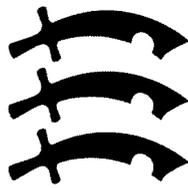


## **CONTENTS OF THE APPLICATION PACK**

This application pack contains the following papers:

- Notes on how to make application to modify the Definitive Map
- Application form for the modification of the Definitive Map Form A
- Notice of application to be served on all landowners and occupiers affected Form B
- Certificate that notices of application to modify the Definitive Map have been served on all owners and occupiers (to be completed and sent to the County Council) Form C
- Evidence of Use Form

September 2015



## **NOTES ON HOW TO MAKE APPLICATIONS TO ALTER THE DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY**

If you wish to apply to the County Council for the Definitive Map to be altered **YOU MUST**:-

1. COMPLETE the **APPLICATION FORM "A"** (attached)
2. MARK the exact route of the way clearly on a **PLAN** as a thin coloured line, not with broad felt tip.
3. \*SEND **ALL THE EVIDENCE** you have to support your claim. This **MUST** accompany your Application Form "A". Late evidence will not be accepted.
4. SEND a completed copy of the **NOTICE FORM "B"** (attached) and a **MAP** showing the path to **EVERY** Owner and Occupier whose land is crossed by the way you claim. If you cannot find out who these are, please tell the Council and you will be told what to do.
5. SEND completed **CERTIFICATE FORM "C"** (attached) to the County Council. This certifies that you have served the notice on the Owners and Occupiers affected.

### **DO NOT DEAL WITH MORE THAN ONE PATH IN EACH APPLICATION**

\***EVIDENCE** may be:-

#### **1. EVIDENCE OF USE FORMS**

Evidence Forms are enclosed. One may be copied by the applicant should further copies be required. Each should have a **PLAN** attached showing the route and completed by a person who used it. Unnecessary public expense is often incurred because people filling in such forms often exaggerate their use of a path and only when interviewed are specific as to the frequency and years of use. It is *vital* that people record *if & when* they have been turned back or challenged on a path, or *if & when* it was obstructed. They *must* also clearly state the years they used the path before this happened.

*Each evidence of use form should only deal with ONE path*

Sometimes people change their minds about being willing to give evidence at a Public Inquiry. Evidence not supported by attendance carries considerably less weight as it cannot be tested by cross-examination.

***GREAT CARE SHOULD BE TAKEN THEREFORE BEFORE DECIDING WHICH  
WITNESSES THE APPLICANT FEELS ARE ABLE TO HELP THE MOST***

The witnesses should not use a photocopy of the application plan but should themselves draw the route they use on an unmarked Ordnance Survey Map. It is preferred that the scale of the map is of a minimum of 1:10,000. A scale of 1:2500 is better still. This is because it is necessary to establish the dimensions of the route claimed.

#### **2. DOCUMENTS**

Documents, such as old maps, photographs of stiles or sale pamphlets which show the way in question.

*Rules affecting applications based on 20 years user evidence are overleaf. However at common law, a right of way can be proved if all the evidence taken together can only lead to a conclusion, on the balance of probability, that the owner had dedicated the way across his land to the public and that by using the right the public accepted it.*

## **RULES affecting claims made under Section 31 of the Highways Act 1980** **20 year user**

***Under Section 31 of the Highways Act 1980, a public right of way can be presumed to exist if there is evidence of use by the PUBLIC for 20 years but the following rules must ALL apply:-***

- a) The use must be "as of right": use must not be in secret, by violence nor by permission.
- b) Use must be **by the public**, not merely by one or two individuals. There must be enough regular users ready to speak up, at any public inquiry on the issue, to enable a conclusion to be reached that the public at large have used the way.
- c) The way **must not** be one where simple use by the public **could not** give rise to presumption of dedication by the owner as a highway. Public parks and promenades are provided and open for public use but not intended to be a highway so, for instance, a footpath used for 20 years over such land will not generally be a public right of way.
- d) There must be no open evidence of intent **not** to dedicate e.g. a notice on site at any time during the 20 years indicating "no public right of way".
- e) The period of 20 years must end at a date when the public's right is called into question by the owner or tenant - e.g. turning someone back or putting up a "Private" notice.
- f) The use must be "without interruption". This means without physical action such as locking a gate across the way intended to prevent public use. You do not have to prove use for every day of the 20 years but must show regular public use so that the conclusion can be drawn that the right of way has been enjoyed by the public for the whole period.

The County Council will investigate your application and decide whether to make an Order to change the Map. If it refuses to do so, you will have a right to appeal.

**If the Council decides to make an Order it will rely on you to do your best to see that, if necessary, people who submitted evidence forms come to an Inquiry.**

The information in this note is given in the belief that it is correct, but on the distinct understanding that the Council does not warrant the accuracy of any of it and on the basis that neither the Council nor any Officer, servant or agent of the Council is legally responsible, either in contract or in tort for any inaccuracies, errors or omissions herein contained whether arising from inadvertence or negligence or from any other cause whatsoever.

**If you require any further assistance please contact: ELS Helpline on 0333 013 9993**

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May 2015