

**GUIDANCE NOTES FOR**

**THE DEFINITIVE MAP MODIFICATION ORDER PROCEDURE**



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## 1 Introduction

### 1.1 The Recording of Public Rights of Way

Public rights of way are highways. A highway is a way over which the public has a right to 'pass and re-pass'. Oxfordshire County Council is the highway authority responsible for maintaining an accurate record of all public rights of way in the County. These routes are recorded on the Definitive Map and Statement of Public Rights of Way (DMS).

Four types of public right of way are recorded on the DMS: -

- **Footpath** – a public right of way for walkers only
- **Bridleway** – a public right of way for walkers, cyclists, invalid carriages, and those on horseback or leading a horse
- **Restricted Byway** – a public right of way on foot, on horseback or leading a horse, and for vehicles other than mechanically propelled vehicles
- **Byway Open to All Traffic (BOAT)** – a highway over which the public has a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose that footpaths or bridleways are used.

### 1.2 The Definitive Map and Statement of Public Rights of Way

The **Definitive Map** shows the location and status of a public right of way. The **Definitive Statement** gives a brief description of the route. This can include a width or if there have ever been any changes to the route, for example, by diversion.

Together these form the legal record of public rights of way. The inclusion of a public right of way on the DMS is conclusive in law as evidence of its existence. The reverse is not true, however. The absence of a route from the DMS does not necessarily mean that no public right of way exists. Even if a right of way has not been used for many years or is not evident on the ground, public rights can continue to exist unless there has been a legally authorised change. Alterations to the DMS (e.g. deleting, adding or upgrading a public right of way) can only be made by a legal Order process.

## 2 Applications to Modify the Definitive Map & Statement of Public Rights of Way

### 2.1 Who Can Apply?

Anyone can apply for a Definitive Map Modification Order (DMMO) to amend the DMS (either as an individual or on behalf of an organisation such as a parish council or amenity group) if they believe that they are inaccurate or incomplete in some way. Anyone applying **must have evidence to support their claim**. This is done in accordance with the provisions of the Wildlife and Countryside Act 1981. There are some exceptions where public vehicular rights are claimed.

The applicant is also required to serve Notice of any application they submit on the owners of the land concerned.

If we decide to record the route and people object to it, we may call the applicant and any other supporters as witnesses at a local public inquiry.

**This is a very complex process and frequently contentious, and the Council is duty bound to investigate applications in accordance with the law, following the relevant legal tests.**

## **2.2 What Can be Applied For?**

An application for a DMMO must show that the DMS is in some way incorrect and be supported by good supporting evidence.

The most common reasons for applying for a DMMO are that: -

- The DMS does not record a path that the applicant believes to be a public right of way. This needs to follow a specific route rather than wandering at large over an area.
- The DMS shows a path that the applicant strongly believes was mistakenly added to the Map.
- The DMS records a route of a particular status which the applicant believes is a different status.
- The DMS records the location, width or description of the route which the applicant believes is incorrect in some way.

The DMS is a record of known public rights. It does not create or alter them. The investigation into an application will only consider what public rights already exist and, therefore, should be recorded. It does not consider what rights the public, landowners or the Council would like to have. We must look at the relevant evidence and make a decision based on whether or not the evidence meets the relevant legal tests. Issues about need, suitability, safety and security are often of local concern but these are not evidence as to whether or not public rights subsist and we cannot consider them when deciding whether to make an Order to change the DMS.

Other legal procedures, in the form of Public Path Orders, allow for paths to be moved. For information about these, please contact the Countryside Records Team, detailed above.

## **2.3 What is the Role of the County Council?**

Procedures relating to the DMS are complex and often require explanation. We will offer informal help and guidance on the legal processes. Our role is to investigate any applications impartially and determine whether or not the available evidence (including any evidence submitted by objectors) supports the claim made in the application.

## **2.4 What Kind of Evidence is needed?**

A way becomes a public right of way through: -

- i. A landowner dedicating a right to the public to pass and repass along the way, and
- ii. the acceptance of that right by the public.

If there is no evidence of an express dedication, such as through a Creation Agreement, (see section 7), we can presume or interpret both the dedication by the landowner and the acceptance by the public from evidence of: -

- The use of the way by the public
- The actions – or lack of – of the landowner
- References to the way in historical documents

Applications are usually submitted for one of two reasons; that a route in use by the public is not currently recorded on the DMS and, that a route that was in use or existed historically is not recorded on the DMS. Evidence in support of this is normally in the form of user evidence or historic / documentary evidence or a combination of both.

