

The law relating to public access rights varies widely between the four countries of the United Kingdom. The following advice applies only in England and Wales.

More advice is available on www.bhs.org.uk/accessadvice.

IMPORTANT This guidance is general and does not aim to cover every variation in circumstances. Where it is being relied upon, The Society strongly recommends seeking its advice specific to the site.

Contents

Definitions.....	2
The Definitive Map and Statement	2
Ways of adding routes to the Definitive Map	3
Creation Agreement Highways Act 1980 Section 25	3
Creation Agreement Highways Act 1980 Section 30	4
Public Path Creation Order Highways Act 1980 Section 26	4
Express Dedication at Common Law.....	5
Making a DMMO Application	6
Preliminaries	6
Register of applications	7
Register of declarations	7
List of Streets maintainable at public expense	7
Background	8
Making an application	10
The process	12
Evidence	14
User evidence.....	14
Finding users.....	15
Documentary evidence	16
Submitting the application.....	19
A final consideration.....	19
Further information	19

Definitions

Equestrians — Riders and drivers of horses.

Highway — a public right of way, generally assumed to mean a public road, but a public footpath, bridleway or byway is a highway in law.

The Definitive Map and Statement

Each highway authority (county council or unitary authority in England, county or county borough council in Wales) has a duty to keep a Definitive Map and Statement of public rights of way which is the formal legal record of the existence of footpaths, bridleways, restricted byways and byways open to all traffic in its area. Each public right of way will have a unique reference which may indicate the parish (or district) and number of the path in that parish. The Map shows status and alignment; the Statement may be brief, giving only status and start and end point, or it may include details of width, gates, bridges or constraints.

The map is conclusive evidence of any route recorded on it, but is without prejudice to the existence of rights that are not recorded, either because they were omitted when the Map was first created, as a result of the National Parks and Access to the Countryside Act 1949, or because they have come into being since that date.

There are many errors on the Definitive Map and Statement because compiling and updating it has been complex and contentious, and the work has been chronically under-funded.

Highway authorities (councils) can correct the Definitive Map by a legal process called a Definitive Map Modification Order (DMMO).

Members of the public who find evidence that a right of way is not correctly recorded can apply to the council for a DMMO to be made. If an application results in a confirmed Modification Order, the rights will be added to the Definitive Map and Statement.

The BHS supports the work to correctly record the many bridleways and restricted byways that have been omitted or recorded as footpath, as well as creating any new definitive routes. Many of its volunteers are dedicated to the task and any more people who can help gather evidence and make applications are welcome because it is important to have [all rights recorded](#) so they can be protected.

This advice note is a brief overview of how to investigate a right that is not recorded or is under-recorded (on the Map at a lower status) and how to prepare an application for a Definitive Map Modification Order (DMMO) to correct the record. Alternative means of adding rights to the Definitive Map are also described. It is only an introduction and those interested in making applications are encouraged to attend BHS [Access training](#) days or refer to the book 'Rights of Way – Restoring the Record' (Bucks and Wadey) available from the BHS bookshop.

Ways of adding routes to the Definitive Map

A Definitive Map Modification Order is used to record rights which have been shown to exist. This may be through documentary evidence, perhaps going back centuries, or evidence from users alive now. They are not new rights, they may have existed for centuries but have not been recorded. The process can be lengthy and requires robust evidence.

Sometimes the evidence cannot be found, or evidence exists for a route which is no longer available because of development or other land change, but there may be a clear need for a bridleway or byway so that the public can pass from A to B without use of roads.

New rights, with no history of use, can be created by a Creation Agreement, Creation Order or Express Dedication on a convenient route but a Definitive Map Modification Order can only record the highway reflected by the evidence, some of which could be old and the route may no longer be ideal, so a second legal process would be required to move the evidenced line to an accessible route. In this case, a creation (by agreement, order or express dedication) of an accessible route can save a lot of time and expense of a DMMO followed by a public path order to divert the line.

