

## WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53 DEFINITIVE MAP MODIFICATION ORDERS (DMMO) GENERAL INFORMATION SHEET

### 1. What is the Definitive Map and Statement?

The Definitive Map and Statement (DM&S) of Public Rights of Way is the legal record of public rights of way in the county. Gloucestershire County Council is the surveying authority responsible for maintaining the DM&S as the accurate record of all public rights of way in the County.

You can view the original Map at Shire Hall, Westgate Street, Gloucester, GL1 2TJ during Shire Hall Reception open hours (no need to book an appointment).

An electronic representation of the recorded rights of way is available online at <https://www.gloucestershire.gov.uk/prow/rights-of-way-online-map/>. This is not the Definitive Map but our attempt to show the data in an electronic format. The routes shown have been transposed from the original Definitive Map, which is at a published scale of 1:10,560; therefore, please make due allowance for any extra implied accuracy at the viewed scale.

The rights recorded on the DM&S are as follows:

- Footpath - right of way on foot only.
- Bridleway - right on foot and to lead or ride a horse; pedal cycles may be used on a bridleway.
- Restricted Byway - carriageway which carries rights on foot, and to lead or ride a horse, and for all non-mechanically propelled vehicles (for example, a bicycle or a horse and cart).
- Byway Open to All Traffic (BOAT) - special category of carriageway that usually has the character of a footpath or bridleway, and which carries a right on foot, to lead or ride a horse, and a full vehicular right that includes motor vehicles.

### 2. What is a Modification Order?

A Definitive Map Modification Order (DMMO) is a change to the Definitive Map & Statement of Public Rights of Way governed by a legal process, and must be based on evidence:

- Public rights may exist over a route not shown on the DM&S; higher rights may exist over a route which is already shown; or rights may be shown which have been recorded incorrectly or in error.
- Modification Orders are not about whether it is a good thing or a bad thing that a right should be added or deleted, but about whether those particular rights exist.
- Section 31 of the Highways Act 1980 provides that where a way over land has actually been enjoyed by the public as of right and without interruption for 20 years or more, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. (A lesser period may be considered under common law.)

Therefore, the Council can only consider 'legally relevant' evidence, i.e. that relating to:

- The existence of the way - whether there is documentary evidence which shows that a right of way for the public exists, or a history of use by members of the public sufficient to show that a right of way exists; or conversely, whether and when any

such use has been challenged either verbally or by the route being blocked, etc. (and by whom);

- The status of the way - whether there is evidence to show that the way has been used by walkers, cyclists, horse-riders, horse & carriage, or motor traffic, etc., and if so, the extent and frequency of that use; and
- The precise route of the way.

The following factors cannot be taken into account:

- The suitability of the way for the use being claimed.
- The effect on the environment or on amenities in the area.
- The existence (or not) of other rights of way in the immediate area.

NB: If someone wishes to divert an existing public right of way, there are separate procedures under the provisions of the Highways Act 1980 which should be followed - please email [prow@gloucestershire.gov.uk](mailto:prow@gloucestershire.gov.uk) for more information.

### **3. Who can apply for a DMMO?**

Anyone may apply for a Modification Order if they believe the DM&S is inaccurate or incomplete. This includes national or local User Groups or a Parish Council.

### **4. Is there a charge to make a DMMO application?**

There is no charge for making a Modification Order application as, if successful, it is in effect a correction to the DM&S.

### **5. What evidence is required?**

The Modification Order procedure is governed by the Wildlife and Countryside Act 1981 which requires that the application must be accompanied by copies of any supporting evidence.

It is important to submit as much evidence as possible in support of the application, as the decision whether or not to make an Order will be made on the basis of the evidence provided and any other available evidence. There are two kinds of evidence which may be submitted: user evidence or documentary evidence (or a mixture of the two).

