

Definitive Map Modification Orders Applications made under Section 53 Wildlife & Countryside Act 1981

Introduction

1. The definitive map and statement is the legal document for recording public rights of way. The map is not a complete record of all public rights of way and many more unrecorded public rights may exist. Local Authorities are under a statutory duty to keep their definitive map under continuous review in order to ensure that public rights are recorded as accurately as possible. Shropshire Council holds the definitive map for Shropshire where it can be viewed by the public at the Shirehall in Shrewsbury.

2. Alterations can be made to the definitive map based on evidence or based on preference. Changes can also be made where a route is affected by development. Changes based on evidence are dealt with under the Wildlife & Countryside Act 1981 and it is these changes that are covered by these notes. Other types of change are covered by separate guidance.

3. Under section 53 of the Wildlife and Countryside Act 1981 anyone may apply to have routes added to the definitive map or to make other changes to it; this is called a 'Formal Application'. These guidance notes are intended to give detailed information for applicants and affected landowners on the processes involved and the way that these applications are dealt with in Shropshire. There are four types of changes that can be made under this legislation:

- **Addition** - To add a public right of way of a particular status to the definitive map where none is currently recorded. This could be for a Footpath, Bridleway, Restricted Byway, or Byway Open to All Traffic¹.
- **Upgrading/downgrading** - To change the status of a recorded public right of way. For example to upgrade a Footpath to a Bridleway or to downgrade a Bridleway to a Footpath.
- **Varying Particulars** - For example to alter the line of a public right of way or the width of a route.
- **Deletion** - To remove a recorded route from the map.

4. In order to make a Formal Application you must have evidence to support your claim.

¹ Since the commencement of the Natural Environment & Rural Communities Act (NERC) 2006 applications for Byways Open to All Traffic can only be considered where they satisfy certain prescribed exception. See DEFRA guidance for more information.

5. Before you make an application it is advisable to talk to a Definitive Map Review Officer about what is considered relevant evidence for the type of change required as different types of changes have different evidential requirements.

Do I have enough evidence to support a claim?

6. Formal Applications can be supported either by documentary evidence or by evidence of long use by the public. Most applications rely on a combination of both.

User Evidence

7. Evidence of use can be gathered from people who have used the route or have seen other people use it. The Council can provide blank evidence of use forms that ask questions that will aid the decision making process. Guidance on completion of these evidence forms can also be provided. People who provide evidence forms might be asked to provide further detail or clarification and might eventually be asked to present their evidence at a Public Inquiry or Hearing. Whilst evidence can be accepted without a commitment to attend an Inquiry that evidence will naturally be afforded less weight than evidence that can be tested.

8. As a guide, to add a public right of way it must be shown that the public have used the route for twenty years or more. This is the statutory period of time required under the provisions of Section 31 of the Highways Act 1980. Usage has to have been as of right and without interruption. Each individual does not need to have used the route for 20 years provided there has been cumulative use of the route by the general public for this period.

9. Under common law, usage can be for a period of less than 20 years. This arises where there has been long use by the public as of right to the extent that the landowner must have been aware of that usage and acquiesced in it.

Documentary Evidence

10. The principal historical documents are Inclosure Awards, Tithe Maps, maps and documents produced under the Finance Act 1910, Highways Board Minutes and Parish or Vestry Minutes; these are important as they went through a due legal process. Other information can be extracted from Ordnance Survey maps, estate maps, other maps and papers and local history sources. The individual circumstances of the location and nature of the claimed route will dictate which documents might provide evidence for instance if the route was ever affected by a proposed railway or canal the plans associated with these projects might make reference to any public rights accepted at the time.

11. Officers will be able to advise you whether the evidence you have found is sufficient to support a claim. Simply finding the route marked on an historic Ordnance Survey map for instance would not be sufficient although it might provide supporting evidence as part of a more comprehensive package.

12. Most of the relevant documents are available to view at Shropshire Archives based in Shrewsbury or other local archives. Officers can give more detailed advice on the value of historical records if required.

Making the application

13. If you feel you have enough evidence to support a Formal Application you should contact Shropshire Council's Countryside Access Team who will be able to provide you with the relevant forms.