Creation Agreement Highways Act 1980 Section 25

A local authority may enter into an agreement with a landowner to create a bridleway or restricted byway, or upgrade a footpath. The default agreement will include the local authority assuming responsibility for maintenance of the right of way.

A creation agreement is the simplest and most cost-effective means of a bridleway or restricted byway being created.

With reduced budgets, some authorities may refuse to enter into a creation agreement unless they can justify it in terms of their priorities, so it may be necessary for the public to make the case for the importance of the way to local people.

If the council finds itself unable to justify the cost against the benefit to the public, the agreement process can include payment from local crowdfunding, either to the council as a contribution to the legal work or for any work required to enable the route to become usable, e.g. surface or gates. Supply of materials or volunteer labour might also help.

Creation Agreement Highways Act 1980 Section 30

Parish or community councils have the power to create a bridleway or restricted byway, or upgrade a footpath, under section 30 of the Highways Act 1980. The way would not be maintainable at public expense under this power, although it can then become maintainable at public expense under the Highways Act Section 38.

Public Path Creation Order Highways Act 1980 Section 26

A local authority can make an order to create a bridleway or restricted byway, or upgrade a footpath. Evidence of need will be necessary and the effect on the rights of landholders would have to be considered. The right of way would be maintainable at public expense.

Compensation may have to be paid to the landowner. Dispute about the level of compensation is decided by the Lands Tribunal.

The process is sometimes used where the owner of the land is not known and compensation is unlikely to be claimed. It can be used against the landowner's wishes, but this is rare because of the cost.

The cost implications of making a creation order, particularly against opposition, of maintenance liability and potential compensation may make an authority reluctant to use this power except where the need is shown to be high, with substantial local support, and within the council's priorities. Reference to those priorities and the council's [Rights of Way Improvement Plan](#) may assist an application.

Express Dedication at Common Law

A less common method to record a right of way on the Definitive Map is for the landowner to expressly dedicate the right of way at common law. This can be done for completely new rights as well as an affirmation of unrecorded rights which evidence suggests already exist, and to upgrade an existing right of way.

If there is evidence of an unrecorded right, it is worth asking landowners if they would be willing to dedicate a right of way because this may take less time and effort than Making a DMMO Application (below). Detailed information on express dedication is available through The Trails Trust,¹ which has published 'Creating Multi-user Public Rights of Way – A Guide for Local Groups'.

A landowner may dedicate a route by deed or proclamation and if the public then uses the route sufficiently to demonstrate acceptance of the dedicated right, a 'legal event' creating the new right may be deemed to have occurred, although there is some debate among councils as to whether a legal event has occurred despite advice from the government.

The highway authority may accept the legal event and simply add the route to the Definitive Map by an internal process called a Legal Event Modification Order, or it may fall to the person promoting the agreement with the landowner to make an application for a Definitive Map Modification Order, for which the evidence is the landowner's dedication and declarations of acceptance by members of the public.

The agreement does not require the involvement of the highway authority and can proceed without it, although it is strongly recommended that its Rights of Way Officers are consulted at an early stage to ensure that it is progressed in a way most likely to be added to the Definitive Map with least work.

Such a dedication should be in writing and include proof that the signatory is the owner of the land, and able² to dedicate a right of way over it.

The highway authority does not have to accept maintenance liability but may do so, especially if maintenance is likely to be minimal (e.g. a track used and

¹ www.thetrailstrust.org.uk/

² Having 'capacity' to dedicate means being legally free to take that action without constraint in the deeds. Land held in trust or by a company, or in probate, for instance, may not have that capacity.

maintained by the landholder for their own use). Guidance from Defra³ states that it would seem good practice for the authority to accept maintenance liability in conjunction with its liability to assert and protect the right of way.

If the landowner wishes to be certain that the highway authority will accept liability for maintenance,⁴ they must give notice to the highway authority of their intention to dedicate the right at least three months before the dedication. The highway authority can decide to accept liability for maintenance after the highway has been dedicated.⁵

If a dedicated route is physically unsuitable it may have to be brought up to a certain standard before the authority will accept maintenance liability. Local crowdfunding may be helpful in this case.