#### **[i] User Evidence**

Most claims involving user evidence are considered under the provisions set out under Section 31 of the Highways Act 1980, where the public can acquire rights over a way if it has been used for at least twenty years (a lesser period may be considered under common law). The qualifying period of use under Section 31 of the Highways Act 1980 is counted back from the date on which the public's right was first brought in question.

In general, use must be by 'the public' (rather than, say, by those working for the landowner, or those with private easements/rights of access). The use by the public must also be 'as of right', i.e. without force, secrecy or permission.

A claim based on user evidence may fail if there is sufficient other evidence that there was no intention to dedicate it as public during that period. Actions such as erecting signs stating no public right of way subsists, challenging people, submission of a Section 31(6) Highways Act 1980 deposition, obstructing the route, or clear indication that use was by permission could all demonstrate a lack of intention to dedicate.

Evidence of use can be from individuals who have used a route over the whole qualifying period, or from a number of users whose use overlaps.

User Evidence Statement forms in the prescribed format are available from the DMMO Team. Each submitted form should be accompanied by a map on a scale of not less than 1:25,000; but a larger [more zoomed in] scale map is preferable to be able to mark the application route more accurately. The map should be marked by the User to show the route they are referring to; the map should not be pre-marked by the Applicant. The County Council can supply suitable location plans.

### [iii] Documentary Evidence

Documentary evidence may consist of, for example, old maps, parish records, estate records, photographs, Inclosure Awards, or Tithe Maps. Such documents may be found in Gloucestershire Archives, National Archives, or other collections.

Whilst the County Council will carry out a search of primary sources as part of its investigation of an application, the Applicant may wish to research the available records for the area in question in support of their application. Further information (if required) can be found in the Documentary Evidence Information Sheet.

## **6. How do I apply?**

You should contact the DMMO Team in the first instance (contact details at the end of this Sheet).

It would be helpful if you could provide a brief outline of why you think rights should be recorded, and details of the approximate location of the route(s).

If appropriate, you will be sent an application pack which will include a Form 1, a Form 2, a Form 3, blank location plans, and a supply of User Evidence Statement forms (if applicable):

- Form 1 [Form of Application for Modification Order]  
This should be completed by the Applicant to describe the change being requested. It should be returned to the DMMO Team with a map clearly showing the route in question and copies of the evidence supporting the application.
- Form 2 [Form of Notice of Application for Modification Order]  
This should be completed by the Applicant and sent to every owner and occupier of any land to which the application relates, together with a map showing the claimed route. Further copies of this form can be provided on request.
- Form 3 [Form of Certificate of Service of Notice of Application]  
This should be completed by the Applicant and returned to DMMO Team (usually together with Form 1) to confirm that Form 2 has been correctly served.
- User Evidence Statement forms (if applicable)  
These should be passed to any Users of the route who are willing to submit evidence of their use. The plans should not be pre-marked by the Applicant, as to do so may prejudice the application. The User should pass their completed questionnaire, declaration and map back to the Applicant for submission as part of the application. (If additional forms are completed after the application has been made, they can be sent direct to us.)

All forms submitted as part of the application must be signed and dated, and (where applicable) Statements of Truth completed. See also below regarding data privacy.

If you are referring to historical maps and documents to support your application, it will be necessary to supply a copy of these documents. Your application will be regarded as

invalid under the relevant legislation if you simply provide a list of the documents you are referring to. We will accept digital images by email, but these must be clear, referenced, and unedited. If you have any concerns about obtaining, or the submission of, documentary evidence, please contact the DMMO Team.

In order for an application to be formally accepted as a “duly made” (proper) application, it must be accompanied by all the required signed forms, location map at the appropriate scale and copies of evidence being relied upon.

### **7. What if I cannot find out who the landowner/occupier is?**

If, after reasonable enquiry has been made, you are unable to trace the landowner/occupier(s) affected by the application in respect of Form 2 above, you can apply to the County Council to dispense with the usual personal notice and instead serve notice by addressing it to the “owner or occupier” and fixing it to some conspicuous object on the land. If this applies, please contact us for advice.