14. For each application to change the Definitive Map three forms are required to be completed:

1) **Application Form** coded A1, D1, U1, V1 or Del 1 depending on the type of application
This should be signed by you and submitted to the Council together with copies of the documentary evidence, any evidence of use forms **and a map clearly showing the route to be added or altered.**

2) **Notification Form** coded A2, D2, U2, V2 or Del 2 depending on the type of application
It is a requirement that anyone submitting a Formal Application **MUST** serve notice on **ALL** the landowners affected. If the application affects a route that appears to be outside of any obvious land holding then notice should be served on all adjoining owners. You should deliver or send the form to the landowner/s along with details of the application i.e. the route affected and the proposed change. If the landowners are not known this notice should be erected on the site at strategic locations. **If affected landholders are not notified then this is likely to cause significant future problems and delays and could mean your application is rejected.**

3) **Certificate** coded C1 regardless of the type of application
This must be sent to the Council with the application confirming that the landowners have been notified of the application.

15. The appropriate **Application Form** and **Certificate** must be returned to the Council and the **Notification Form**, and copies of it, must be delivered or posted to the landowner/s.

When will the application be dealt with?

16. Shropshire Council meets its requirements to keep the Definitive Map and Statement under review in two ways. Firstly by processing applications and secondly by undertaking a proactive parish review process where the Council systematically investigates all claims, anomalies and recording queries on the Definitive Map within a selected parish.

17. Shropshire Council receives many applications to amend the Definitive Map. In order that applications requiring urgent attention or where amendments would have significant public benefit are dealt with promptly the Council employs a **Statement of Priorities** which details the order and priority in which Formal Applications will be dealt with.

18. Applications will be considered according to the agreed policy and a decision will be made that it should fall under one of the following categories:

- To be investigated as a Priority:
- To be considered in order of receipt
- To be held on file for consideration under the next Parish Review.

Currently applications will be dealt with in accordance with the priorities detailed below:-

Priority Area 1 – North Shropshire and the remaining un-reviewed Parishes within Oswestry District.

Priority Area 2 – All other outstanding areas which have not yet been reviewed.

Priority Area 3 – The rest of the County in relation to key historic document resources.

A map of priority areas is included as Appendix 1: see where your parish fits in to this plan.

19. In addition, applications within the three priority areas will be prioritised in accordance with key local demands identified through the Countryside Access Strategy.

20. It is recognised that there may be occasions when applications outside of this priority programme need to be determined in the public interest. Such exceptions may apply where the application is for a route that is being threatened by development work or where an amendment to a route would significantly improve public safety.

21. The statement is updated periodically as priorities alter with regard to the review and updates are sent to interested organisations. The Statement was last reviewed on the 24th September 2009.

What if I am unhappy about how quickly my application is being dealt with?

22. When a Formal Application is accepted the Council has to consider it within 12 months. The Council may decide that it is not justifiable to treat the matter as a priority, and may decide to place the application on 'hold' in accordance with our priority statement.

23. If an application has not been dealt with within 12 months of it being formally lodged and acknowledged by the Council then the applicant can appeal to the Secretary of State (via the Planning Inspectorate) requesting that Shropshire Council are directed to determine the issue. The Secretary of State will consider the Council's Priority Statement (as detailed above) in these instances.

If you do not want to go through the Formal Application procedure but feel you have information or evidence that may indicate that the Definitive Map should be altered you may submit the information to the Countryside Access Team where it will be considered when the review of the relevant parish is undertaken. The information will be investigated and a decision will be made whether or not to recommend an Order is published. The appeal procedure does not apply in this case.

What happens when an application is investigated?

24. The investigating officer will review the case file and the evidence submitted with the Formal Application and will contact the applicant, affected landowners or other witnesses if they require further information or clarification.

25. In addition consultation will also be carried out with relevant user groups, the local Parish Council as well as any other interested groups and individuals whom the officer thinks might have an interest in the application.

26. The investigating officer will usually undertake further research which may include consulting historical evidence, checking records, legal orders or correspondence held by the Council, or interviewing witnesses. The officer will also undertake one or more site visits and might carry out a Land Registry search where ownership is in question.

27. During this process the investigating officer will:-

- Investigate all the evidence both for and against a claim.
- Work with both the applicants and the landholders affected to obtain a balanced view on whether the claimed rights exist or not.
- Make any recommendations based solely on the evidence available.
- Weigh the evidence based on the statutory tests that have to be applied under the relevant legislation.

