

**PEMBROKESHIRE COUNTY COUNCIL  
MODIFICATION OF THE DEFINITIVE MAP & STATEMENT**

**BACKGROUND INFORMATION**

The Council's official record of public rights of way is known as the definitive map and statement. Sometimes the information this records is incorrect, or it may not include certain routes. Likewise, it may include routes that it should not. However the map and statement may be altered only by the Council making an order, known as a modification order. This involves quite a complex procedure that is laid down by Parliament.

The majority of applications are for the registration of unrecorded rights. These may include 'higher rights' on existing rights of way, such as bridleway rights on footpaths. Rights may exist because they have been dedicated in the past, or because it is presumed they have been dedicated because people have used a route over a period of time without opposition. Under statute, it is necessary to demonstrate 20 or more years of uninterrupted use of the way prior to the date that public rights were brought into question.

This does not mean that individuals must have used the route for 20 years, but that there must have been collective use by the public over a 20-year period. At least six forms from unrelated people with good evidence are normally needed to show public use. Twenty forms would normally be plenty, although this would depend on the circumstances. Evidence from people using a route to gain access to their homes or workplaces is of less value than evidence of use by the general public. It is important that the way is shown to follow a specific route and not an area over which the public has wandered at large.

It is also possible to claim rights on the basis of less than 20 years' use under common law, which is law based on court decisions rather than Acts of Parliament. However this relies on evidence from which dedication can be inferred, rather than outright *presumption* of dedication.

As well as 'user' evidence, it is helpful to have some documentary evidence. With historic routes this may form the bulk of the evidence, and may include photographs (ground and aerial), old guide books, Ordnance Survey maps and independent maps; also information from the Finance Act 1910, tithes, enclosures, railway plans, turnpikes, estates, Quarter Sessions, Parish Council minute books, Highway Board records, property deeds and land sale documents. These may be available at the County Record Office at Haverfordwest, the National Library at Aberystwyth, or the National Record Centre at Kew. The national centers have websites that indicate what is available. Certain Council documents may also be relevant, such as the draft and provisional definitive maps, and highway maintenance and 'adoption' records.

Landowners may successfully refute claims for the registration of rights if they can show that the way was used with their express permission only, or that they have prevented access to the way; also that they have erected notices to counter any suggestion that there had been any intention to dedicate a public right of way, or have lodged papers with the Council indicating that they had no intention to dedicate further rights. Even private papers that indicate no intention to dedicate a public way can be effective. Landowners may also make applications for modification orders to delete rights where they can produce clear, cogent evidence that they were recorded in error.

Ordnance Survey maps are supplied by the Council to facilitate applications, but these must be used only for the purposes of the application. Any unused maps and forms should be returned to the Council. Copying of maps is forbidden.

Once the evidence has been gathered this can be submitted with a completed application form. The original evidence forms should be sent, and preferably first generation copies of maps and other documents. After the application has been made the applicant must serve a notice on every owner and occupier whose land is crossed by the route. This of course requires some research. Once this is done, there is a form to fill in to certify that the notices have been served.

There may be a backlog of applications, so it could be some time before new ones are looked at. Applications are not dealt with in order of receipt but are prioritized using a scoring system. A decision on whether or not to make an order must be made within twelve months of application. If a decision is not made within this period, the applicant may apply to the National Assembly for Wales to direct the Council to make a decision. Even after a decision has been made, the process takes at least four months if everything goes smoothly. However, if there are problems, the process can take many months.

An officer will first assess the application and undertake wider consultations. They then make a recommendation to the Director of Community Services. If the Director decides to make an order, this will be advertised by a notice in a local newspaper in the 'official notices' section, which is also displayed at the ends of the path and in local Council offices. There is then a period of six weeks during which anyone may lodge objections to the order being confirmed. If after the expiry of that period there are no objections, the order will be confirmed, which requires another notice. There is a further six-week period during which appeal may be made to the High Court on the grounds that the order was not properly made. Only after this stage is it certain that the route is a recorded public way, but it will not be added to the definitive map and statement until it is revised. However, it will appear in searches and on subsequent Ordnance Survey maps. The route may or may not be maintainable by the Council, depending on when the public rights were first exercised.

If objections are lodged during the six-week period after the order is made, the Council cannot confirm it. Sometimes objections are made on grounds that are irrelevant to the process, and in such cases we may contact the objectors to see if they will withdraw their objections. If this is unsuccessful we must refer the order to the National Assembly for Wales for a decision. To make the decision, they appoint an Inspector, who may take submissions in writing or may decide to hold a Public Inquiry. These are usually held in the locality of the path under consideration, such as in the nearest village hall if it is suitable, and often involve a delay of several months. At the Inquiry, those supporting both sides are allowed to put forward their evidence. The Inspector does not make a decision on the day of the Inquiry, but considers the evidence and produces a report some weeks later. Sometimes the decision is to confirm the order with some changes, and if so, this requires a further notice and objection period. Assuming there are no objections, the order will be confirmed, requiring another notice. This is normally the end of the process, although it is still possible for owners or occupiers to appeal to the High Court.