

CLAIMED PUBLIC RIGHTS OF WAY

EXPLANATORY NOTE OF THE PROCEDURE FOR MAKING AN APPLICATION

If you claim that a public right of way exists but it is not shown on the County Council's Definitive map and Statement, you must make a formal application under section 53 of the Wildlife and Countryside Act 1981 for an Order to modify the Definitive Map and Statement of Public Rights of Way.

The procedure for making an application is set out in Part III of the Act and in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

A public right of way can be claimed where the public has used a route as of right for 20 years without force, without secrecy and without permission. In some circumstances there may not be a requirement to show 20 years use, but use over a lesser period of time. A public right of way may also be claimed if there is sufficient historical evidence, such as from Tithe maps, Inclosure Awards and Quarter Sessions records, to prove that the public right of way exists and the rights have not been extinguished.

Applicants should take the following steps:

1. Complete an application form drawn up in accordance with the format shown in Appendix One.
 - You must make clear:
 - (i) what classification of public right of way you are claiming, i.e. a footpath, bridleway or restricted byway; and
 - (ii) where it runs from and to.
 - Your application form **must** be accompanied by:
 - (a) An Ordnance Survey map showing clearly the claimed public right of way (not less than 1:25,000 – e.g. 1:2,500 will be acceptable). The County Council can provide you with such a plan if requested.
 - (b) All documentary evidence to support your claim such as witness statements, plans or historical evidence. You must decide how much evidence you wish to submit. The County Council may not provide advice as to what evidence, or how much evidence, should be submitted. A number of user evidence forms have been enclosed which you may wish to use, and further copies can be obtained on request.

2. Notify all of the landowners affected by your application

- Draw up a Notice in accordance with the format shown in Appendix Two, completed as appropriate, and send to every owner and every occupier of the land over which the claimed public right of way crosses. You will need to make copies of those Notices and send them to the Council.
- If you do not know or cannot find out the names of all of the owners or occupiers please refer to Land Registry or contact the County Council. If we cannot find the information we will ask you to post Notices on site addressed to the 'owners/occupiers' of the land.

3. Certification of service of notice on the landowners

As soon as you have served Notice on the landowners you must certify that you have done so by serving on the County Council a certificate drawn up in accordance with the format shown in Appendix Three.

4. Send your application form, application plan, Appendices 2 and 3 and all supporting evidence to the County Council. We will then check that the application has been properly made.

Investigation of the claim:

Once the above steps have been carried out the County Council will investigate your claim once it has reached sufficient priority to do so.

To begin with we will contact all affected landowners/occupiers of that land and will provide a copy of all evidence that you submit with your application. They will be given a set period of time within which to make comments or objections, if any.

We will also provide details of the claim to a number of other bodies, such as the local district or borough councils, and we are also required to provide details of the claim to a number of statutory consultees, such as the Ramblers' Association.

We shall send you any comments, objections or evidence which were received during the consultation period so that you may make submissions or provide further evidence in response.

We will send your subsequent submissions to any persons who made objections to the application during the first consultation period so that they make their final submissions before asking you for your final comments.

Decision on the claim:

The County Council will take into account all evidence or comments submitted during the consultation periods. It will also take into account historical records held at County Hall, although it will be up to the Applicant, and anyone who wishes to make submissions in support or against the application, to source and submit any other publicly available records in support of their arguments during the consultation periods.

The investigating officer will prepare a report based on all of the available evidence which will be presented to the officer within the County Council with Delegated Authority to consider the evidence and make a decision.

The County Council's decision will be based on the legal test: whether the claimed right of way exists or is reasonably alleged to exist. The County Council cannot consider whether such rights would be useful or cause a nuisance when making its decision.

If the application is granted, an Order will be made to modify the Definitive Map and Statement. Public Notice will be given and there is a period for representations. If there are objections which are not withdrawn the matter is sent to the Secretary of State for a decision. This will be made by means of a Public Inquiry, a hearing or by written representations.

If the County Council refuses to grant the application, the applicant has a right of appeal to the Secretary of State by means of written representations.

Please note that the role of the County Council is to act in an impartial manner in order to decide whether a public right of way is reasonably alleged to exist.

The County Council is not able to advise you in relation to what evidence you need to supply in order to support your claim. Should you require assistance with this, or advice on the merits of your case, we would recommend that you seek independent legal advice.

Please note also that we will be unable to give you an indication of the likelihood of success of your claim at any time until publication of our decision.

You may find the following websites useful:

www.naturalengland.org.uk on which there is a downloadable booklet entitled '*A guide to definitive maps and changes to public rights of way*'. This gives some explanation of the legal process and the procedures involved in claiming a public right of way; and www.gov.uk which gives further guidance on this topic.

Please contact the County Council should you have any queries. Definitive Map Team, ESCC County Hall Lewes BN7 1UE 0345 6080 193 or email definitive.map@eastsussex.gov.uk

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