28. A right of way can only be added to the Definitive map if evidence shows that public rights subsist. To counter an allegation of public rights or to object to an order, comments or evidence must be submitted which shows that public rights do not subsist. This evidential requirement applies when an application is made to upgrade, downgrade or alter the route of a public right of way.

29. Under the terms of the legislation, the following matters are issues which cannot be considered relevant when reaching decisions:

- The suitability of the route
- Invasion of privacy
- Security risks to property
- Potential effects on the value of property
- Damage to the environment (unless the area is a Site of Special Scientific Interest)
- 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

30. The investigating officer will produce a report in draft form based on all the available evidence and correspondence with a recommendation to either make a legal order or to reject the application. In some instances the investigating officer might decide that the evidence supports amendments that differ to the initial application. The draft report passes through a process within the Council to ensure it complies with the relevant legislation and Council policy and is also made available for interested parties to make representations.

31. Where further representations are made the officer will make any amendments necessary and this final report will be considered by a senior officer with delegated powers² who will consider the case and make a decision whether or not an order will be made. In some circumstances, for instance where there is a high degree of controversy, the officer with delegated powers might decide that a case should be heard by the local Planning Committee.

An illustrative flow chart is included as Appendix 2 showing the process which is followed when a Formal Application is received by the Council.

What if I am not happy with the decision?

32. If the Council decide to reject the application the applicant will be notified by letter and then have a period of 28 days in which they may appeal to the Secretary of State via the Planning Inspectorate who will look into the application and either agree with the Council's decision, or direct the Council to publish an order.

33. All other interested parties will also be written to or contacted to inform them of the Council's decision to reject the application. Only the applicant has the right of appeal.

34. The address for appeals is the same as that given on page 5.

² Authority given to an individual officer to make certain specified decisions normally made by a committee.
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Making the Order

35. If the Council decide to publish a legal order as a result of the Formal Application then the investigating officer will inform the applicant, landholders and other interested parties of this decision.

36. When an order is published the Council is required to:-

- Erect notices at either end of the route with details of the proposed changes and an accompanying map.
- Advertise the making of the order in least one local newspaper.
- Notify statutory consultees, the local member and any landowners/interested parties of the publication and sent copies of the legal order together with guidance notes on how to object to the proposals.

What happens next?

37. Anyone can object or make representations to the order within 42 days of the order being published and the Council cannot confirm an order that is subject to outstanding objections.

What happens if objections are received?

38. The investigating officer will try to negotiate withdrawal of any objections. If objections are not relevant then the officer will explain this to the objector and give grounds for their opinion; however the Council does not have the power to dismiss irrelevant objections. If negotiation fails the Council will forward the order and any outstanding objections to the Planning Inspectorate. An Independent Inspector will then be appointed by the Secretary of State to determine the Order. A decision will then be made on how best to deal with the matter based on the number and content of the objections received. There are three different procedures for dealing with orders:-

- a) An exchange of written representations;
- b) A hearing; or
- c) A local public inquiry.

39. The Planning Inspectorate has clear guidelines on how they deal with objections relating to Definitive Map Modification Orders. Depending upon the procedures being employed the Inspectorate provide both the local authority, the applicant, and other relevant people with notification of how they intend to deal with the matter and then provide a specific timetable of when the required information has to be submitted. The timetables vary dependant on the process being employed.

40. The two main sets of documentation that will be required by the Planning Inspectorate are:-

A Statement of Case (this is required at the earlier stage of the process and is required from the Order Making Authority (OMA) and anyone who has formally objected to the order) and should include:-

- Full particulars of the case proposed to be put forward
- The Planning Inspectorate Reference Number for the Order
- Copies of any documentary evidence and a list of those documents
- Reference to any case law being relied upon with full references and copies attached in the Appendix.
- The local authority's Statement of case should cite the statutory provisions under which the order has been made, the reasons for making the order, a description of the site and the authority's comments on the representations or objections to the order.
- Supporting material should be contained within appendices which are provided separately, collated and appropriately numbered and indexed.
- Both the statement and appendices should be A4 size and bound or placed in a ring binder so they can be laid flat. Any larger documents contained within the Appendices should be folded to A4 size. Photographs should be mounted on A4, referenced to a plan and include other relevant details e.g. time, date taken etc.

