

Definitive Map Modification Order Research Guidance Information

The whole basis for making definitive Map Modification Orders hinges on there being sufficient evidence that the Definitive Map and Statement is incorrect and requires to be modified. It is essential to realise that no matter how desirable a change or modification may be, the Council cannot act unless there is sufficient evidence that a modification should be made.

So what is this evidence, and how much is needed to make a good case for modifying the Definitive Map and Statement?

The evidence that the Council needs to consider takes two forms:

- Documentary Evidence
- User Evidence

A successful application can be based on either of these, or a combination of both. In most cases (where the application is for a right of way to be added to the Definitive Map and Statement) the Council needs to be satisfied from the evidence that on the balance of probabilities, a public right of way exists, or may be reasonably alleged to exist. It is almost impossible to lay down hard and fast rules as to how much evidence is necessary – especially as some evidence carries much more weight than others. However, there are some key sources of evidence which should always be investigated.

Documentary Evidence

Most of the documentary evidence relevant to Definitive Map Modification Orders can be found in the County records Office in Harold Street, Hereford. Researching these documents can be time consuming, so it is always worthwhile keeping an accurate record of document references and taking copies or photographs of documents. This assists us when looking at applications in the future.

The following documentary sources should always be investigated – even if it is only to confirm that a particular record does not exist for that area, or does not show anything relevant – this in itself is important information.

- **Inclosure Awards and Plans**

These can be extremely important documents. In many cases, if an inclosure award has created a right of way, and there is evidence that the correct legal procedures were carried out, this can be conclusive legal evidence for the existence of the right of way.

If a route was set out by an inclosure award and plan, then the local private Act that the award was made under, and also the general Act must also be examined. These are very important as they describe exactly what the award had powers to do, and what procedures should be followed. Sometimes, as a result of checking the Acts, it may also be necessary to check the Quarter Sessions records.

Sometimes parish boundaries have changed over time, so it may be necessary to check the awards in adjoining parishes. Generally, the inclosure awards and plans are indexed under the references Q/RI/1 to Q/RI/59 in the Records Office, though some are also found in individual parish files.

- **Quarter Sessions Records**

The Quarter Sessions were the forerunners of the Magistrates Courts, and were held quarterly at Epiphany, Easter, Trinity and Michaelmas. They routinely dealt with matters concerning highways, including stopping up, diversion, maintenance and repair. If a legal procedure is set out in the Quarter Sessions records, it is generally conclusive evidence of that procedure. Sometimes the descriptions of routes are rather vague, but on other occasions there are often plans and detailed descriptions – these are particularly useful.

The Quarter Sessions are a very large and complex archive of records – they cover a vast area of activity from such things as petty theft and assault, through to highways maintenance and diversions. Fortunately, there is a Highways Index, which is a comprehensive listing of the Quarter Sessions rolls which relate to highways and rights of way matters – this can save a great deal of time and effort. The Highways Index lists entries by parish in alphabetical order, and then in date order within each parish. It can be a good idea to check the adjoining parishes as well if there is suspicion of a parish boundary being moved. The Highways Index covers the period 1732 to 1971, and just occasionally, it may also be necessary to check Magistrates Court records, though in most cases, changes made by that date should already be on the Definitive Map.

- **Tithe Maps and Apportionments**

The Commutation of Tithes Act of 1836 gave rise to the production of tithe maps. The primary purpose of these wasn't the recording of highways or rights of way; it was the assessment of the productive value of land, from which a tithe rent charge could be calculated. However, because roads were generally not productive land, they were usually excluded from the areas of land assessed for tithes. On some tithe maps footpaths and bridleways may also be shown, though this is not common. Tithe maps are valuable as evidence because they are large-scale plans produced to a reasonable standard of accuracy and they were legal documents subject to public scrutiny. However, there can be considerable variation between them – each must be assessed individually. Hereford Records Office has microfilm copies of the Tithe Commissioner's copies of the tithe maps and apportionments (the originals are at the Public Records Office in Kew), and it also has the originals of most of the diocesan copies of the tithe maps and apportionments. Generally, there is little difference between the Tithe Commissioner's copies and the diocesan copies.