## **User Evidence**

Most claims involving user evidence are based on the provisions set out in the Highways Act 1980 section 31, where the public can acquire rights over a way if:-

- i. They have used it as of right (i.e. without force, secrecy or permission) and without interruption for a period of 20 or more years and,
- ii. The landowner has taken no action to indicate a lack of intention to dedicate the route to the public. This could be by erecting signs stating that no public right of way subsists, challenging people, obstructing the route or making it clear that use was only with permission.

The 20 year period is calculated retrospectively from the date when the public's right to use the way was first brought into question.

Therefore, an applicant basing a claim on user evidence should collect detailed evidence from witnesses who believe that they had used the route as of right. This needs to show that the way has been used for a continuous period of at least 20 years.

As part of the application pack, we can supply questionnaires called *User Evidence Statements*, to enable evidence of use to be gathered from individuals. It is important that witnesses have a good recollection of their use of the way and should be prepared to be questioned further on their usage. We may also ask them to give evidence at a Public Inquiry.

Witnesses who may have been exercising a private right to use the way being claimed should not normally complete a user evidence statement. An example of a private right might be where someone uses a way to access their own property. Those with a private right to use a way but who believe there is a public right as well can still provide evidence in support of the claim. They should complete a different questionnaire and applicants can request a copy of this from us.

Any evidence supplied will be made publicly available. It might be copied and inspected by other parties at any time in the future. The information given may also be examined at a Public Inquiry.

## **Documentary Evidence**

Historic documents may be used as evidence of the existence of highway rights. The Highways Act 1980, section 32 allows us to consider any map, plan or other relevant document when deciding whether a route carries public rights.

If the public has had rights over a way at any time, those rights still exist unless they have been stopped up by some other legal process. This is the case even if the way has not been in public use for many years.

Common sources of historical information include Tithe Maps, Inclosure Awards, old Ordnance Survey maps, title deeds, parish council minutes, photographs and reference books. Section 8.2 provides information about where potential applicants can carry out documentary research.

Applicants should copy and include any relevant maps with their application where possible. Written records should either be copied or quoted. Applicants should always include references to where these documents are and to the particular part of the document that is relevant to the application.

Anyone can disprove a presumption of dedication of the way to the public. They should have sufficient evidence that there was no intention to dedicate it during the relevant period. For information on opposing a DMMO application see section 3.

A claim to add (or upgrade to) a BOAT can only rely on documentary evidence demonstrating an express intention to create a right of way for motorised vehicles.

The Natural Environment and Rural Communities Act 2006 (NERCA) sections 66 and 67 controls how claims to add a BOAT to the DMS or to upgrade a path to a BOAT are treated. This severely limits the circumstances in which the public can claim the existence of public vehicular rights. More information of NERCA is available in DEFRA guidance: - <http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/rural/countryside/prow/nerc06.htm>

## **2.5 Applications to Delete or Amend a Public Right of Way Recorded on the DMS**

To delete a right of way there must be enough evidence to show that a mistake was made when the right of way was first recorded. This is because the DMS is the legal record and presumed to be correct, so applicants need to show that an error was made.

Changing the status of an existing right of way or vary its particulars needs a similarly strong level of evidence. Applicants should be aware that if they are applying to amend the alignment of a right of way they are effectively seeking to delete one path and add a different path. As a higher level of evidence is needed to remove a path from the DMS it is possible that there may be enough evidence to support the existence of both paths.

## **2.6 How to Apply for a Definitive Map Modification Order**

If you are considering applying for a DMMO, please write to us with a brief summary and details of the supporting evidence you intend to submit. This should include the approximate number of witnesses who would complete user evidence statements, the average number of years they have used the route and whether the public right has been called into question.

If we believe that you may be able to provide enough evidence to support an application we will send you an application pack. A number of forms are involved in the application procedure and it is important that you comply with the various guidelines included on the forms to avoid invalidating the application.

Once completed, send the application to us. We have a large number of applications to investigate and new ones are received regularly. Generally, they are investigated in order of date of receipt and it could be some time before we can start work on it. You can see the applications we already have, and a list of those we are currently working on at: - [www.oxfordshire.gov.uk/definitivemap](http://www.oxfordshire.gov.uk/definitivemap).