Making a DMMO Application

Where evidence is found of a bridleway or byway which is not already shown on the Definitive Map, or which is shown only as a footpath, the highway authority (county council) can make a Definitive Map Modification Order on the basis of the evidence to modify the Definitive Map. An application is a specific form plus the copies of the evidence and its sources and a plan showing the route.

Evidence may be 'historical', that is documents such as old maps, deeds or other records, or 'user', statements from people who have used the way. An application can include either or both historical and user evidence.

Preliminaries

Each highway authority will have its own method, its own versions of user evidence forms and the prescribed forms mentioned below. It is useful to contact the authority and seek to follow their preferred methods, if correct. Local BHS Access and Bridleways Officers may have established contact if you need help where it is not possible to reach the council officer directly.

³ Letter from Dave Waterman, Landscape and Outdoor Recreation, Defra, to Paul Johnson, Natural England, on 19 November 2012

⁴ Highways Act 1980 Section 37

⁵ Highways Act 1980 Section 38

The council will hold two registers (see below) and the List of Streets, which should all be consulted before beginning work as they may affect the work required and the period to be considered.

Register of applications

If a bridleway or byway is not shown on the Definitive Map, first check whether an application to have the Map modified has already been submitted and is waiting to be processed.

Information on Modification Order applications should be included in a register of applications to add, remove or change a right of way, which is available for public inspection and should be on the council's website. Some lack detail so you may have to contact the council to clarify.

Register of declarations

The highway authority will also keep and should publish on its website a register of declarations by landowners who have lodged a map and statement with the authority under Section 31(6) of the Highways Act 1980 which acknowledges rights of way over their land and prevents the deemed dedication of further public rights of way. The register should be checked if any evidence being considered post-dates 1932 (when declarations were first able to be made).

The date of the declaration can act as a challenge to the existence of an unrecorded and unacknowledged right, which will affect the period for which evidence will be required to make a case for a Modification Order.

List of Streets maintainable at public expense

In addition to the Definitive Map and Statement, each highway authority will have a 'List of Streets maintainable at public expense'. This is a list which a highway authority is required to maintain and keep up-to-date and available to the public for inspection free of charge. It records all the highways in its area which it is liable to maintain. (The official record is a list although authorities will work from a map as this is easier, but the map may not be available for public inspection or only at a charge.) Many authorities have the working data from the map available on a website map facility, and on the [National Street Gazetteer](#).

The List of Streets does not have a prescribed process for its format or maintenance so it varies between authorities. There is also a difference between

maintainable and maintained which has a history of misunderstanding and has created anomalies both within and between authorities in what is shown on the List and how.

In theory, the List should include all public carriageways, whether surfaced or not (classified and unclassified roads, byways open to all traffic and restricted byways) plus all public bridleways and public footpaths which are maintainable at public expense.

In practice, most authorities only record carriageways (whether surfaced or not) which are NOT shown on their Definitive Map, plus footways and cycle tracks that are surfaced and maintained. The National Street Gazetteer may also show public highways which are privately maintainable, which cannot be shown on the List of Streets. Most show only a few, if any, of the public rights of way which are recorded on the Definitive Map. You will need to clarify the practice of your highway authority. It may not be consistent, even within the authority.

If the List of Streets is correctly maintained as a register of publicly maintainable routes, then it provides clear evidence that any route on it is public because it is illegal to maintain a private road with public funds. It is often taken as evidence of a public road, although the latter may be argued by some authorities who will state that it only indicates at least a right on foot. This is because it may include routes which are pedestrian only or cycle tracks. In practice, unless the route is physically constrained to use on foot only, e.g. by steps or width, List of Streets routes are more likely than not to be roads.