Proofs of evidence (these are only required for Public Inquiries)

- This contains the written evidence which a person appearing at a Public Inquiry will speak about.
- They should be concise and concentrate on the points in dispute.
- They should not rehearse all the matters which are not in dispute or refer to new material not previously mentioned in the Statement of Case.
- If facts have to be included in detail the proof should focus on the information necessary to make the case.
- If a document is referred to it should be clearly referenced to where it is in the Statement of Case.
- All pages and paragraphs should be numbered and if the proof is longer than 1500 words (approx 3 A4 pages) then a written summary should be provided which will be read out at the inquiry.

41. The Inspectorate copies all Statements of Case and circulates them to the relevant bodies involved. They do not copy the Authority's Appendices but these are made available by the Authority for inspection.

42. The Inspector will also undertake an unaccompanied site visit to view the site prior to making any determination and if necessary after the hearing or public inquiry. Site visits after the hearing or inquiry are normally accompanied. It should be noted that no new evidence can be produced at the site visit.

43. The Inspector concerned will consider all the relevant evidence. This evidence is that relating to:-

- **The existence of the way:** whether there is documentary evidence or a history of use by members of the public, 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 the nature and extent of that use is; and
- **The precise route of the way.**

44. For the full details of the Planning Inspectorate procedures please visit www.planning-inspectorate.gov.uk

Can costs be awarded?

45. The parties at hearings and inquiries relating to public rights of way Orders made by local authorities are normally expected to meet their own expenses irrespective of the outcome. However, the Secretary of State or Planning Inspectors are empowered to award costs by virtue of Section 250 (5) of the Local Government Act 1972. Costs are only awarded when what is termed 'unreasonable' behaviour is held to have occurred.

46. The right of objection to an order under the Wildlife & Countryside Act 1981 is a statutory right but it should be exercised in a reasonable manner. Objectors who have been given the opportunity to modify grounds of objection, which are not legally relevant, but have declined to do so will be at risk of an award of the authority's costs against them if they pursue the objection, unmodified to a hearing or inquiry, but it must have been obvious that the objection, so pursued, had no reasonable prospect of success.

47. Other actions that can constitute 'unreasonable behaviour' which can be the cause of an application for costs against objectors include;

- Failing to comply with normal procedural requirements for inquiries and hearings; do not provide a pre-inquiry statement when asked to do so, if the proceedings have to be adjourned or are unnecessarily prolonged; or are deliberately or wilfully un-cooperative, such as refusing to discuss the matter or provide requested, necessary information.
- Failing to attend an inquiry or hearing.
- 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.

48. Further information is available at www.planning-inspectorate.gov.uk

Planning Inspectorate decisions

49. Following either the written representation, hearing or Public Inquiry process the Inspector will make a decision on the order and detail his/her reasons and interpretation of the evidence in a written decision letter. The decision letter is sent to all those that request a copy at the hearing or Public Inquiry, the order making authority and the objectors.

50. The Inspector may decide:-

- to confirm the order
- not to confirm the order
- to confirm the order with modifications