When we start to investigate your application we will contact you. We will investigate all the available evidence to find out as much as possible about the route in question so that we can make a decision whether or not to make an Order to record the route. For more information, please see section 4.

## **3 Opposing an Application for a Definitive Map Modification Order**

This section addresses the making of informal objections and representations, before any Order is made. (Formal, statutory objections and representations can still be made if we make and advertise an Order – please refer to Section 4.5). Any objections or

representations made at any other time (e.g. prior to an application being determined) are regarded as informal and will be considered by us as part of the investigation.

Often, someone will want to object to or make representations against an application. An application is aimed at demonstrating that the DMS requires modification because it is inaccurate in some way. Any representation or objection must show that the DMS is not inaccurate (or that it is not inaccurate in the way described in the application). **Objections or representations should only relate to evidence about the existence and / or extent of public rights.**

It is possible that an application, if it is successful, may cause practical problems. The DMMO process cannot address these issues. It is only to assess whether there is sufficient evidence to indicate that the DMS requires amendment.

If you wish to make a representation or objection, it should be supported by evidence to demonstrate that the claims made in the application are inaccurate. Evidence against an application can be of a similar type to that which is submitted in support (see section 2.4 above).

### 3.1 Evidence Against an Application

Evidence against an application is usually concerned with proving that there was no intention on the part of the landowner to dedicate a right of way. Anyone may disprove a claim in several ways, for example, if it can be shown that: -

- The way was used with the express permission of the landowner
- The landowner had no intention of dedicating the route as a public right of way during the 20 years before the public's use was called into question (e.g. by acting to prevent access or erecting suitable notices)
- That the landowner did not intend to dedicate public rights of a higher status than that already recorded on the DMS

A landowner may also have given notice of their lack of intention to dedicate a right of way by making a formal declaration and depositing a plan with the Council in accordance with the Highways Act 1980 section 31(6). (see Section 3.3 for further information).

In other cases the evidence submitted may need to prove the correctness of the path (the route and / or status) as recorded on the DMS.

Representations and objections generally rely on user and / or documentary evidence.

**User Evidence** may be relevant if, for example, it shows that the users had not been walking the same path or that the path had been used only in accordance with its recorded status. Other witnesses might give evidence that people had been stopped when using a route and / or told that they had no right to be there.

Evidence might be collected from those who understood the way to be private and did not believe that a public right of way existed, or that some had been permitted to use the way by the landowner.

An absence of user evidence does not mean that public rights do not exist as other types of evidence will also usually be required.

**Documentary Evidence** in the form of old maps and documents (as discussed in Section 2.4) can be relevant as a means of objecting if they demonstrate something different from the claim made in the application. For example, documents may be interpreted to reach a

different conclusion to that claimed in the application, or there may be documentary evidence that a right of way has been legally stopped up or diverted in the past.

Where possible, any relevant maps should be copied and included as part of any objection. Written records should either be copied or quoted. Reference should always be made to where the documents are and which part of the document is relevant to the application.

**Measures taken** by the landowner or occupier may also be important. For example, if it can be shown that the landowner had erected clearly worded notices indicating that there was no public right of way, if gates across a route were regularly locked to prevent public access or if a landowner had made a deposit with the Council in accordance with the Highways Act 1980 section 31(6) (see section 3.3).

These are some examples of evidence that may be submitted against an application. It is not an exhaustive list as there are may be case-specific circumstances. Those wishing to object to an application may seek their own legal advice, although this is not a legal requirement.

### **3.2 How to Make an Informal Representation or Objection**

We can provide appropriate forms to submit evidence against an application. They should be completed and returned with copies of any relevant documentary evidence etc. This ensures that the evidence collected is relevant to our investigations. Nevertheless, anyone can simply submit a statement to us regarding the claimed route.

As part of our investigation, we may request an interview with the principal objectors and any witnesses who have submitted evidence in support of an objection.

Any evidence supplied would be in the public domain. It might be copied and inspected by other parties at any time in the future, and examined at a Public Inquiry.

The process for making a formal, statutory representation or objection is explained in Section 4.6.

### **3.3 Highways Act 1980 Section 31(6) Statements and Deposits**

This allows landowners to deposit with us a statement and plan detailing any public rights of way they acknowledge as already existing on their land. This can help to protect the landowner from any claims based on user evidence that might be made to record additional public rights of way over their land. A deposit is regarded as an indication that a landowner does not intend to dedicate rights further to those shown on the plan. A deposit should be renewed at least every **20 years** to ensure continued protection. Any deposited plans and statements cannot apply retrospectively.