Some minor roads on the List of Streets are shown on modern Ordnance Survey maps as Other Routes with Public Access (ORPAs), whether surfaced or not.

When checking the List of Streets it is important to see just how much of the route is recorded on the List: in some cases it may be only a section, perhaps which has been surfaced to serve a few houses at one end, and not the whole length of the road/track even though the whole route is a highway. There are many through routes which are tarmaced at the ends but metalling reduces beyond the last dwelling or farm.

Background

Under Section 31 of the Highways Act 1980 (HA80s31) or under common law it is possible to establish that a right of way has come into existence by means of presumed dedication, that is, enough use over a period of time without the

landowner preventing the use, so they, or their predecessor, are presumed to have dedicated it. Evidence is required to substantiate a claim that the rights exist and an application is made to the local highway authority for a Definitive Map Modification Order (DMMO) under the Wildlife and Countryside Act 1981.

The DMMO application is a case put by an individual, a parish council, a bridleways group or other organisation (such as the BHS), who produces evidence that rights exist that are not recorded and should be added to the Definitive Map and Statement. They may be rights over a route that is not recorded at all, or higher rights than those recorded, such as evidence of a bridleway or restricted byway that is recorded as footpath.

It is time-consuming to prepare an application and it can take years to be processed. However, it does not depend on help or cooperation from any landowner, council or other organisation.

The application needs to show that the route has been used by the public as of right for a considerable period, either with reference to historical documents that demonstrate that the route was used in the past or by witness accounts of use, or both. Evidence of uninterrupted use for a period of at least 20 years is sought.

A case can be made using the '20 year rule' which was introduced by the Highways Act 1980 Section 31, in which evidence must support the allegation that a right of way can be presumed to have been dedicated by the landowner because of the level of use over a period of 20 years without action by the landowner to show a lack of intention to dedicate. The 20-year period is counted backwards from the point at which use of the route was challenged. The onus is on the landowner to demonstrate that dedication was not made. A 20-year case is dependent on there being a date of challenge or 'bringing into question' the assumed public right. This is commonly a gate being locked, change of ownership, or a planning application for change of use of the land.

In the absence of a challenge, with the route still in use, the date of the application for a modification order can be taken as the date from which the 20 years is counted backwards.⁶

A case may also be made under common law without reliance on the 20-year rule. The period may be for fewer than 20 years but the greater the period of use that can be shown, the more likely it is to infer that dedication has occurred. The case

⁶ Natural Environment and Communities Act 2006 Section 69

can be harder to make because the onus is on the claimant to show that there has been dedication by the landowner, which is most likely achieved by physical provision for the public or signs indicating acceptance of use;⁷ use alone is not necessarily sufficient evidence that dedication has occurred. A common law case does not need a point of challenge.

Whether the case is made using S31 or common law, it is still an application for a Definitive Map Modification Order.

Making an application

There are some requirements (see bullet points below) that must be fulfilled to make a DMMO application valid. An authority is entitled to regard any application that is not completely compliant with the regulations as invalid and reject it. The rejection could happen long after the application is initially made, which could be too late to re-work the application. Therefore, people wishing to make applications are advised to have an application checked by a BHS Officer before sending it to the authority.

Authorities will each have their own policy for dealing with applications and their own versions of the prescribed forms. To avoid any wasted time, applicants should first ensure they have the guidance and application pack from the relevant authority and to read it carefully. The DMMO application should be made on the prescribed form from the authority and should include:

- A map at a scale no smaller than 1:25,000 with the route marked accurately on it.

A copy of the current Ordnance Survey (OS) map at a scale of 1:25,000 or larger is the best plan to include with the application, with the route marked on it. The map may be enlarged from a 1:50,000,⁸ but as the 1:25,000 shows far more detail and is freely available online,⁹ it is better to use the larger scale because it is important to be precise in marking the route, in particular where it runs in relation to a hedge or boundary.

Other maps may be used but must not be of a scale smaller than 1:25,000.