- **1910 Finance Act Maps and Records**

Like the tithe maps, these documents were originally prepared for the purpose of assessing the value of land. The 1910 Finance Act sought to levy a tax every time land was sold – this demanded a very thorough survey of all the land in England and Wales. The maps were prepared on large-scale Ordnance Survey plans, and each plot or hereditament was given a reference number and shown coloured. Books of Reference (sometimes called Domesday Books) accompany these plans, and the plots are listed by parish and then by their reference number. These entries describe the plots in considerable detail, and show if particular deductions on the value of the land were claimed – for example where land was crossed by public rights of way. There were severe penalties for those making false claims, so where deductions for public rights of way were allowed, this can be good evidence. However, where a plot is large or is crossed by a number of potential rights of way, it may not be possible to be certain that a reduction in tax was allowed on a particular path. Generally, roads were excluded from the land to be assessed, and are shown as un-numbered and un-coloured – this can be good supporting evidence (in conjunction with other records) of public rights of way. There is also a considerable archive of Finance Act records in the Public Records Office at Kew, including the Field Books, which generally give more detail than the books of reference.

- **Private County Maps**

The late 1700's and early 1880's saw a growth in county maps produced by private surveyors. These vary a great deal in quality and accuracy. Some of the maps from the earlier part of this period are rudimentary and generally can only be relied upon to show the more major routes, whereas later maps, such as those produced by Bryant, appear to be much more accurately surveyed and show a much higher level of detail. Quite a number of the surveyors readily "borrowed" information from other surveys and estate maps. Generally, these maps do not distinguish between private and public routes, and you should consider these maps in the context of other records. However, if a route is shown on some of the other sources listed above, as well as on (for example) Bryant's map and Price's maps, this can be very valuable supporting evidence. In Herefordshire, the main County maps are by Bryant, Price, Taylor, Cary, and Greenwood.

- **Ordnance Survey Maps**

The one-inch to the mile Ordnance Survey first edition map circa 1832-33 shows a similar level of detail as the best of the private maps (such as the Bryant, above). However, the original motivation for the production of these maps was for military use, and the main concern was to record features relevant to moving men and materials, and defence of the land from attack. The accurate recording of roads and tracks and the terrain they went through was vital, but whether they were

public or private was relatively unimportant. In the 1880's, the Ordnance Survey began publishing large-scale maps at 1:2500 and 1:10,560 scales. Again, these were primarily concerned with accurately recording the physical features of the land, and most bear specific disclaimers stating that the showing of roads, tracks and paths is not evidence of public rights of way. In spite of this, Ordnance Survey plans can be excellent evidence of the continued physical existence of a public right of way – for example, that a route set out by the Inclosure process was actually established on the ground.

- **Estate Maps and Surveys**

These were produced for a very wide range of purposes, including the sale or exchange of land and the management and running of the estate. As a result of this, these maps are very variable – some resembling little more than sketch plans, whereas others are at a very large scale and show considerable detail. Each must be assessed on its merits and the purposes for which it was produced.

- **Canal and Railway Plans**

During the eighteenth and nineteenth centuries there was a great expansion in the canal and the railway networks. The canal and railway companies had to obtain Private Acts of Parliament in order to acquire land for these. As part of this process, books of reference were produced containing detailed plans of the proposed canal or railway. Generally, canal plans only showed roads affected by the proposed scheme, whereas railway plans would also show footpaths and bridleways. In many cases, canals or railways were proposed even though they never reached construction, so it may be worthwhile checking to see if any plans exist, even though there is no evidence of anything having been constructed.

- **Turnpike Records**

Repair and maintenance of roads has always been a difficult issue, and in the 1600s there was a growing demand for the charging of tolls to pay for repairing and maintaining roads which were breaking up under greater volumes of traffic. To allow this, an Act of Parliament gave the Justices of the Peace powers to authorise the setting up of Turnpike Trusts. Later, specific legislation enabled the setting up of such trusts. Generally, the trusts were concerned with the improvement of existing roads – surfacing maintenance, straightening, drainage – though occasionally, they did build new roads. The records can be very variable, but may include very detailed plans, accounts, and descriptions of the turnpike roads and those adjoining. These can be very valuable evidence, though each must be considered on its own merits.

