

Objecting to Definitive Map Modification Orders

Introduction

1. These guidance notes relate only to objections to orders made under the Wildlife and Countryside Act 1981 (WCA 1981). A separate note is available relating to objections to orders made under the Highways Act 1980.

2. The Wildlife and Countryside Act 1981 s.53 (3) places a duty upon the council, as surveying authority, to keep the Definitive Map and statement under continuous review and make Modification Orders under the provisions of the Act. The council can only consider relevant evidence and apply the relevant legal test when deciding whether to publish a Modification Order.

3. Modification Orders are published by the council and notices served upon owners and occupiers of land affected, user groups, the local Member and every local council for the area concerned. Notices are also placed in the local press and at the ends of every way or path affected by the order.

4. As Definitive Map Modification Orders affect rights available to all and usually also affect land in private ownership it is vital that anyone with an interest has the opportunity to make representations. However, as these orders can only be decided on evidence objections can usually only be considered relevant if they are concerned with that evidence.

5. Shropshire Council is not able to confirm an order where there are objections that have not been withdrawn. In these instances the order will be forwarded to the Planning Inspectorate and the case will usually need to be heard at a Public Inquiry or Hearing.

Who may object to a Modification Order?

6. Anyone may object to an order and may request to inspect any evidence the council relied upon to make the 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 an order should be made. This is usually within 42 days of the date of the order notice.

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 an 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 the objection relates to¹
For example – Order Map 2, Bridleway Addition
- The reason for the objection
The reason for objecting to the 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 publication of Modification Orders is based on the examination of all available evidence which is either user or historical or both. The historical evidence used to determine public rights of way issues is sometimes found in documents such as inclosure and tithe maps and early Ordnance Survey maps which 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 make contact with 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 forward the order and any outstanding objections to the Planning Inspectorate. An Independent Inspector will be appointed by the Secretary of State to determine the 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 make a decision to -

1. confirm the order
2. not confirm the order
3. modify the order proposals

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

14. Should the decision be to modify the order proposals 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 final outcome of the order.

¹ This only applies to orders which consist of more than one proposal.

16. Following 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 Act.

Relevance of objections

17. Under the terms of the 1981 Act, a public right of way can only be added to the Definitive Map if evidence shows that public rights exist. To object to an addition you must submit comments or evidence which shows that public rights do not exist. There is the same requirement when an 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 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 route of the way

19. The following are examples of issues which **cannot** 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 (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

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 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 irrespective of the outcome. 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 opposed Definitive Map Modification Orders.

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

24. For further information on relevant grounds for objections, procedures for determining opposed Modification Orders or the awarding of costs please refer to www.planning-inspectorate.gov.uk