



THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

EXPLANATORY NOTE: APPLICATIONS TO ADD A PATH TO THE DEFINITIVE MAP AND STATEMENT

1. What is the Definitive Map and Statement?

So that everyone, including walkers, riders, local residents and landowners alike, know which paths or ways are public rights of way, Parliament has required local authorities, known as Surveying Authorities, to record those rights on special maps and statements known as Definitive Maps and Statements. All known public footpaths, bridleways and byways should be recorded in the Map and Statement. Anyone may make an application to the Council for a Modification Order to modify the Map and Statement. Nottingham City Council ("the Council") is the Surveying Authority for the City of Nottingham.

2. The Council's duty to keep the Definitive Map and Statement under continuous review

The Wildlife and Countryside Act 1981 placed a duty on the Council to keep the Map and Statement under continuous review. This means that the Council have a duty to consider all duly made applications and supporting evidence, presented to them or discovered by themselves, to modify the Map and Statement.

3. Modification Orders under the Wildlife and Countryside Act 1981

To record the rights of the public in the Map and Statement the Council have to make a Modification Order, which has the effect of modifying the Map and Statement by adding the public right(s) of way to them. This process is only concerned with recording existing public rights of way as opposed to creating new rights. An Order may also propose to change what is already recorded in the Map and Statement. For example, an Order may delete a public right of way from the Map and Statement where new evidence shows no such public rights exist or the Order may alter the classification of the public right of way from footpath to bridleway or vice versa, if its classification had been recorded incorrectly.

4. Types of evidence to support the making of a Modification Order under the Wildlife and Countryside Act 1981

Following receipt of an application for an Order to add a way to the Map and Statement, before the Council make an Order, they must be satisfied that the evidence in support of the application shows that a public right of way subsists, or is reasonably alleged to subsist, over the land in question. On receiving an application, the Council must decide whether the claimed route is or is not a public right of way within 12 months, but this period may be extended with the applicant's approval. The supporting evidence may be evidence of public use (i.e. user evidence) or documentary evidence such as Ordnance Survey Map(s) or an Inclosure Award, or a combination of both. Under statutory provisions (Section 31 of the Highways Act 1980) user evidence would have to show that the public have enjoyed using a path or way, as of right (i.e. without force, secrecy or permission) and without interruption for a period of at least twenty years. This is evidence that the landowner may have dedicated the way to the public as a public right of way, unless there is evidence of a contrary intention by the landowner. A contrary intention may be a sign displayed on the way stating '*no public right of way*' or '*use is with the permission of the landowner only*' and/or a gate that has been periodically locked. Similar provisions exist under Common Law although the period of public use is less than 20 years.

5. Procedure for resolving a disputed public right of way

When the Council publish the Notice that they have made an Order it is subject to a 42 day consultation period during which time anyone may make objections or representations. The Order does not take effect and the Map and Statement is not modified (i.e. the public rights are not recorded, deleted or amended) until the Order has been confirmed.

If objections are made against the Order within the 42 day consultation period, and are not withdrawn, the Council do not have the power to confirm the Order themselves and the Map and Statement remains unmodified (i.e. the public rights are not recorded, deleted or amended). The Council only have the power to confirm unopposed Orders. To have the opposed Order confirmed, the Council must refer the Order along with any outstanding objections to the Secretary of State.

6. The role of the Secretary of State and the Planning Inspectorate

In practice, on behalf of the Secretary of State, the Planning Inspectorate (PINS) process the opposed Order. PINS check whether the Order has been drafted correctly, made and publicised, and if everything submitted to PINS is correct, the responsibility for the Order passes from the Council to the Secretary of State. PINS then review the application documents, the evidence in support of the Order and the objections/evidence against it. At this stage the Council may submit its summary 'Statement of Case' and its comments on the objections. This includes a summary of the evidence in the Councils possession and explains why the Council believe, on the balance of probabilities, that a public right of way subsists and the Order should be confirmed and the Map and Statement modified. PINS then decide whether the opposed Order should be resolved through a Public Inquiry, Hearing or written representation (i.e. the exchange of written evidence without a public meeting). PINS will then write to everyone advising of their preferred procedure and appoint an independent Inspector to consider the case. All parties are then invited to submit their full Statements of Case and Proofs of Evidence within the statutory time scales.

It is important to note that an Inspector has powers only to consider whether or not the claimed public rights already exist. The Inspector cannot consider the suitability of the path or way for public use or any other effects of confirming the Order, such as crime, disorder, or the health and safety of users of the claimed public right of way. If they believe that a representation or an objection contains no material that is relevant, they will write to the relevant person(s) to give them the opportunity to say why it is relevant, to amend the objection so that it is relevant, or to withdraw it. If none of the objections are relevant the Inspector has the power to decide the Order without hearing the evidence or exchanging written representations. In these cases, PINS will write to everyone explaining that the Inspector intends to make a decision on the Order without requesting further information.

In making the decision, the Inspector has the power to confirm the Order as the Council made it, confirm the Order with modifications (i.e. modify the width or length of the claimed path or way) or not to confirm it. Some modifications require further publicity and consultation. PINS will then inform all relevant parties of the Inspectors decision.