Further information about this is available on the Council's website at: -

<https://www.oxfordshire.gov.uk/residents/environment-and-planning/countryside/countryside-access/public-rights-way/changing-public-rights-way/protection-against-claims>

## **4 The Definitive Map Modification Order Procedure**

This section outlines key stages in the DMMO procedure after we receive an application. Two flow chart diagrams illustrating the procedure are at Appendix 2 and 3.

## 4.1 We Investigate the Application

Our investigation is thorough and considers all the available relevant evidence, including that put forward by any objectors.

We find out as much as possible about the history of a claimed route, including: -

- Making a site visit and inspecting the route for evidence on the ground
- Studying maps and documents
- Consulting with landowners and other interested parties, such as the parish council, local walking / riding societies etc.
- Talking to witnesses who submitted evidence with the application
- Examining any counter evidence received from objectors

Once all the research is complete, a full report is produced determining if there is sufficient evidence to make a DMMO.

## 4.2 We Make our Decision

We determine applications based on evidence of the existence or otherwise of public rights. The law does not allow us to consider other issues such as need, privacy, security, suitability, etc. A notice of our determination (decision) is sent to the applicant and the landowners on whom notice of the application was originally served. The determination does not modify the DMS. It states whether or not we consider there to be sufficient evidence to make an Order to modify the DMS.

### Applications to Add a Route

The decision to make an order to add a route is based on whether or not public rights subsist or are reasonably alleged to subsist (on the balance of probability).<sup>1</sup>

### Applications to Delete or Regrade a Route

This decision relates to whether or not there is clear evidence that the status of the way is incorrectly recorded and / or that a mistake was made when it was first shown on the DMS. The evidence needs to be of sufficient weight to over-balance the initial presumption that the DMS is correct.

We are required to determine whether to make an Order as soon as reasonably practicable after receipt of an application. If, after 12 months, we have not made a decision, the applicant has the right to apply to the Secretary of State requesting that the application be determined within specific deadline. In considering such requests the Secretary of State will take account of the Council's Statement of Priorities. (See Appendix 1).

## 4.3 Decision is not to make an Order

If we determine that there is insufficient evidence to support the claim, the applicant may appeal this decision to the Secretary of State who will decide whether there is a case to make an Order. If he / she decides there is, the Council will be directed to make the Order.

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<sup>1</sup>Case law has determined that for an order to add a path to be **confirmed** the rights must have been shown to **subsist** on the balance of probabilities.



#### **4.4 Decision to Make an Order**

If we determine in favour of an application, we will make an Order to amend the Definitive Map and / or Statement accordingly. This does not alter the DMS at this stage. To come into effect, an Order must first be confirmed.

#### **4.5 The Council makes an Order and Publicises it**

After an Order is made, it is advertised for 42 days and the evidence on which the decision is based can be viewed at our office. Notice of the order is: -

- Published in a local newspaper (usually The Oxford Times)
- Displayed at the ends of each way affected by the Order with a plan showing its effect
- Served with a copy of the Order and plan on every landowner and occupier affected by the Order, on the District and Parish Councils, on bodies prescribed by the regulations to receive such Orders, and on any other interested parties
- Put on deposit in certain County Council Offices & libraries

#### **4.6 Objections or Representations received**

Anyone can make a formal statutory objection or representation during the relevant 42-day period. To be valid, they must be made in writing to the Officer specified in the notice of the Order by the date specified in the notice. The grounds on which the objection is made must also be stated.

To be relevant, objections and representations should relate solely to the question of the existence or otherwise of the rights that are described in the Order (see Section 3.1). There may be issues that, whilst they may be of genuine concern to people affected by an order, are beyond the scope of what can be legally considered, including the desirability of a particular route or its effects on the amenities of neighbours. We are happy to discuss the concerns of those considering objecting or making representations to an Order.

Representations and objections that are received after the closing date or that do not relate to the Order are **not** valid. Any objections or representations made prior to the 42-day period will not automatically be carried forward to be included as statutory objections or representations against the Order. Therefore, any person who submitted an informal objection or representation (i.e. at any time prior to the relevant 42-day period) and who also wishes to make a formal objection must resubmit their objection or representation in writing no later than the date specified in the notice advertising the making of the Order.