⁷ e.g. 'Horse riders please keep to the path'

⁸ *R (on the application of Trail Riders' Fellowship and Tilbury) v Dorset CC and Secretary of State for EFRA and Plumbe* [2013] EWCA Civ 553 (Court of Appeal judgment overturned High Court judgment and upheld by Supreme Court March 2015)

⁹ www.bhsaccess.org.uk/2026, Streetmap, WheresThePath etc

- A full description of the route with accurate start and end points, preferably using grid references.
- A list of the historical documents relied upon, together with references of their sources and copies of photographs or photocopies of the documents. This should include all documents which have been consulted even if they are not conclusive.
- Copies of user evidence forms (see user evidence below).

Supply copies only and keep the certified photocopies of documents and photographs and original user evidence forms in case anything should go astray. (Bear in mind that it can take years for an application to be processed, with changes in staff, offices and even authorities in that time.)

It is also useful (though is not required) to supply photographs, particularly of each end of the route and, if needed, for clarification at the junction with another right of way or road and any feature or turning along the route.

These components take the application to the point of being 'Paragraph 1 compliant' which means it must be registered by the authority as 'duly made' under paragraph 1 of Schedule 14 of the Wildlife and Countryside Act 1981.

The next stage is dictated by paragraph 2 of Schedule 14 and requires:

- Evidence that you have made 'reasonable inquiry' to find and notify any landowner and occupier. The Land Registry will show whether the route is on registered land, in which case its report is enough. If it is not registered, the parish council may be able to identify the landowner or occupier. If no landowner can be found, then the applicant should apply to the authority for permission to erect notices (in the prescribed form) at each end of the route. In some cases the authority may take responsibility for erecting the notices.
- A certificate (in the prescribed form) that notification (in its prescribed form) has been served on any 'person with an interest in the land' who has been identified.

The application should be for the status (bridleway, restricted byway or byway open to all traffic) indicated by the evidence considering the 'balance of probability'. The evidence may be historical documents and/or evidence of recent or current use (if available, an application may be made on documentary evidence alone). Balance of probability is a legal term used to describe a reasonable

assumption on the evidence, as opposed to the 'beyond reasonable doubt' test which is applied to a criminal case.

The Paragraph 2 stage does not have to follow immediately on the issue of the Paragraph 1 documents but many applicants will complete the requirements of Paragraphs 1 and 2 in one delivery to the authority because some authorities will not investigate or determine an application unless it complies with both Paragraph 1 and 2, although they are required to register it even if it is not Paragraph 2 compliant (i.e. notice has not been served on landholders).

The process

The authority will register the application then investigate the evidence and determine whether it is going to make an Order. The period between registration and investigation may be years. When investigation of the application begins, it is good practice for the authority to consult user bodies and the landowners, listing the evidence cited and asking for any further evidence and comments which are considered in determining whether to make an Order, and for what.

If the authority has not determined the application within 12 months of receiving the certificate from the applicant that notice has been served on the landholders, the applicant may apply to the Secretary of State under Schedule 14 of the Wildlife and Countryside Act 1981 for the authority to be given a deadline for determination. The twelve months was set in legislation because at the time that was considered a period in which a council could reasonably be expected to investigate. Since 1981, council resources for this work have dropped, and since 2000,¹⁰ the number of applications has increased massively, so few councils have any hope of even beginning to investigate an application within twelve months.

An authority following good practice should investigate fully and could decide that the evidence provided in an application for a bridleway indicates the existence of a byway, or vice versa, and the authority is correct to make the order indicated by the evidence. However, this is their interpretation of the evidence, with which the applicant or others may disagree, in which case, they may object to an Order made for a different status. Their grounds for objection should be based on cogent interpretation of the evidence, personal preference or perceptions of e.g. safety or security are not relevant to the decision of whether or not an unrecorded right exists.