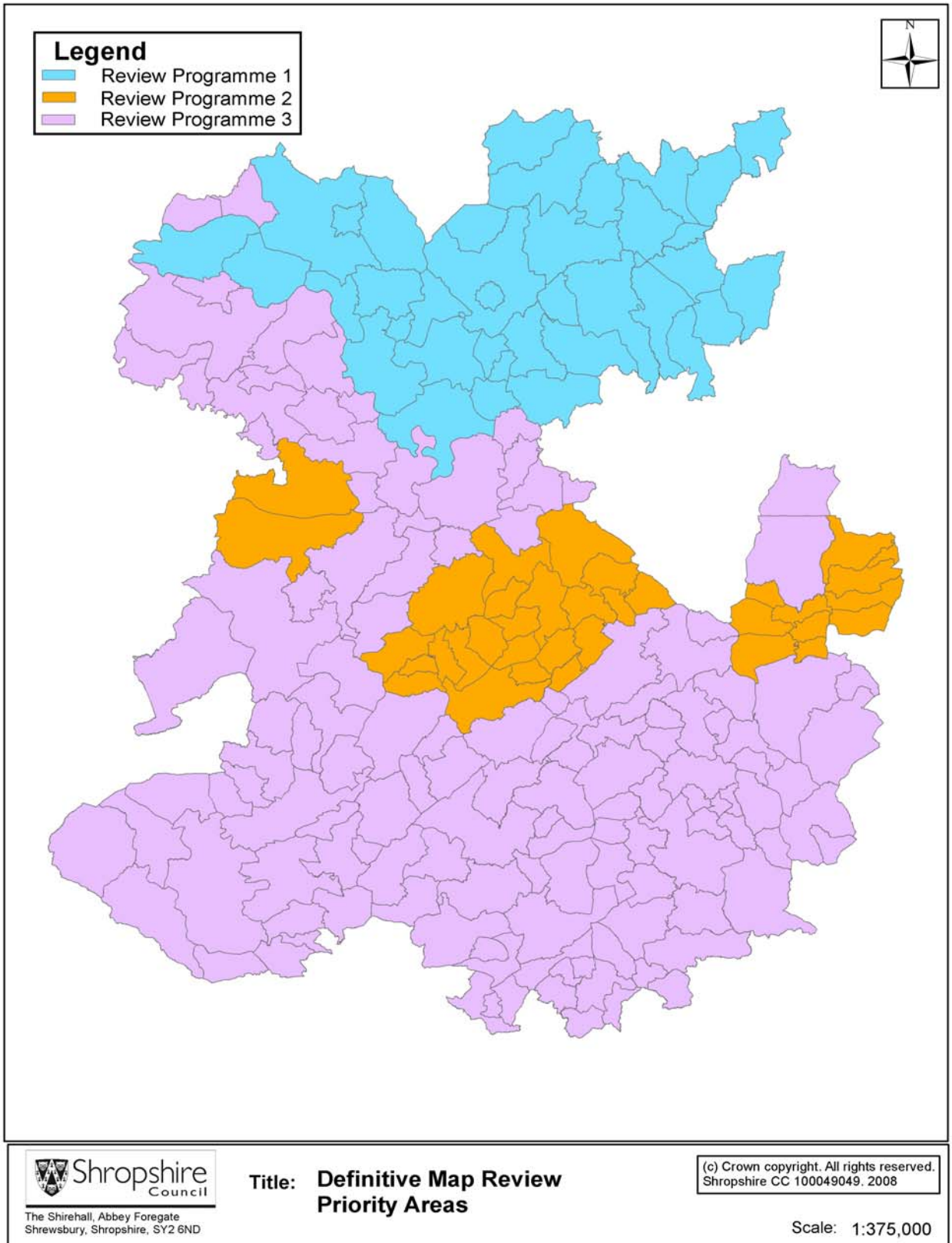
51. **If the order is confirmed**, the Council will publish final notices of confirmation and serve notice on all those who were served notice when the order was made.

52. **If the order is not confirmed**, the Council will forward a copy of the Inspector's decision letter to all those served notice of the making of the order.