The right of objection to an Order is a statutory one but it should be exercised in a reasonable manner. Similarly, the County Council's costs in dealing with objections to orders may be awarded against objectors in cases of unreasonable behaviour.

#### **4.7 If No Objections or Representations are Received**

We can confirm the Order and modify the DMS.

#### **4.8 Where there are Objections and the Order is Referred to the Secretary of State**

We consider all objections and representations made. If appropriate we seek to secure their withdrawal, particularly if they do not appear to be relevant. If any objections are not withdrawn, we must refer the Order to the Planning Inspectorate. The Inspectorate will then arrange for the Order and objections to be considered by an inspector. This can be

at a Public Inquiry (see section 5 below) or it could be determined through written representations or a hearing.

#### **4.9 Notice Of Confirmation of Order**

Once the decision to confirm an Order has been made, we will give notice of its confirmation by publishing, serving and displaying it in the same manner as when the Order was made.

### **5 Public Inquiries**

The Planning Inspectorate gives at least 18 weeks' notice before an Inquiry starts. All parties, including those who wish to support or to oppose the Order must submit their evidence to the Planning Inspectorate within 14 weeks of receiving notification of the inquiry. The Inspectorate specifies the deadlines and all parties are informed.

Anyone may attend the Inquiry and those who have submitted evidence to the Inspectorate in advance have a right to speak. Others may speak at the discretion of the Inspector.

Usually we will present the case in support of the Order and the objectors then present the case against the Order although, in some circumstances, we may choose to take a neutral stance (e.g. where the Order has been made following direction of the Secretary of State – see section 4.3). Each side has the opportunity to cross-examine the other. The Inspector will often hold an accompanied site visit.

After the Inquiry the Inspector must come to a decision, which may be some weeks after the Inquiry. The Planning Inspectorate will send a copy of the decision letter to all those who made valid representations and objections and to anyone else who asks for one.

If the Inspector decides to confirm the Order, it will be advertised in the normal way (see section 4.9).

The inspector may decide that the Order should be modified, for example: -

- To show a different route which affects land not affected by the Order
- To show a different status for the right of way
- To add a way to an Order
- To exclude a way from an Order

If so, the proposed modification must be advertised so that all interested parties have a chance to comment. If there are representations or objections to the Inspector's modification, a second Inquiry may be held.

If the Inspector decides to modify the Order in a minor way not included in the above list, the modification may not be advertised.

### **6 Timescales**

It is usual for the Council to have a considerable number of DMMO applications awaiting investigation and determination. There is also likely to be an increased demand in applications due to a change in the law that will apply a cut-off date of 2026 for certain types of application. This may impact on the rate at which we can progress them. Due to the lengthy process involved, it could be a long period before we are able to begin on a particular case.

For more detailed information regarding the way we manage this area of work, please refer to our Statement of Priorities (see Appendix 1).

The list of current Definitive Map Modification Orders and Applications (the pending DMMO case list) can be viewed on the County Council's website at: - <http://www.oxfordshire.gov.uk/modificationsanddiversions>

The case list is updated monthly. A register of all applications made in accordance with the Wildlife and Countryside Act 1981 section 53, is also on the website.

## **7 Creation Agreements**

In certain cases where the affected landowner is not opposed to a right of way being recorded across their land, the owner may be happy to enter into a formal dedication of the route in accordance with the Highways Act 1980 section 25 or by some other means. This can be comparatively straightforward and, if achievable, the landowner should contact us, or we may choose to pursue such an option ourselves if it could lead to a quicker outcome.

## **8 Useful Sources of Information**

### **8.1 Where can I see a Copy of the Definitive Map and Statement?**

You can see the map on our County Council website at: - [www.oxfordshire.gov.uk/definitivemap](http://www.oxfordshire.gov.uk/definitivemap)

You can see a paper copy by appointment at the County Council's Countryside Records office, contact details on the cover of this guidance document.

### **8.2 Carrying out Documentary Research**

You may find the following places useful for research, particularly for documentary information: -

**Oxfordshire Record Office**

St Luke's Church  
Temple Road  
Cowley  
Oxford OX4 2EX                      Tel: 01865 398200  
Email: [archives@oxfordshire.gov.uk](mailto:archives@oxfordshire.gov.uk)

**Berkshire Record Office**

9 Coley Avenue  
Reading  
Berkshire RG1 6AF                      Tel: 0118 901 5132  
Email: [arch@reading.gov.uk](mailto:arch@reading.gov.uk)

**The National Archives**

Kew  
Richmond  
Surrey TW9 4DU                      Tel: 020 8876 3444  
<http://www.nationalarchives.gov.uk>

For old Ordnance  
Survey Maps, Aerial  
Photos, local  
history, historic  
documents such as  
Tithe Maps,  
Inclosure Awards,  
Deeds etc.