¹⁰ Countryside and Rights of Way Act 2000 section 53

An authority may determine not to make an Order, in which case the applicant may choose to seek more evidence, if that is the reason for the decision, or the applicant may, within 28 days of the service of the notice of the decision, appeal to the Secretary of State under Schedule 14 to the Wildlife and Countryside Act. The Secretary of State may refuse the appeal or instruct the authority to make an Order.

If the authority determines to make an Order (or is instructed to do so by the Secretary of State), this may not be immediate – an authority may assign a priority to an application depending on its policy as it is unlikely to have the resources to make all orders immediately. A route that meets criteria of the authority's Rights of Way Improvement Plan or has implications to improve safety or is affected by a planning application may raise it in the list of priorities. A case dependent on elderly witnesses may also be escalated in some authorities, depending on their policies.

When the Order is made it is advertised with a deadline for objections and the statutory consultees (which include the BHS) are notified.

If there are no objections, or the objections are withdrawn, the Order can be confirmed by the authority. If objections are not withdrawn or resolved, the Order is referred to the Secretary of State who delegates the decision to an Inspector from the Planning Inspectorate (PINS).

The Inspector can deal with the Order either by holding a Public Local Inquiry or by holding a hearing for less complex cases, or by written representations (an exchange of correspondence). The Inspector may decide to confirm the Order, confirm it with modifications or not confirm it. Some modifications require an Order to be re-advertised and can lead to further objection and referral again to the Secretary of State.

When an Order is confirmed, notices are published, and a copy is sent to statutory consultees. The modification is then recorded on the Definitive Map provided that within 42 days of the publication of the notices there has been no challenge in the High Court to the order's validity.

Evidence

User evidence

User evidence is written (or recorded oral) evidence from individuals stating that the route has been in use for at least a continuous 20-year period counting back from the date when the use was challenged or the DMMO application submitted. Each individual does not need to have used the route continuously for 20 years, but cumulatively, there must be use by several people for periods which have overlapped so there has been use by different people throughout the 20 year period. There may be an 'interruption to use', not because of an action preventing use, but because no evidence is available of use in that period or there was a documented reason why use could not take place.

Quality of user evidence is important. Evidence from a greater number of users will build a stronger case but only if the evidence of each user is true and good. This is not implying that people may deliberately lie, but memories are rarely accurate the further back in time you go, especially relating to frequency and consistency of use, width or obstructions. A case will be weakened by users whose evidence can be shown to be doubtful, perhaps because they had forgotten a period when they could not have used the route. It can be better to have fewer witnesses but with unshakeable evidence.

Use must have been by the public (on or leading a horse for a bridleway plus driving a horse or other non-motorised users for a restricted byway) and 'as of right', that is openly and without permission.

Use by employees, tenants, clients or invited guests of the landowner (such as a hunt) is usually considered to be by permission and not as of right. However, although their use of the path may not count towards the 20 years, they may still be able to give evidence of the reputation of the path. 'As of right' is a term that has changed in interpretation over the years. It means use openly and at any time, as if it was a right of way. It does not mean that the user had to have believed it to be a right of way.

If a landowner had made it known during the 20 years in question that they did not intend to dedicate the route, for instance by erecting signs (such as 'No Public Right of Way') or by locking a gate, then the use will not have been as of right and, if the application is based only on that use, it will fail. Any intention by the landowner not to dedicate must have been evident to users.

If the route has been in use as a permissive route, or a toll ride, or by virtue of a Countryside Stewardship or Environmental Stewardship Scheme, the relevant user evidence will have to start going back for 20 years from the date the permissive route or toll ride was opened or the stewardship scheme started. In theory, such permissive routes should not be accepted along paths which have historical higher rights, but it has happened.

Highway authorities usually prefer evidence to be submitted on their own Evidence Forms as this makes it easier for them to compare and assess. The authority should supply these forms plus maps covering the relevant areas. The BHS can supply a form if not. This does not preclude evidence in other formats, such as letters or recordings (which need a transcript, signature, and a map which should also be signed), and a witness may use whatever wording they find convenient. It is most important that the evidence should be in the user's own words, and thorough in describing the exact route and the period it was used. It is best if the form or letter is in the user's own handwriting. Witness statements from elderly members of the community who saw horses and riders and/or carts using the route are also pertinent.

