which is the subject of the DMMO, including starting and finishing points, surface conditions and furniture details (stiles, gates etc.), directions, length and width.

There is a period of 28 days to appeal to the Planning Inspectorate from receiving a Notice notification.

The Planning Inspectorate may either agree with our decision or direct us to make an Order. If we are directed to make an Order and objections/representations are received resulting in a Public Inquiry, we will normally take a neutral stance and it will rest on you as the applicant to make the case to the Inspector.

Further information about the steps involved in this process can be found in Appendix 1.

## Step 5 – Making the Modification Order

Simply because a DMMO has been made, this does not mean that the proposals to which it refers have come into effect. The amendment of the Definitive Map only takes place if the DMMO is subsequently confirmed.

Notices stating that a DMMO has been made are posted on site, and an advertisement is placed in the local newspaper. Six weeks are allowed from the date of the notice for objections to the DMMO to be lodged with us.

If no objections are received, the DMMO can be confirmed. In most cases, there will be objections to the DMMO, which cannot be resolved even after consultations with the objectors, and the DMMO is then referred to the Secretary of State.

## Appendix 1 - Additional notes

For information about rights of way, including locations and types, visit our website:

[www.bracknell-forest.gov.uk/public-rights-way](http://www.bracknell-forest.gov.uk/public-rights-way)

The Definitive Map Modification Order (DMMO) application process that allows the Definitive Map and Statement to be amended, is termed 'modification', and changes are carried out via a modification order, which can be made in response to any of the following proposals:

### **Adding a path to the map and statement in cases where a claimed public right of way is not recorded.**

It is not sufficient to say, "This path has been used for years. Why isn't it shown on the map?" Anyone who wishes to claim a public right of way in Bracknell Forest must collate the evidence and make a formal application to us. A public right of way may be claimed by bringing forward user evidence, documentary evidence, or a combination of both.

User evidence can be supplied by anyone with personal knowledge of the path being claimed using a standard form supplied by us.

Documentary evidence includes extracts taken from historical records, such as:

- Inclosure Awards
- Tithe Awards
- Railway plans
- Finance Act maps.

Further information about these documents can be obtained by contacting our rights of way team. In many cases, the documents themselves are held at the [Berkshire Record Office](#).

### **Changing the status of an existing right of way.**

This usually means 'upgrading' a path, which involves amending the Definitive Map and Statement to record a higher level of public rights. This doesn't involve the creation of additional public rights. If a DMMO application is successful and the map and statement are altered, it is because it has been proven that the right being considered already exists. A route that has been used by horse riders, either historically or in the more recent past, may only be shown as a footpath, and it is therefore possible to make a claim for an upgrade to bridleway status. It is also possible to upgrade a footpath or a bridleway to a byway (a right of way for all types of traffic, including motorised vehicles).

Modification Order applications based on documentary evidence rely on the fact that public rights continue to exist until they are formally removed, 'once a highway always a highway'. A route set out in the late eighteenth century as a public bridleway, for example, continues to carry public bridleway rights until those rights are officially extinguished, regardless of the fact that it is only shown on the Definitive Map as a footpath, or that it has not been used by horseriders for many years. The depiction of a path at a particular status on the Definitive Map does not therefore override any additional public rights that may exist.

It is also possible to 'downgrade' a right of way, for example by amending the map and statement to show a footpath instead of a bridleway, thereby removing the right to ride a horse on the path in question. In such cases, we do not have to prove that the route's status differs from that shown. The onus is on the applicant to prove their case conclusively. They must therefore submit evidence that was not known or available to the Authority prior to the preparation of the Definitive Map in the 1950s. The assumption being that anyone wishing to object to the status at which a path was being shown would have submitted their evidence at that time. It is very difficult to downgrade an existing public right of way.

### **Removing a path from the Definitive Map and Statement**

Another option is to apply to remove a path on the grounds that it is not a right of way and should never have been shown on the Definitive Map. However, it is assumed that an application of this nature, together with the relevant supporting evidence, would have been submitted in the 1950s when the map was being produced. An application to remove a path will therefore have to be based on newly discovered evidence which was not previously available for consideration. The onus is on the applicant to prove their case conclusively.

### **Altering the Definitive Statement**

Any of the details contained in the Definitive Statement, including path number, path width and the description of starting and finishing points can be amended if there is sufficient evidence found to suggest that it is incorrect. Members of the public may apply for a Modification Order if they believe that the statement needs correcting in some way.

**Please note that alterations to public rights of way may also occur due to diversion, creation, or extinguishment orders. These are covered on our [Changing a right of way web page](#).**

### **Public inquiry**

If we proceed to make an Order and objections are received there may be a public inquiry. This will be held locally. If you are unable to attend your evidence will be given in writing. User evidence is of much greater value if you attend in person and are prepared to answer questions about it. Inquiries are kept as informal as possible, and we will help you with this procedure.

At a public inquiry, the cases for and against the DMMO are put before an independent Inspector. Two site inspections are usually carried out, one by the Inspector alone before the inquiry, and a second, after the inquiry, by the Inspector and representatives from both sides.

The most important factor to be borne in mind in relation to a public inquiry is that it is only concerned with matters of fact. This means it will only consider factual evidence relating to the DMMO application, and the interpretation of that evidence. **Objections relating to desirability, or the perceived problems that the DMMO would cause if confirmed, are not relevant.** The Inspector's only brief is to establish the existence or otherwise of public rights of way.



After the inquiry the Inspector produces a decision letter, drawing on the submissions made at the inquiry or in the presentations.

If the Inspector decides not to confirm the DMMO, the Definitive Map and Statement remain unchanged. The applicant and all other interested parties are notified of the decision.

If the Inspector does decide to confirm the DMMO, a notice of confirmation is posted on site, and an advertisement is placed in the local newspaper. Site works are carried out as necessary (a footpath which has been upgraded to a bridleway, for example, will have bridlegates fitted).

The Definitive Map and Statement are amended to reflect the content of the DMMO, whether by adding a new path or changing the status of an existing right of way. The DMMO is effective from the date it is confirmed.

## **Appendix 2 Rights of Way and Access Privacy Notice**

The information provided will only be processed for the purpose of determining the Definitive Map claims and for no other purpose.

Under the terms of the Public Rights of Way (Register of Applications under Section 53(5) of the Wildlife and Countryside Act 1981 (England) Regulations 2005, the details provided on this form will be kept in a public register that is available on the internet. For further information please see our [Privacy Notice](#).

In some cases, we will be legally required to allow other persons to have access to completed forms and documents relating to a Definitive Map claim.

For example, we might need to provide information to other local authorities, the Planning Inspectorate and other government departments, public bodies and other organisations, landowners and members of the public. This means that your personal details could become accessible to the public.

In some cases we will redact information in forms provided to us which are due for publication online. This includes signatures and phone numbers.

If the application proceeds to a public inquiry your evidence will be made available to the inquiry.

We are committed to protecting your personal data and ensuring that it is processed fairly and lawfully. Information you provide to us will be processed in accordance with the General Data Protection Regulations, The Data Protection Act 2018 and subsequent legislation.

The basis on which we process your information is in accordance with the legal obligation under the Wildlife and Countryside Act 1981. See our [privacy notice](#).



## Appendix 3 - Flow chart of the process, provided by the [Ramblers](#)

\*The Surveying Authority for an area is the top tier of local government (e.g. a county council or unitary authority).

\*\*In Wales, the Welsh Assembly Government takes the place of the Secretary of State.

\*\*\*Modifications that require advertisement are those that affect land which was unaffected by the original Order.