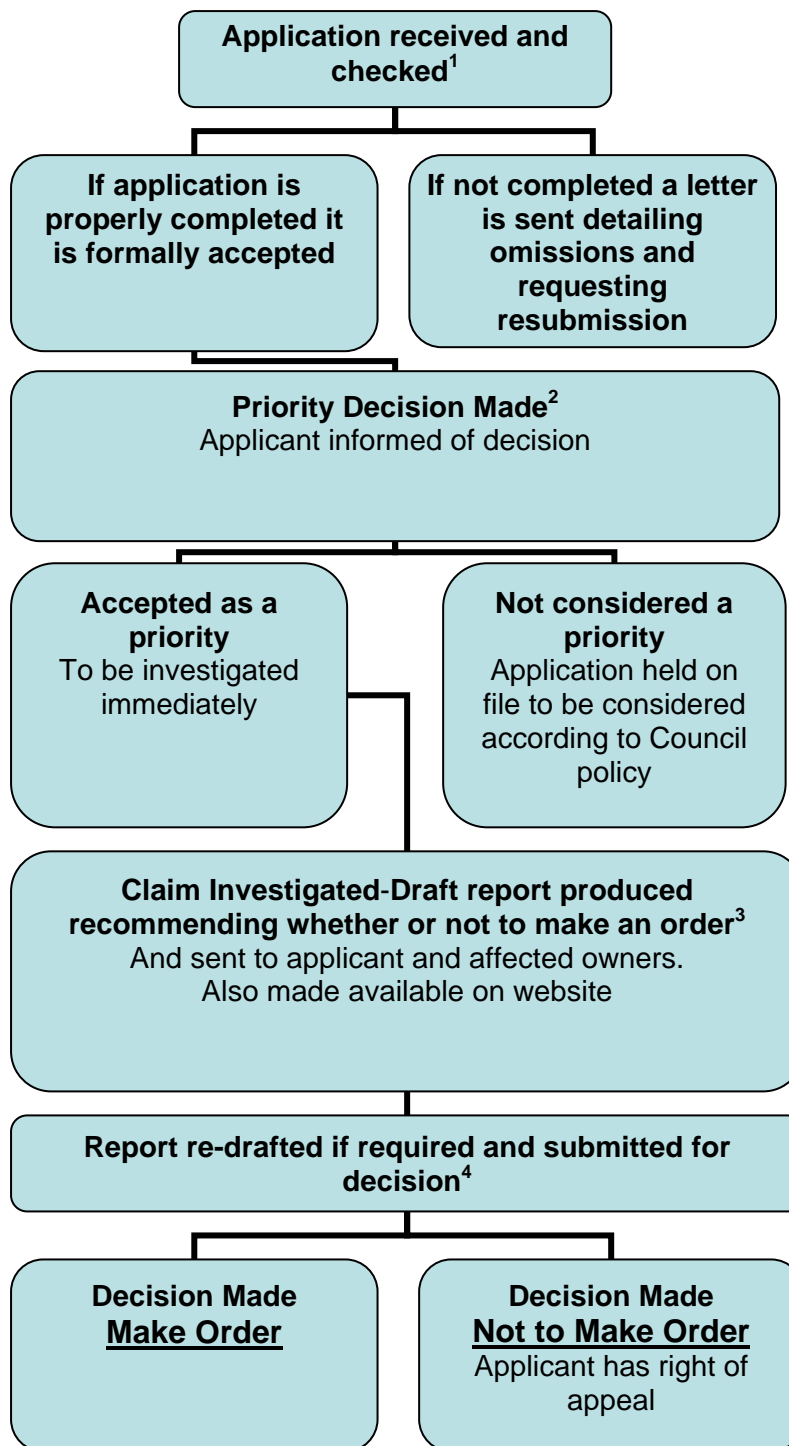
53. **If the order is confirmed with modifications**, the Planning Inspectorate will sometimes require that the order is re-advertised. There would be an opportunity at this stage to make objections to the proposed modifications which may lead to a second Public Inquiry to determine the outcome of the modified order. Where the modification is minor (for instance the addition of a grid reference or correction of a spelling mistake) re-advertisement will not normally be required.

54. Following the publication of the notice of confirmation, there is a final opportunity to appeal against the validity of the order to the High Court on the grounds that the Inspector's decision was not within the powers of the Wildlife and Countryside Act 1981.

An illustrative flow chart is included as Appendix 3 showing the process which is followed after an order is made.