Use of maps marked by users can be of debateable value as many people have difficulty reading a map, cannot relate a route they have used to the map. It is important to demonstrate that users were able to relate the route used to that marked. Photographs of the route can be invaluable and reference to them incorporated in the witness statement.

Should the Order be opposed and considered at a Public Inquiry, it is important for as many as possible of the people who gave the evidence to attend and give their evidence verbally. This can be vital to the success of a case and lack of witnesses at an Inquiry immediately reduces the strength of the evidence. It is good practice to establish at the outset that those giving evidence will attend an Inquiry when the time comes.

Finding users

Finding users may be simple if you are very familiar with the area and know a lot of riders and older residents. To find more witnesses:

- Ask every witness you find if they can suggest others and follow those up.
- Parish councils may know of older people, whether still in the area or moved away, who know the route.

- Bridleway Groups may be able to help, as may cycling or walking groups.
- The local hunt may have current or past members who know the route.
- Livery yards may have noticeboards or websites where you could appeal for witnesses.
- Saddlers, vets, farriers and other local equine services may know of contacts or be able to promote your need for witnesses.
- Village and village hall noticeboards may be appropriate places to put a poster asking for past users.

Documentary evidence

The BHS's tool for gathering evidence and help make applications is called [Equestrian Access Mapping](#) (often referred to be users as Dobbin).¹¹ It is county-based and most counties have an Evidence Library available with documents that have been photographed and compiled over the last decade. The tool works by plotting the line of the route to be investigated, which creates a Research Record, and that guides through the process of gathering evidence. The entered data can then be compiled into an application and statement of evidence to submit.

Applicants are recommended to consult and follow the guidance in the book 'Rights of Way: restoring the record' (Bucks & Wadey), available from the BHS bookshop. The book makes the process of checking documentation and building a strong case much easier, especially for anyone new to the process.

Documentary evidence is collected by visiting various archives and libraries to check historical maps and documents. Some maps are available online, which helps (see Dobbin Evidence Library above). The aim is to show that the route was used by the public in the past as a bridleway or higher status. Evidence from Acts of Parliament and other legal procedures carries the most weight; maps sold for use by travellers are useful; and Ordnance Survey records will, as a minimum, show the physical existence of a track.

Most highway authorities' rights of way departments have a list of primary documents that should be checked. These documents should be available to view, free of charge, and can be inspected at public records offices or libraries. There may be a charge for using a camera or photocopying in which case careful

¹¹ See www.bhs.org.uk/2026 for more on Dobbin and help on using it

planning of a visit is worthwhile. Optimum use of time can be to photograph everything for investigation later, rather than scrutinising at the time. The list can be extended, but if, after looking at these documents, there is little evidence that the route was a public right of way at the time, then checking more historical documents is unlikely to be fruitful.

Local Public Record Offices (usually in the county town) hold useful records:

- Inclosure awards
- Plans and books of reference for railways, canals and turnpike roads
- Quarter Sessions records of maintenance at the public expense, extinguishments, creations and diversions
- County maps
- Tithe commutation maps (if they exist)
- Sales documents (from the auction of farms and large estates)
- Parish histories, maps and other documents

It is advisable to check the Quarter Sessions records for earlier diversions and extinguishments before devoting time and resources to other archival research. Many also hold early Ordnance Survey (OS) maps, though the collection may be less complete than at the British Library.

Highway authorities' rights of way departments hold background information relating to the making of the definitive map (may be referred to as the 'walking survey' or 'parish footpath map'). They may indicate CRBs (cart roads used as bridleways) and CRFs (cart roads used as footpaths) because the original guidance to councils for compiling the Definitive Map defined these terms as 'public carriage or cart road, or green unmetalled lane mainly used as a footpath or bridleway'). They may have 'Handover maps' which show the highways as they were in 1930 when responsibility for them was passed to the county councils, and records from the Rights of Way Act 1932 which began the process of recording rights of way.