NB. Berkshire  
Record Office may  
hold documents  
relating to the area  
of Oxfordshire that  
used to form North  
Berkshire.

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**Your Local Parish /Town Council**

### **8.3 Recommended Reading**

A Guide to Definitive Maps and Changes to Public Rights of Way

<https://www.gov.uk/government/publications/definitive-maps-of-public-rights-of-way-change-the-legal-records>

Rights of Way – Restoring the Record by Sarah Bucks and Phil Wadey

Rights of Way – A Guide to Law and Practice by John Riddall and John Trevelyan

Public Rights of Way and Access to Land by Angela Sydenham

Definitive Map and Public Path Orders

[www.planningportal.gov.uk/planning/countryside/countryside](http://www.planningportal.gov.uk/planning/countryside/countryside)

## **OXFORDSHIRE COUNTY COUNCIL**

### **STATEMENT OF PRIORITIES FOR MAINTAINING THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY**

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The Definitive Map and Statement (DMS) of Public Rights of Way for Oxfordshire is the legal record of public rights of way in the county. The Council is the Surveying Authority for such purposes. In accordance with the Wildlife and Countryside Act 1981 section 56, the DMS is conclusive evidence of the existence of a public right of way and its status, width, position and any limitations or conditions that affect it.

It has a relevant date of 1 February 2006.

In accordance with the Wildlife and Countryside Act 1981 section 53, Oxfordshire County Council has a duty as the Surveying Authority to keep the DMS under continuous review and to modify it by way of Orders as and when relevant events occur.

The Council's priorities in respect of its DMS are to: -

- Process applications for Definitive Map Modification Orders
- Update and maintain the DMS, including addressing anomalies and errors

This Statement of Priorities replaces the previous version dated October 2007.

#### **Processing Definitive Map Modification Orders (DMMOs)**

Any person with substantive evidence of an error or omission in the DMS may apply to the Council for an Order to modify it to add or delete a right of way, to upgrade or downgrade one that is already shown, or to amend the particulars contained in the Map or Statement. Most are claims to add rights to the DMS on the basis that they legally exist but are not recorded. The procedure to do this is set out in schedule 14 of the Wildlife and Countryside Act 1981.

The Council is required, as soon as reasonably practicable after receipt of applications, to investigate and determine whether or not to make the Order sought. If after 12 months no such determination has been made, the applicant may appeal to the Secretary of State who may then direct the Council to determine the application and may impose a timescale for doing so. Government Guidance in the form of Circular 1/09 states that the Secretary of State, when considering a response to a request for a direction to determine an application for an Order within a specified period, will take account of any Statement made by the Surveying Authority setting out its priorities for bringing and keeping the DMS up to date and the reasonableness of such priorities.

There are a large number of applications outstanding, each requiring significant research and investigation and are frequently contentious, further extending the period of the process. A single application might take between 6 and 18 months, and sometimes longer, to conclude depending on the different factors that might impact on it. There is also a steady stream of new applications being received, the rate of which is anticipated will increase in the light of the impending legislative reforms which will introduce an end date for the making of applications based on historic evidence.

Details of all Definitive Map applications are contained in a statutory register published on the Council's website, alongside a 'Pending DMMO Case List' detailing the applications currently being progressed, updated on a monthly basis, and where progress can be tracked. These can be viewed at [www.oxfordshire.gov.uk/modificationsanddiversions](http://www.oxfordshire.gov.uk/modificationsanddiversions)

## **Rationale for Prioritising Applications for DMMOs**

Oxfordshire County Council finds itself in a similar position to many Surveying Authorities across the country where the volume and complexity of applications makes it unsustainable to determine them all within the 12 months before any appeal can be triggered. Backlogs can then accrue, further exacerbated by the continuous flow of new applications. The waiting list for new applicants currently stands at more than 10 years.