Appendix 1 – Definitive Map Review Priority Areas



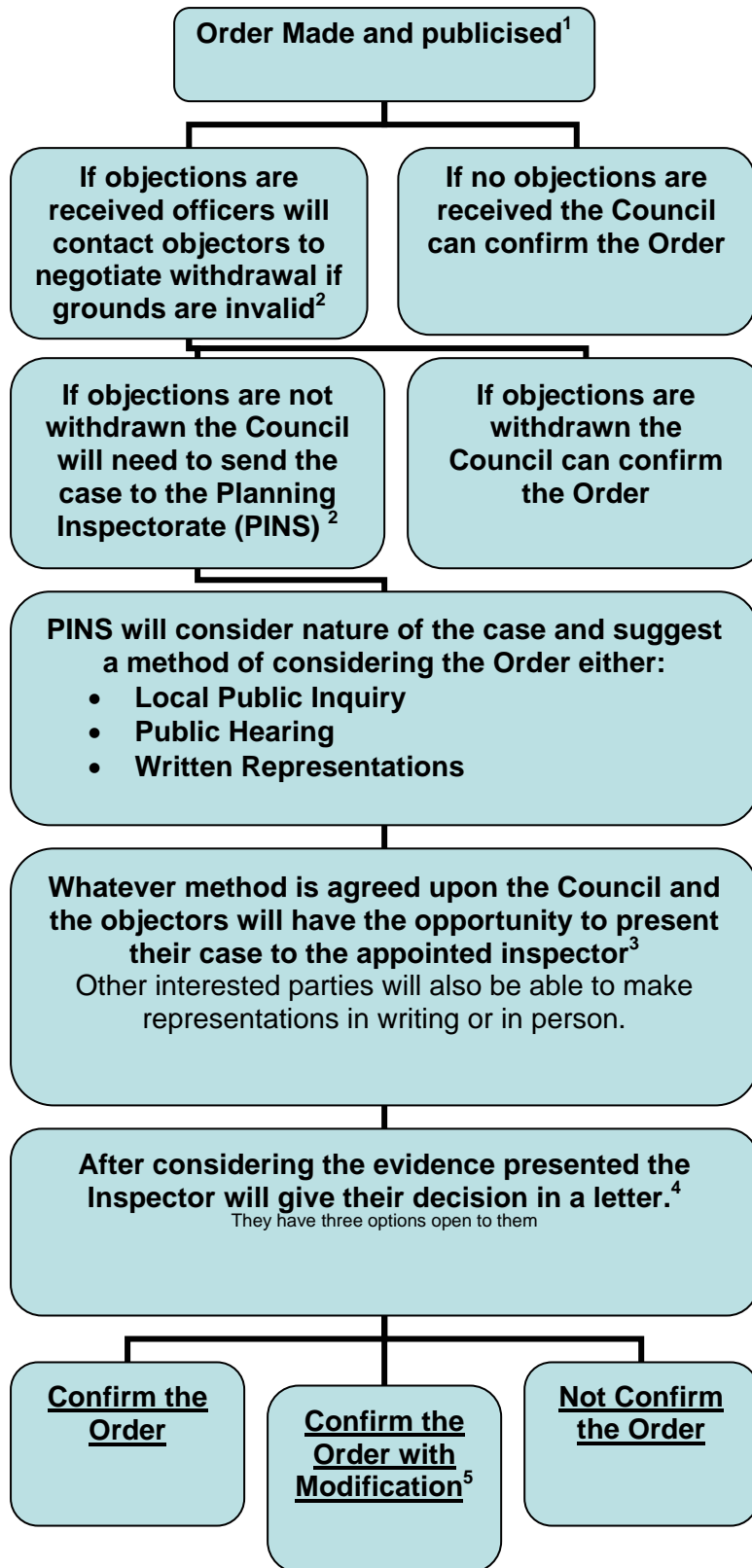
1. Applications will need to be accompanied by a map at the specified scale, the completed forms and certificate and will have to include evidence in support of the claim.

2. Decisions about priorities are made in accordance with the current council policy. The current policy statement will be available on the website or can be requested from the Countryside Access Team.

3. Evidence submitted by the applicant will be considered and further investigation will be carried out by the Council. Any comments made by consultees on the Draft Report will be considered when the final report is drafted.

4. Decisions are usually made by a senior officer under delegated powers however in some cases decisions might be made by the local Planning Committee.

Appendix 2 - Shropshire Council's Procedure for Formal Applications



1. The making of the order will be advertised in the local press, notices will be erected on site and statutory consultees, the local Member and any landowners or interested parties will be informed

2. The Council or the Planning Inspectorate can provide guidance as to what objections can be considered by an inspector. If an objector refuses to withdraw an irrelevant objection they risk being subject to a claim for costs from any party who incurs unnecessary expense as a result.

3. PINS provide detailed guidance about what is required from each party for each of the proscribed methods. Officers from the Council will also give advice where required.

4. This will usually be at within 9 weeks of the case is heard or the inspector's site visit.

5. Depending on the nature of the modifications the Order may need to be re-advertised

Appendix 3 - The Process for Definitive Map Modification Orders