The National Archives in London holds records from Government Departments. Some of the most important records are those from the 1910 Finance Act. These records may show a public right of way over a holding, although declaring rights of way was not a requirement, if it is there, it is substantive evidence. The records vary considerably – some will simply state the amount of abatement given for a public right of way, others state £xx for yy yards of bridleway or footpath. If a track is shown excluded from holdings, it would suggest that it was used by the public. (There are a few exceptions, such as land owned by the Church, the

Crown, or Ministry of Defence, or local authorities, such as workhouses or hospitals.)

The National Archives also holds some Ordnance Survey records, especially those relating to parish boundaries, and the OS Object Names Books which give a description of features named on the Second Series Ordnance Survey maps. The National Archives holds the tithe maps and associated papers (also available online by subscription to The Genealogist, or in Wales, free on Cynefin).

The British Library in Central London holds records that can be useful, especially the First Edition County Series Ordnance Survey Maps and Books of Reference. Some of the records available will only cover some parts of the country, and there will be different records applicable for different counties. The Parliamentary Archives at the Houses of Parliament hold Acts of Parliament, deposited plans and records of parliamentary proceedings and have been transferred to The National Archives.

These records can all support the evidence, but in some cases the records were not compiled or have been lost or destroyed. In some parts of the country additional different records may be available. The aim is to look at as many legitimate sources as possible and produce enough to show that, on the balance of probability, the route has been in public use. Once collected, the historical evidence should be listed chronologically and it should be possible to see when the route came into existence, and its status and history since then.

It is necessary to be wary of records where multiple copies exist, such as tithe or inclosure. There is usually one document that is designated as the original, all others being copies. Most designated originals are held at the National Archives. Be particularly careful to check Kew copies of the Finance Act records, as the local records can be different, and Tithe commutation.

There are now commercially reprinted maps of the older OS maps, covering the first edition OS maps (around 1805 to 1820), the 'Revised new series' (around 1900), and the 'Popular edition' dated 1919. These are currently published by Cassini Publishing (www.cassinimaps.com) and are useful in checking at what stage the route appeared. They are re-projected and rescaled to match the current Ordnance Survey Landranger Maps.

Submitting the application

There is a case for delivering the application in person and asking that it be checked to ensure that it is valid, however, this is now uncommon with the cost and difficulty of travelling to a county council office, and that its staff may now work at home or other sites. All applications must be signed and dated. Many are submitted in the name of an organisation such as The British Horse Society or a bridleways association, so that if an individual applicant dies or moves away the application could still be carried on and the surveying authority would still have the necessary point of contact.

A final consideration

Even if a landowner has said they will not consider an Express Dedication at Common Law, at any stage in the process of gathering evidence, when it is reasonably clear that a right can be shown to exist, it is worth approaching the landowner(s) again to discuss the evidence and the possibility of the route being expressly dedicated to avoid the need for the entire DMMO process. Although dedication is presumed to have occurred, a formal dedication in writing will declare the rights with potentially less effort from all involved.

An Express Dedication at Common Law is a legal event for the purposes of section 53(2) and 53(3)(a) of the Wildlife and Countryside Act 1981 and the highway authority must make a legal event order to record the route on the Definitive Map and Statement.

The highway authority can elect to adopt the new route as publicly maintainable.

Further information

This advice note is a brief overview of how to investigate a route that is not recorded, or is recorded as a footpath, and prepare an application for a Definitive Map Modification Order (DMMO) to correct the record. Those interested in making applications are encouraged to work with the BHS through its volunteers and training days to ensure that applications are of good quality and most likely to succeed. Further help is available through BHS resources on www.bhs.org.uk/2026.

If this is a saved or printed copy, please check www.bhs.org.uk/accessadvice for the latest version (date top of page 2).