

Public Rights of Way

Guidance on Decision Making for Definitive Map Modification Orders (DMMOs): to add a route to the Definitive Map under s53(3)(c)(i).

A DMMO is the legal procedure (Wildlife and Countryside Act 1981, s53(3)) used to make a change to the Definitive Map and Statement (DM) which is the legally conclusive record of all known public rights of way in an authority's area. A DMMO is used to:

Add rights of way to the DM that are not presently recorded: s53(3)(b) and s53(3)(c)(i).

Delete rights of way already recorded, which have been added in error: s53(3)(c)(iii).

Upgrade/downgrade rights of way already recorded but their recorded status is incorrect, eg recorded as footpath but should be recorded as a bridleway: s53(3)(c)(ii).

Change details of a right of way already recorded eg reflect the authority's authorisation of a stile or gate for stock control purposes: s53(3)(c)(iii).

The DMMO process requires the council to investigate the application, to consult and in light of its investigations and consultations, apply the relevant tests and decide whether to make the order. Whether this process provides new opportunities for users or creates difficulties for landowners (or ourselves) is irrelevant and must not be taken into account.

This differs from Public Path Orders (PPO's) (diversions, creations, extinguishments), where the council can exercise a certain amount of discretion to make changes to the rights of way network, to perhaps improve it for users or, reduce problems for landowners.

The Wildlife & Countryside Act 1981 relates to amending the DM on the basis of evidence (user and/or documentary) alone. The evidence alone therefore, will determine the course of the application and, factors such as safety, desirability, current land use, personalities involved, Authority policy and security cannot be taken into consideration within the decision process.

The DMMO procedure is laid out in legislation and if not followed correctly and with proper justification can cause the council to be challenged in High Court, or possibly further. When determining a DMMO the Council is acting in a "quasi judicial capacity" and must reach a decision based on all the evidence presented in the report. The evidence is considered against the test of "subsists or is reasonably alleged to subsist over land (53)(3)(c)(i)". If a decision is made which is clearly outside of the legislative framework the council can be open to Judicial Review.

In writing the report Officers will have considered the evidence against the relevant legislative tests and have made a recommendation based on their appraisal. The Exec Member must consider the evidence and be informed by, and follow the relevant legislation in reaching their own conclusion. It is likely that there will be evidence both in support and rebuttal, the Exec Member is not required to resolve conflicts in the evidence. This has been clarified by case law (see R. v. S.o.S. for Wales, ex p. Emery). The Exec Member should consider the evidence and if a right of way can, from the evidence, reasonably be alleged to exist the authority must make the order. If a DMMO is made anyone has the opportunity to object to it. If this occurs the matter would then be determined by the Secretary of State.

If it is determined not to make a DMMO then the applicant (if there is one) has a right of appeal to the Secretary of State. If the SoS determines that 'a reasonable person, having considered all the relevant evidence, could reasonably allege a right of way to subsist' the council will be instructed to make the Order.