The certificate that notice has been served (Form 3) is essential; without it the Council is under no obligation to consider the application.

### **8. What happens after the application has been made?**

Once received by the DMMO Team, the application will be assessed and given a priority score according to the statement of priorities as set out in the approved Rights of Way & Countryside Access Improvement Plan 2011-2026

([https://www.gloucestershire.gov.uk/media/pelfpxn1/rowip\\_2011\\_to\\_2026-45038.pdf](https://www.gloucestershire.gov.uk/media/pelfpxn1/rowip_2011_to_2026-45038.pdf)), and placed in an open queue based upon its priority rating.

It is possible for the priority given to any application to change if significant factors come to light; for example, if the evidence is weaker than first thought, or stronger evidence comes to light to demonstrate a greater public need, or if the site is subject to planning.

The Application will also be uploaded to the official Register of Applications (online version available at <https://ww3.gloucestershire.gov.uk/PROW/>). See also below regarding data privacy.

Typical timescales for the processing of any application are generally quite long because of the number of statutory stages that are involved, and our legal responsibility to consult with various parties. For example, an application will typically take two years from commencement to resolve if there are no objections; but if there are objectors, this may require the application to be submitted to the Planning Inspectorate for a decision and overall timescales will be much higher.

In order to fully investigate the application, the County Council consult the relevant Parish and District Councils, other statutory bodies, etc., and investigate any matters raised in the application. A summary of any User evidence will be sent to any landowner/occupier(s) affected by the application and an opportunity given for them to comment. Any such comments may then be sent to the Applicant for their observations. In addition, the County Councillor for the area will be consulted, and any documentary evidence discovered will also be taken into account.

### **9. How will the application be decided upon?**

Once the application has been researched and consulted upon, Officers will produce a Report which will form the basis of the application’s “determination” by the County

Council's Commons and Rights of Way Committee or by Officers under Delegated Powers.

If it is determined that sufficient evidence of the claimed right exists, a Modification Order will be 'made' and published.

If it is determined that there is insufficient evidence to 'make' an Order, the Applicant has twenty-eight days in which to appeal to the Secretary of State who will consider the evidence and direct the County Council accordingly.

#### **10. What happens after any Modification Order is 'made'?**

Notice of the 'made' Order will be served on the Applicant, affected landowner/occupier(s) and other interested statutory parties. It will also be posted on site, in the local newspaper, and within the Register of Applications available on our website at <https://www3.gloucestershire.gov.uk/PROW/>.

A period of forty-two days will be allowed for any objections or representations regarding the Order. If no objections are received, or they are subsequently withdrawn, a 'confirmation' order will be signed and published. A further forty-two days will then be allowed during which it is possible to apply to the High Court for a judicial review into the making of the Order (i.e. on the grounds that the process of law was not followed).

After this period, and if no judicial review is lodged, the Definitive Map & Statement will be updated, along with the electronic Public Rights of Way map, the National Street Gazetteer, and Ordnance Survey.

If objections are received to the 'made' Order and not withdrawn, the 'contested order' must be passed to the Secretary of State for the Environment, who will ask the Planning Inspectorate to determine whether the Order should be confirmed, by holding either a local Public Inquiry, a Hearing or by Written Representations.

#### **11. How will my data be used?**

Please see our Data Privacy notice concerning DMMO applications at <https://www.gloucestershire.gov.uk/prow/definitive-map-and-associated-registers/>

#### **12. Any other questions?**

If you have any further questions about the DMMO process, please contact us:

- Post: Highway Records & DMMO Team, Gloucestershire County Council, Shire Hall, Gloucester GL1 2TH
- Email: [modificationorders@gloucestershire.gov.uk](mailto:modificationorders@gloucestershire.gov.uk)
- Web: [www.gloucestershire.gov.uk/prow](http://www.gloucestershire.gov.uk/prow)