

Agenda item 20.23 - PROW application information for Bell Lane

Although the Definitive Map and Statement is conclusive evidence of the existence of a public right of way over those routes recorded on it, there may be ways over which public rights might exist that are not yet legally recorded. Anyone has the right to apply for a definitive map modification order to add a way to the Definitive Map and Statement. This is an evidential process and any application for a modification order must be accompanied by documentary and/or user evidence demonstrating that public rights exist over a way, in support, to warrant the Council to investigate.

User evidence should demonstrate that a way has been used continuously by the public, as of right (that is without force, secrecy, or permission) and without interruption for at least 20 years. If use amounts to less than 20 years, then it may be considered under common law. There is no set time period for use under common law, but it is generally considered that the shorter the period of use relied upon, the more intense the use of way should have been in terms for the number of people using it and how often they used it.

Documentary evidence may include the showing of the way as a public right of way or highway in inclosure awards, tithe awards, Finance 1909/10 Act 1910 documentation, railway, and canal plans, among other documents.

The Council is under a statutory duty to investigate applications for modification order and the evidence accompanying them, together with all other evidence which is available to the Council. The process includes interviewing and taking statements from a cross-section of users who have completed evidence forms in support of an application and contacting the owners of the land affected by an application as they might have evidence supporting or negating the claim. A search for documentary evidence supporting or negating the claim would be undertaken at Lincolnshire Archives and in the Council's records. The Council is required to consult with local authorities about the application; however, it is standard practice for the Council to also consult with any parties affected or interested in the claim as part of the evidence gathering process. A decision based on the evidence would then be taken on whether it is "reasonably alleged" that a public right of way subsists over the route applied for. A modification order would be made to add the route to the Definitive Map and Statement if it is determined that a public right of way is "reasonably alleged" to subsist.

Please note that this evidential process is about establishing whether a public right of way already exists; it is not about whether they should be created or taken away. Furthermore, issues regarding the need for public access, the suitability of a way for users who have a right to use it, or the nuisance that they are alleged/likely to cause cannot be taken into consideration.

Please find attached the booklet "NE112: A guide to definitive maps and changes to public rights of way – 2008 Revision" which provides an outline explanation of this process on pages 4-13, 24-28 and 42-43.

The Council has a large caseload of outstanding modification order applications which are subject to a priority system which determines how soon they are researched. Applications are researched in the date order of their receipt with the oldest ones being progressed first, unless it is determined that they fulfil certain criteria which could result in them being reprioritised and progressed sooner. It is therefore likely to be a considerable amount of time before any prospective application would be determined. Also, the process of determining applications can be quite lengthy and complex for a variety of reasons.

Assistant Rights of Way Officer – Countryside Services