

Clerk to the Council



Date 02/02/2016

Dear 

Cut-off date for recording historic rights of way on the Definitive Map.

1 January 2026 is the cut-off date for adding historic paths to The definitive map: the official record of the public's rights of way in an area. When a path or way is on this map, it not only means we have a right to walk, or ride/cycle, or drive on it, but it is much easier to protect and maintain. However, any path which came into existence before 1949 and that has not been requested to be on the map by 2026 cannot be added in the future.

New regulations simplifying some of the work involved in modification orders, and requirements for authorities to do so within defined time periods will come into force in April this year. Although it is not anticipated that there will be many paths in Bracknell Forest that were established by right prior to 1949, but not recorded on the first or subsequent Definitive maps for East Berkshire, it seemed an appropriate time to remind local councils and other organisations of this time limit.

It was in 1998 that moves to close the definitive maps to historic paths were first seriously proposed. The creation of the definitive map was never meant to be open-ended and successive governments over the years since its creation in 1949 have tried to complete and close the process for recording older paths. The Countryside and Rights of Way Act (2000) officially introduced the cut-off date for adding historic paths to definitive maps. This measure came about largely in order to ensure that landowners have a clear idea of whether land they owned has a right of way on it. 2016 as was originally proposed, but opposition from organisations such as the Ramblers and The Open Spaces Society and others ensured that the cut-off date was set as 2026.

Changes to Regulations include a new type of order that will combine the Map Modification Order with a diversion order to create a path on a new line. This is intended to make negotiations with landowners easier and reduce the number of objections. While this may make it easier to record a right of way, it may not be on the exact line of the historic path.

Other regulation changes affect how orders are publicised, with more use of digital media and less need to place expensive and formally worded public notices in local papers.

Evidence

A right of way can be claimed on the basis of:

- User evidence: the public has established a right of way by using a defined route over a period of time, or
- Documentary evidence: that the right of way has existed historically based on evidence in documents such as old maps
- Or a combination of the two. It is often best to provide as much evidence as possible when making a claim.

Due to the amount of time elapsed, reliable user evidence of rights that may have existed pre-1949 will be getting harder to assemble, and documentary evidence is likely to be the most important basis of a claim.

If you believe that a right of way has been established by public use you will need to collect evidence from people who have used the route concerned. The council can supply forms to gather information on how and when the route was used. Witnesses should also mark the route they have used on a map, and sign and date it.

Documentary evidence

To prove that a right of way came into existence at some time in the past you'll need to rely on documentary evidence like old maps and Enclosure Awards, tithe awards, title deeds, statutory orders and plans, parish council minutes, photographs, reference books and published material that refers to the route in question.

The working maps drawn up by the Inland Revenue under the Finance Act 1910 can be accessed or located via the National Archive at this link: <http://labs.nationalarchives.gov.uk/maps/valuation.html> The maps are typically consulted by the public for family and local history research and for evidence to support the existence of public rights of way.

The Open Spaces Society has been using the IR maps for rights of way evidence since 1979. 'The maps contain cogent information to support the existence of public rights of way; mainly for restricted byways and bridleways, but occasionally for footpaths too. They are a vital source of supporting evidence for definitive map modification order applications.'

Enclosure maps for the Bracknell Forest area are archived at the Berkshire Records Office in Reading, along with some Parish Council and District Council minutes and old Ordnance Survey maps. Enclosure maps can also be viewed online at <http://www.berkshireenclosure.org.uk/>

Before doing lots of research and investigations, it's worth checking with the Borough Council whether the right of way you're claiming has previously been extinguished by a legal order. If a right of way has been extinguished it cannot be claimed again using documentary evidence.

If any claims are submitted, the Borough Council's officers will look at the application and carry out additional research to assess whether the definitive map needs to be amended. A recommendation for a decision will be made to the Director of Environment, Culture & Communities, who will have the final say on whether to proceed with the change to the Definitive map.

If the evidence provided does not support the application to change the definitive map, you will be informed by the council and told of any right to appeal against the decision. If the Director decides that the evidence does support your application to change the Definitive map, you will be told by the council that a Definitive map modification order will be made. This notice will also be sent to the landowners and occupiers.

Definitive map modification order (DMMO): The making of the order isn't the end of the process. The council will advertise the order by notices at each end of the disputed path, in the local press and on its public website. Anyone may object to the order during the 42 days following the advertisement. If objections are made then the order has to be determined by an inspector appointed by the Secretary of State. Only if the inspector then decides that the existence of the path has been shown is the order confirmed, and the definitive map amended to show the path.

If no objections are received then the order can be confirmed and the path or way will be added to the definitive map.

If you would like any additional detail or clarification concerning this information, please do not hesitate to contact me.

Yours sincerely,

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