The County Council recognises that delays of this kind do not reflect the level of service it expects to provide and has reviewed its resourcing and processes to ensure a renewed rigour is applied to the way in which it addresses its existing and future caseloads. A recent restructuring of the Council's duties and responsibilities has resulted in a further investment into this activity. This Statement is reflective of that review and further sets out an intention to address its caseload and introduce much greater flexibility and discretion where this can improve its overall service to customers.

There remains a need to be as equitable as possible in determining the basis on which the list of applications is addressed. At its core, this necessitates addressing applications in chronological order of receipt; this being the fairest means of prioritising where no application is more important than any other. However, in certain instances, it will be necessary to address some applications out of turn where the impact of deferral could have consequences. For this reason, the Council must retain an element of discretion. If it considers that action of this kind is warranted and there are exceptional circumstances, the Council will consider if the circumstances of that case merit it being taken 'out of turn'.

Similarly, the Council may target an application if this helps achieve a greater efficiency or reduce backlogs faster.

This means that, in some cases, an application already on the register may be taken out of sequence where circumstances dictate, or for the purposes of expediency.

The Council's plan for dealing with applications may also be disrupted should the Secretary of State determine, on appeal, to direct the Council to address cases out of turn and within specific deadlines.

## **Updating and Maintaining the Definitive Map and Statement**

The processing of Definitive Map applications must be addressed in parallel with other duties necessary to keep the DMS as up to date as possible.

The present Definitive Map, produced in 2006, was the culmination of significant investment to produce a modern map utilising digital mapping software replacing previous paper-based versions. This has many benefits, including improved management processes and a more straightforward means of physically amending and updating it when any changes occur.

This has also had the considerable added benefit of allowing an online version of the Map to be made available to view on the Council's website.

Managing the integrity of the Map data entails: -

- Addressing any issues of the accuracy of the DMS by systematically investigating discrepancies such as: -
  - Errors in drafting
  - Discrepancies between the Map and Statement
  - Possible errors or omissions in the DMS (such as an unexplained change of status where a path crosses a parish boundary or where the route on the ground differs from that shown on the DMS).

Whilst these will be prioritised and researched as resources permit depending on their significance or impact, these are not matters that normally feature on Wildlife and Countryside Act 1981 s53b Registers of Applications. As such, any work undertaken will impact on the rate at which formal applications on the Register are addressed.

Undertaking an investigation on a particular 'anomaly' may have a degree of urgency where, for example, a sale of property is reliant on it. The DMS can usually only be amended by fully researching the case and making and advertising a DMMO. As such there is inevitable impact on priorities.

- Keeping the DMS up to date by making regular 'Legal Event' Modification Orders to modify it in respect of changes resulting from Public Path Orders, Agreements, etc.
- To periodically republish the DMS, currently dated 2006. The timing for such a major piece of work will be kept under review and carried out when appropriate and balanced against other workloads.



## **Prioritising Applications for Definitive Map Modification Orders**

This approach is adopted with the agreement of the Oxfordshire Countryside Access Forum, a body representing a wide range of interest groups including user groups and landowning associations.

Whilst there are, essentially, two types of Definitive Map application (based either on historic documentary evidence or are, primarily, user-based) distinction could be made between the two in that user-based applications are more likely to be in contemporary use and may have been called into question by an action on the part of the owners of the land. The integrity of the user evidence may be at risk if there are inherent delays in dealing with them. Conversely, due to the potential introduction of a cut-off date, there is increasing pressure to record historic routes that have been 'lost' over time and remain unrecorded on the DMS. Frequently these can be routes that are (or would be) important links in the overall network.

On that basis, a priority system initially based on date of receipt is inherently simple and fair and does not discriminate between applicants.

The Council will, however, exercise discretion for purposes of expediency.

