

PERMISSIVE PATHS - INFORMATION SHEET

What is a Permissive Path?

Permissive Paths ("PP") are ways granted for use "with permission" of the landowner. The public do not have a legal right to use them without this permission; consequently, they are not recorded as public rights of way ("PROW") on the Definitive Map of Public Rights of Way.

They can, however, play an important role in improving public access to the countryside by providing a connection between existing PROW or to areas of interest, such as to a viewpoint or around a private woodland.

How can a Permissive Path be created?

There are two main ways of creating a PP:

- through a written agreement between the Council and the landowner(s), or
- by the landowner(s) granting consent independently of Council involvement

The Council will only enter into an agreement where:

- the permission being granted is not already recorded on either the Definitive Map of PROW or the List of Streets of publicly maintainable highways
- there is a clear and obvious gap in the current public highway network, and
- there is a convincing business case for the Council to enter into such an agreement

When such an agreement between the landowner and the Council is in place, it may include clauses regarding future maintenance of the path, agreed periods of closure, payment to the landowner by the Council (e.g. for any loss of land value), provision as to liabilities, etc. The Council may also assist in addressing problems encountered by either the landowner or members of public relating to use of the PP.

The landowner is not obliged to act in conjunction with the Council, they may instead independently choose to create a PP and publicise its availability, for example through clear signs on the ground, the internet/social media, word of mouth, or placing an advert in a local paper or newsletter.

Can a Permissive Path be moved or closed?

As PP do not carry a public right of access, landowners can move or close them at any time, and without giving prior notice.

Furthermore, landowners can also impose conditions or restrictions on when the public can use them and how the PP is used (e.g. use only at the weekend; or walkers are allowed, but not cyclists or horse-riders).

Who maintains a Permissive Path / Who is liable if I hurt myself?

Unless there is an agreement in place to transfer maintenance, the surface of the PP will be maintained by the landowner. Similarly, they will usually be liable for injury to users as a consequence of any defect in the surface of the path. Consequently, landowners with a PP across their land should have relevant third party and public liability insurance. The Council would not normally have any involvement in such an arrangement.

Can a landowner provide a Permissive Path as an alternative to an existing recorded Public Right of Way?

A landowner has the right to create and provide a PP across their land and encourage the public to use it as an alternative (for example to help users avoid having to go through a working farmyard), but this does not remove their obligation to ensure that any official PROW across their land also remains open and available for use by the public. It is in their interests, however, that they make a clear distinction between the PP and PROW.

Closing a PROW without the correct permissions is an offence.

Can I apply to have a Permissive Path formally recorded as a Public Right of Way?

It is possible to apply to add routes to the Definitive Map of Public Rights of Way. The process is known as a Definitive Map Modification Order ("DMMO") application, but the application must be supported by evidence of the claimed right existing.

DMMO claims based on statutory long-term public use must demonstrate that the route was used "as of right", i.e., openly, without force and without permission, by the public for a continuous period of 20 years. This 20-year period is measured retrospectively from the date when the public's use of the route was first challenged or called into question. A claim may be made at common law for a shorter period which does not rely on the public's use being challenged; however, the same "as of right" test would be applied.

Where a path is clearly designated as a PP, it is generally good evidence that no public right of way was intended. As such, any application to record it as a PROW would need to show that public rights were established at a time when that permission was not in place, or that permission was not clearly communicated to users.

When a landowner clearly communicates that the path is permissive (i.e., a courtesy they have expressly granted), the public is using the route with permission rather than as a right. Because use with permission is legally not "as of right", it stops the time clock for that use accruing toward a permanent public right of way. In such circumstances, a DMMO claim cannot succeed.

It should be further noted that, under Section 31 of the Highways Act 1980, landowners do not need to keep PP signs/communications in place throughout the entire 20-year/qualifying period; it only needs to sufficiently interrupt the qualifying period. As a result, an interruption need not last long in order to defeat claimed use "as of right". Whether an interruption is sufficient will depend on the specific facts and circumstances of each case.

Any application will be considered by the Council on its individual merits, taking into account the law (including associated case law) and all relevant evidence provided.

For further information about claiming a right of way, please see

https://www.gloucestershire.gov.uk/media/rk4dwfdf/dmno_geninfosheet_vjul24.pdf

How can a landowner prevent public rights from accruing on a Permissive Path?

A landowner may be concerned that public rights may accrue through long use of a path by the public across their land. There are three methods by which a landowner can prevent, or diminish, the risk of such a claim. It is recommended that landowners consider a combination (or all) of the following main preventative measures:

1. Erecting permanent and clear signs.

Marking the route in question with clear signage (i.e. waymark signs) to highlight that it can be used 'with permission' and that use is not "as of right". Suggested wording might be: *"This path is not a public right of way. The landowner does not intend to dedicate the path as a public right of way, but users are permitted to use it with express permission of the landowner"*. The wording can be adapted to suit the situation. Other conditions might also be added - for example, use might be limited to daylight hours only. Signs can inform the public that the landowner reserves the right to withdraw permission to use the path at any time, either temporarily or permanently and at short notice.

2. Closing the path for a short period (for example one day per year).

This action prevents uninterrupted use "as of right" from accruing. Traditionally, path closure has been over a public holiday as this makes it memorable to the greatest potential number of users that the path was closed on that day. It must, however, be obvious to users that the path is closed (i.e. closing it 1am - 2am would not be obvious to most users), and there must be overt evidence of the closure. Closure should be supported by signage informing users of the closure or other acts which make it evident that the owner is preventing use for that period. It is useful for the landowner to record actions (e.g. dated photographs) as evidence of closing the path, which can then be used to provide evidence of the act of closing the path at a future date.

3. Depositing a statement and map under Section 31(6) of the Highways Act 1980.

Section 31(6) of the Highways Act 1980 (www.legislation.gov.uk/ukpga/1980/66/section/31) enables a landowner to deposit with the highway authority a map and statement showing the ways (if any) that they admit are dedicated as public highways. The deposition provides a degree of protection against claims for additional rights of way based on deemed dedication. It can be kept in force by the landowner submitting Declarations and Statements of Truth at intervals of no greater than 20 years.

For further information on this type of deposit, including instructions on producing the map and templates for the Statement and Declaration, please see:

<https://www.gloucestershire.gov.uk/prow/definitive-map-and-associated-registers/highways-act-1980-section-31-6-depositions/>

What else should a landowner consider regarding the creation of a Permissive Path?

Erecting signs informing users there is “no public right of way” or that use is “by permission only” on a way which members of the public feel has already been used “as of right” for 20 years may prompt an application to add it to the Definitive Map and Statement of Public Rights of Way. The Council has a legal duty to determine such applications under section 53(2) of the Wildlife and Countryside Act 1981.

How many Permissive Paths are there in Gloucestershire?

It is not known how many PP there are in Gloucestershire because there is no requirement for landowners to notify the Council of them.

Gloucestershire County Council is currently undertaking work to map known permissive routes; however, it is unlikely to capture those routes where landowners have granted permission but have not formally notified the Authority. It must also be appreciated that as permission may be withdrawn at any time and without notification, any printed list or map could become out of date.