

Public Guidance Note 17

Objecting to Definitive Map Modification Orders

Introduction

1. This guidance note relates only to objections to Legal Orders made under the Wildlife and Countryside Act 1981 (WCA 1981). A separate guidance note is available for objections to Legal Orders made under the Highways Act 1980.
2. Section 53 (3) of the WCA 1981 places a duty upon Shropshire Council, as the surveying authority, to keep the Definitive Map and Statement (DMS) under continuous review, and to make Definitive Map Modification Orders (DMMOs) under the provisions of this Act. The Council can only consider relevant evidence and apply the relevant legal test when deciding whether to make a DMMO.
3. DMMOs are made by the Council. When this happens, notices are served upon owners and occupiers of land that is affected by the Legal Order, as well as on user groups, the local Councillor and every local parish/town council for the area concerned. Notices are also placed in a locally circulated newspaper and at either end of every path or way affected by the Legal Order.
4. As DMMOs affect public rights available to all and usually also affect land in private ownership, it is vital that anyone with an interest can make representations to the Legal Order. However, as these Legal Orders can only be decided on evidence, objections can only be considered relevant if they are concerned with that evidence.
5. Shropshire Council are not able to confirm a Legal Order when there are unresolved objections. In these instances, the Legal Order is referred to the Planning Inspectorate for an independent Inspector to make a final decision on the matter. The case will usually be heard at a Public Inquiry or Hearing.

Who may object to a Modification Order?

6. Anyone may object to an DMMO and may request to inspect any evidence that the Council relied upon to make the Legal Order.

When should an objection to a Modification Order be made?

7. The notice specifies the exact date by which time any representation or objection relating to the Legal Order should be made. This is usually within 42 days of the date of the Legal Order being made.

Where should representations or objections be sent?

8. The notice provides the address to which all objections should be sent.

What should the objection include?

9. An objection to a Legal Order should be in writing and should clearly state the following information:

- The full title of the order.
For example – The Shropshire Council (Footpath Addition, Parish of Pontesbury) Modification Order 2009
- The part of the order that the objection relates to^{1F}
For example – Order Map 2, Bridleway Addition
- The reason for the objection. The reason for objecting to the Legal Order should be stated as clearly and precisely as possible and should relate either to the proposed status of the route or its history of use. Issues such as suitability, security to property and preference are not, on their own, valid grounds for objection.

10. The making of DMMOs is based on the examination of all available evidence, which is either evidence of use or historical records or both. The historical evidence used to determine Public Rights of Way issues is sometimes found in documents such as; enclosure and tithe maps, and early Ordnance Survey maps. These are often held at Shropshire Archives.

What happens to the objection once made?

11. The Council will acknowledge receipt of any objections received and may contact the objector. Officers will usually try and negotiate the withdrawal of an objection if they do not feel it is relevant.

12. If objections are not withdrawn, the Council will refer the Legal Order and any outstanding objections to the Planning Inspectorate. An independent inspector will be appointed by the Secretary of State to determine the Legal Order. This may be by way of a local Public Inquiry, usually held at a nearby village hall, or a Hearing, usually held at the Shirehall. The Inspector will consider the evidence presented at the Inquiry or Hearing and then decide to either:

1. confirm the Legal Order
2. not confirm the Legal Order
3. modify the Legal Order proposals

13. An order may also be determined by way of the written representation procedure, if there are a small number of objectors. This involves the written exchange of evidence without holding a meeting in public.

14. Should the inspector's decision be to modify the Legal Order; the Planning Inspectorate might require the modifications to be re-advertised. There is an opportunity at this stage to make objections to the proposed modifications, which may lead to a second Public Inquiry, Hearing, or exchange of written representations.

15. All objectors will be notified of the outcome of the Legal Order.

¹ This only applies to orders which consist of more than one proposal e.g. "Order Map 1".



16. Following the publication of the notice stating that the Legal Order has been confirmed, there is a final opportunity to appeal against the validity of the Legal Order to the High Court, on the grounds that the Inspector's decision was not within the powers of the Act.

Relevance of objections

17. Under the terms of the WCA 1981, a Public Right of Way can only be recorded on the DMS if evidence shows that Upublic rights exist. To object to a Public Right of Way being added to the DMS, you must submit comments or evidence which shows that Upublic rights do not exist. There is the same requirement when an Legal Order is made to delete, upgrade, downgrade or alter the route of a Public Right of Way.

18. The Inspector will consider all the relevant evidence relating to:

- *The existence of the way:* whether there is documentary evidence, or evidence of a history of use by members of the public that is sufficient to show that a right of way for the public exists.
- *The status of the way:* whether there is evidence to show that the way has been used by people on foot, horseback or in vehicles, and if so, what is the nature and extent of that use.
- *The precise location of the way*

19. The following are examples of issues which Ucannot be considered when reaching a decision:

- The suitability of the route
- Invasion of privacy
- Security risks to property
- Potential effects on the value of property
- Damage to the environment
- Loss of tranquillity
- Dog or horse excrement deposited on the route
- Health and safety issues
- Nearby existing Public Rights of Way
- Preferential, alternative routes
- Maintenance of the route
- Potential additional costs to the Council

20. If the grounds of your objection relate to any of the above, the Planning Inspectorate may request you to withdraw your objection. You are nevertheless entitled to pursue such an objection at a Public Inquiry if one is held into the Legal Order. However, if the Inspector concludes that your objection is irrelevant, you may be required to meet any extra costs incurred by other parties as a result of your actions.

The awarding of costs

21. The parties at Hearings and Inquiries are normally expected to meet their own expenses, no matter what the decision on the Legal Order. However, whilst the right of objection to an order under the WCA 1981 is a statutory right, it should be exercised in a reasonable manner. The Secretary of State or Planning Inspectors are empowered to award costs by virtue of Section 250 (5) of the Local Government Act 1972 when unreasonable behaviour is held to have occurred, and this power applies to contested DMMOs.

22. Objectors who have been given the opportunity to modify grounds of a legally irrelevant objection, but who have declined to do so, will be at risk of an award of costs against them if they pursue the objection to a Hearing or Inquiry.

23. Other actions that can constitute 'unreasonable behaviour' and could be the cause of an application for costs against objectors include:

- Failing to comply with normal procedural requirements for Inquiries and Hearings
- Failure to provide a pre-inquiry statement when asked to do so
- Causing the proceedings to be unnecessarily adjourned or prolonged
- Being deliberately or wilfully uncooperative, such as refusing to discuss the matter or failing to provide necessary information when requested
- Failure to attend an Inquiry or Hearing
- Introducing new grounds of objection or new evidence late in the proceedings
- Withdrawing an objection at the 'last minute', resulting in late cancellation of an inquiry or hearing arranged after the objector(s) asked to be heard.
- Pursuing an order with a fundamental defect that renders it incapable of confirmation.
- Pursuing an objection that the Secretary of State has advised, in writing, is not legally relevant.

24. For further information on relevant grounds for objections, procedures for determining contested DMMOs, or the awarding of costs, please refer to:

www.gov.uk/government/organisations/planning-inspectorate