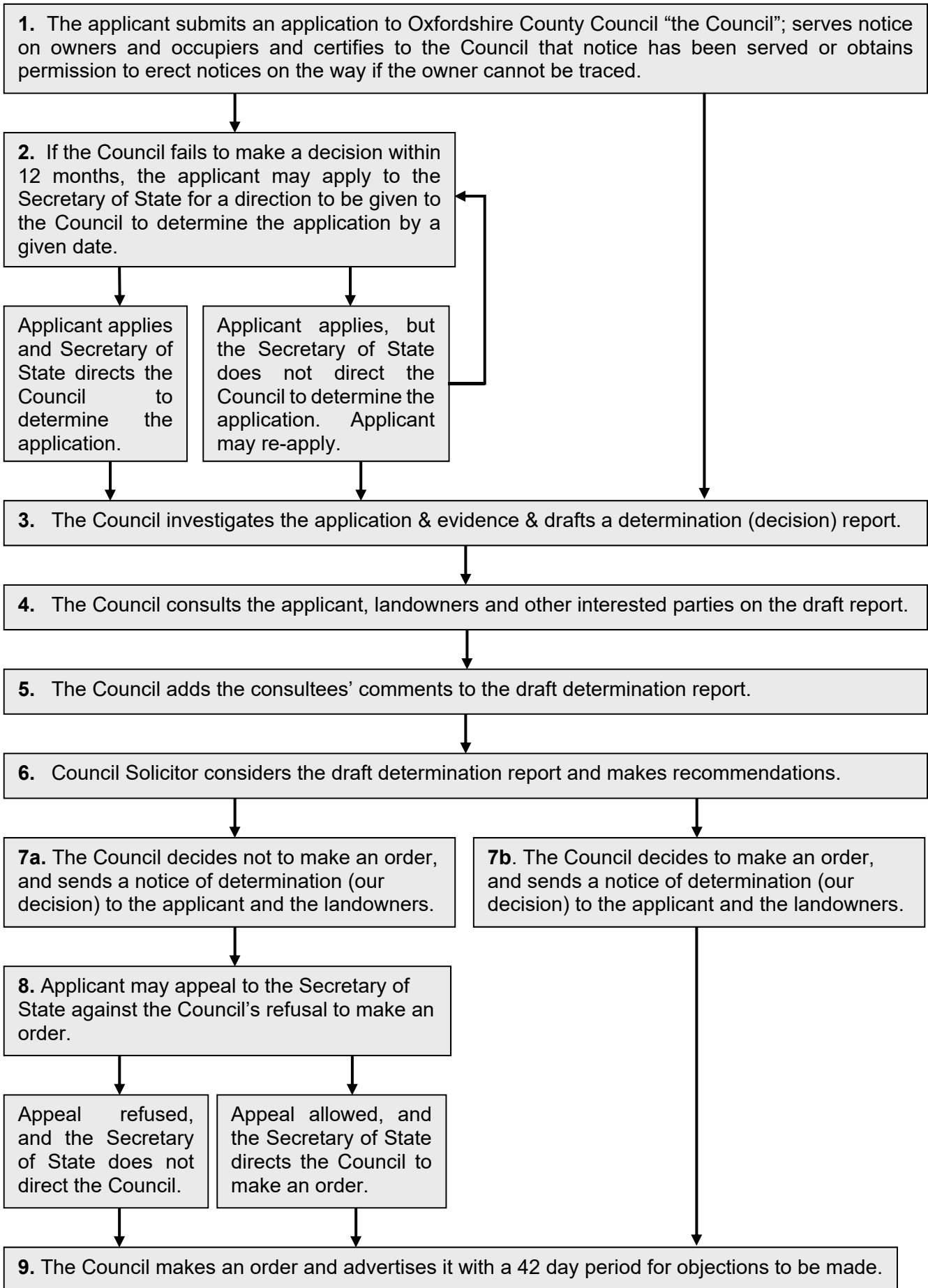
### **The prioritisation of applications is, therefore, as follows: -**

1. As a principle, all applications will be investigated in date order of receipt.
2. The Council will exercise discretion to take cases out of the 'date order' sequence where, for example:-
  - There is a development proposal or planning application that affects or threatens the claimed route.
  - An affected party can demonstrate that they are experiencing exceptional problems due to the impact of an application on their property, such as where this potentially affects its sale.
  - The evidence in support – or geographical location – of an application is shared with another and, therefore, it would be efficient to investigate them concurrently.
  - The path would help fulfil one of the Council's strategic aims, such as where routes have been identified in a Transport Strategy or Rights of Way Improvement Plan.
3. With the aim of reducing its caseloads and bringing down waiting times, the Council uses discretion to identify any application on its Register where there may be opportunity to, for example: -
  - Address an application by some other means (such as a public path order or agreement).
  - Address an application where the extent of the evidence and / or the lack of opposition would involve minimal workload to conclude the matter.

**Oxfordshire County Council  
September 2022**

**APPENDIX 2**

Flowchart showing the Stages involved in processing a DMMO application



**APPENDIX 3**

Flowchart showing stages of the process where a Modification Order is made

