



THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

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

1. What is the Definitive Map and Statement?

Nottingham City Council (“the Council”) is required by law to record all public rights of way on what is known as the Definitive Map and Statement (DM&S). This requirement relates to minor ways such as footpaths, bridleways restricted byways, and byways open to all traffic and enables everyone, including walkers, riders, local residents and landowners to know which routes are public rights of way as opposed to being private. If a person thinks that the DM&S is inaccurate or that a public right of way is missing from the DM&S they may make an application to the Council for a Definitive Map Modification Order (DMMO) to modify the DM&S.

2. The Council’s duty to keep the DM&S under continuous review and make DMMOs

The Wildlife and Countryside Act 1981 (the “WCA”) places a duty on the Council to keep the DM&S under continuous review, and to make modifications as required. The DMMO process is only concerned with recording existing public rights of way as opposed to creating new rights.

Although this note provides information on “adding” a way to the DM&S, a DMMO may also be made which proposes to change what is already recorded in the DM&S. For example, a DMMO may remove a public right of way from the DM&S where new evidence shows no such public rights exist, or it may alter the classification of a recorded public right of way from say a footpath to bridleway (or vice versa,) if new evidence demonstrates its classification had been recorded incorrectly or alter the particulars of a recorded public right of way including its width or length.

3. Application for and the making of a DMMO

Before the Council can consider making a DMMO, it must be satisfied that the supporting evidence shows that a public right of way subsists, or may be reasonably alleged to subsist, over the land in question.

The WCA sets out various requirements which the applicant for a DMMO needs to meet before an application for a DMMO can be considered. Applications for DMMOs are required to be in a prescribed form and accompanied by:-

- (a) a map drawn to the prescribed scale showing the way or ways to which the application relates; and
- (b) copies of any documentary evidence and / or user evidence (including but limited to old maps, plans or history of the locality, statements from users of the claimed public right of way) which the applicant wishes to adduce in support of the application.

The applicant for a DMMO is also under a duty to serve notice on every owner and occupier of any land to which the application relates¹ and serve a certificate confirming this has been done (a “certificate of service”) with the application. **Unless these requirements**

are met the Council is under no duty to investigate the application and will not do so. The Council must determine an application for a DMMO within 12 months of receipt of the certificate of service, but this period may be extended with the applicant's approval.

The evidence to support a DMMO application may include evidence of public use (e.g. User Evidence Forms) and documentary evidence (e.g. formal records such as Ordnance Survey Map(s), an Inclosure Award, property deeds, building layout plans, other historic accounts of the locality) or a combination of both. Under statutory provisions (Section 31 of the Highways Act 1980) the user evidence must show that the public have enjoyed using a way "as of right" (i.e. without force, secrecy or permission) and without interruption for a period of at least twenty years. Collectively, this evidence may be sufficient to demonstrate the landowner has dedicated a public right of way, unless there is evidence of a contrary intention by the landowner (e.g. evidence of a sign displayed on the way stating '*no public right of way*' and / or a gate periodically locked which blocked public access). Similar provisions exist under Common Law although the period of public use does not have to meet the 20-year threshold.

Unless the applicant for the DMMO intends to provide documentary evidence only to support the application, the applicant must provide the Council with sufficient user evidence to demonstrate use was enjoyed by the public at large for the required period, and not just use by a specific class of users (e.g. a small group of neighbours). Therefore, although each application will be considered on its own merits, the Council would generally expect at least 10 completed User Evidence Forms to be submitted in support of an application in order for it to likely succeed, though this number may be less depending on the type, source and quality of any supporting documentary evidence.

4. Procedure for resolving a disputed public right of way

In the event that the Council makes a DMMO it is required to serve and publish a notice which is subject to a 42-day consultation period during which time anyone may make objections or representations. The DMMO does not take effect and the DM&S cannot be modified (i.e. the public rights cannot be recorded, deleted or amended) until the DMMO has been confirmed.

If objections are made against the DMMO within the 42 day consultation period, and are not withdrawn, the Council do not have the power to confirm the DMMO. The Council only have the power to confirm unopposed DMMO's. To have an opposed DMMO confirmed, the Council must refer it and the objections to the Secretary of State.

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

In practice, the Planning Inspectorate (PINS) process the opposed DMMO on behalf of the Secretary of State. PINS check that the DMMO has been drafted correctly and was made and publicised in accordance with the regulations. If everything submitted to PINS is correct, the responsibility for the DMMO passes from the Council to the Secretary of State. PINS then review the application documents, the evidence in support 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 an explanation of why the Council believe, on the balance of probabilities, that a public right of way subsists and the DMMO should be confirmed and the DM&S modified. PINS then decide whether the opposed DMMO should be determined through a Public Inquiry, Hearing or by 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 full Statements of Case and Proofs of Evidence within the statutory time scales. A Council may also decide to take a neutral position and let the evidence speak for itself.

It is important to note that an Inspector has powers only to consider whether the claimed public rights subsist or not. The Inspector cannot consider the suitability of the way for public use or the desirability of public use (e.g. in terms of crime, disorder, or the health and safety of users of the claimed way). If PINS believe that an objection contains no relevant material, they will write to the objector(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 determine the DMMO without hearing the evidence or exchanging written representations. In these cases, PINS will write to everyone explaining that the Inspector intends to make the decision without requesting further information.

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

If the Inspector confirms the DMMO without modifications the Council will publish the Notice of Confirmation and the public right of way is added to the DM&S. If the DMMO is confirmed with modifications (i.e. width / length) the Secretary of State will publish the Order with the proposed modifications. If there are no objections to the parts of the DMMO that have been modified, the Notice of Confirmation is published and the public right of way is added to the DM&S. If there are objections to the modified part of the DM&S the opposed DMMO will be determined at an Inquiry, Hearing or by written representations.

ⁱ If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice may be served by addressing it to the "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.