- **Parish Submissions**

As the first stage in the preparation of the Definitive Map, the 1949 National Parks and Access to the Countryside Act, required parish councils to conduct surveys of the public rights of way in their area. Typically, the submissions include a map of the parish at 1:10,560 scale, showing all the paths that the parish intended to claim. Some of these are quite carefully drawn, others rather less so. These plans are accompanied by handwritten forms which describe each path. These forms are frequently very detailed in their description of routes, often including such details as stiles and field gates. There is a space on the form for the parish and rural district councils to indicate whether they approved the path. These documents were sent to the County Council, which then assessed whether the route should be included in the initial Draft Map: on the reverse of the form they recorded whether the route was approved for inclusion on the Draft Map. Often there are also comments as to the reason why a route was not approved – these can be very useful as they frequently relate to whether the path was used or well maintained, rather than whether rights were found to exist. The parish submissions are held in the Modern Records Unit and are not open to public inspection without a prior appointment.

User Evidence

Establishment of a right of way through long use by the public relies on a legal concept known as presumption of dedication. For a public right of way to come into existence, at some time it must have been given over (or dedicated) to the public by the landowner – either through a formal legal process, or informally. In some cases, there will be good evidence of the dedication, which will come under the documentary evidence listed above. However, it is often the case that the public has just used a route for a long time, and there is no documentary evidence of the landowner ever having dedicated it or it ever having been legally set out. In such circumstances, the law tries to

make a judgement (or presumption), based on the actions (or lack of actions) of the landowner as to whether he or she intended at some time in the past, to dedicate the route as a public right of way.

For a public right of way to be established, not only must it have been dedicated to the public, it must also have been accepted by them – it's not enough for a landowner just to say, "Here's a public footpath." The path must also be used (or accepted) by the public in order for it to become a public right of way.

Use must be over a **defined** route. This does not mean that it has to have been enclosed, but it must follow a particular line – people walking across a piece of open ground and taking a number of different routes would not establish a right of way.

In order to establish such a presumption of dedication, the law has to consider the evidence of the use of the route by the public. The first issue is that use of the route has to be **as of right**: this means that use has to be without force, without secrecy, and without permission.

- Without force - means not having to overcome or ignore obstacles or deterrents, such as having to climb over (or break down) barbed wire or locked gates, go past "Private Land – Keep Out" notices, or ignoring landowners or their agents telling people to keep out.
- Without secrecy – means that the use should be open and in plain view, so that an ordinary landowner, taking normal precautions to protect their interests would have reasonable opportunity to become aware of it and take action to stop or deter use, should they wish to.
- Without permission – if a landowner grants people permission to use a route, the landowner is effectively denying that a right to use the route exists. Permission may be conditional, and can be withdrawn. Sometimes, it is made apparent by a notice saying something to the effect that the route is permissive, or by periodically closing the route off. Similarly, if a user asks for permission to use a route, they are admitting that they do not have a right to use it.

The use of the route must be by the **public**. This means it must have been made by a sufficiently large and diverse group of people: the population at large – use of a route solely by people gaining access to their fields or to particular properties would be unlikely to count as public use. In general, the wider the group of people and the greater the number using a route, the better is the case for public use. It is hard to give an absolute rule, but somewhere between six and ten users would be an absolute minimum to count as public use. The period of time that the route is used for is also vital – it should be for a sufficient uninterrupted period for it to have become obvious to a landowner that a route was being used and a right becoming established. Under common law, frequent use of a route by a large number of people could be sufficient evidence of an intention to dedicate after a comparatively short period of time. For a presumption of dedication to arise under the Highways Act, the route must have been for a continuous period of 20 years before it was called into question. This does not mean that every user must have used the route for 20 years, but that their periods of use must overlap and span a period of 20 years or more.

Evidence of use should be **first hand**. For example, if a bridleway is being claimed, evidence should be obtained from people who have actually ridden horses along that route. Evidence from users who have merely walked the route, but claim to have seen people riding along it, or knew of people who rode along it, would not, on its own, be sufficient. The overall quality and reliability of the user evidence is also very important – users who can give accurate and consistent information about when and how they used a route will be most valuable.