Policy for the Prioritisation of Definitive Map Modification Orders



Summary

This Policy explains how East Sussex County Council (the Council) process and prioritise Definitive Map Modification Order applications.

Background

Definitive Map and Statement

The Definitive Map and Statement (DMS) are the legal record of recognised public rights of way (PROWs) in East Sussex. The existence of a route on the DMS is conclusive evidence of the existence of a right of way. The DMS is a map-based and written record and can only be changed by a legal order.

Anyone has a right to apply for the DMS to be modified, if they believe there is an error on the map or information missing. This process can be started by submitting a Definitive Map Modification Order (DMMO) application to the Council. As part of its work to keep the DMS up to date, the Council has a statutory duty to process these applications.

DMMO applications

Applications to have new PROWs added to the DMS are typically made by members of the public or stakeholder groups. The Council is required, as soon as practicable after receiving an application, to investigate and, after undertaking consultation, it must decide whether or not to make an order. Supporting evidence will look to demonstrate:

- That a route existed before 1949 and therefore should have been included on the original version of the DMS, or
- That there has been 20-years of continuous unchallenged use by members of the public without force, secrecy or permission.

DMMO cases are frequently contentious and can each take around 2-4 years to process. This is due to their complexity, the need for extensive consultation and the legal process involved. If objected to, cases must be referred to the Planning Inspectorate (PINS) to resolve. This may involve a Public Inquiry or Hearing.

Historic applications

The Countryside and Rights of Way Act 2000 introduced a cut-off date of 2026 for submitting applications to add routes to the DMS based on pre-1949 evidence. Any applications submitted beyond that date would not be processed.

The intention of the cut-off date was to give certainty to landowners about public rights affecting their land. In the years leading up to the deadline there was a significant increase in DMMO applications nationally, resulting in backlogs for many Registration Authorities, including the Council.

In 2023 the deadline was extended to 2031, followed by an announcement in 2024 that it would be removed altogether. However, applications are still being submitted and caseloads continue to increase.

Prioritising DMMO applications

To fairly address the increase in cases and the waiting times for applications to be investigated and resolved, the investigation of DMMO applications is prioritised in accordance with the statement of priorities as follows: -

1. Applications are investigated in order of receipt

Applications will be checked and placed on a waiting list and then, by default, processed chronologically.

However, there may be instances where an application is prioritised and processed sooner.

The Definitive Map Team will use the factors below to assess if an application ought to be prioritised. The decision will be made by the Rights of Way and Countryside Team Manager.

2. Factors that may result in an application being processed sooner.

The factors below are not exhaustive and will be considered on a case by case basis. The Council reserves the right to prioritise applications where exceptional circumstances exist.

➢ We are directed to by the Secretary of State

Where an application has not been considered with 12 months of receipt, applicants can appeal to PINS for them to be investigated. PINS then give the Council a deadline by which to determine the application.

➢ A development or scheme could affect the claimed route

Where a claimed route is waiting to be investigated and is affected by a development or scheme. For example, there is risk the route could be lost as part of an imminent development, or that the development could be delayed if the case is not prioritised.

➢ There is only user evidence available

Where an application is based on contemporary use, interviews with users are required to scrutinise their evidence thoroughly. Delays in investigating these cases means there is a risk that evidence could be lost, particularly if users are elderly or might move away. They may also be called on to provide evidence at an Inquiry if the case is referred to PINS.

➢ Where the landowner is willing to dedicate the route

In some cases, landowners affected by the route may be willing to dedicate the route over their land. This would avoid a lengthier legal process and mean the case can be resolved sooner.

➢ Efficiency savings could be made

Given the backlog and waiting times, where efficiencies can be made some cases might be investigated sooner. For example, where cases overlap in terms of location or evidence, or the evidence suggests the case could be determined quickly.

Policy review period

To be reviewed in 5 years, or sooner if there are significant legislative or operational changes.