

# Applying for a Definitive Map Modification Order Information Booklet

This information pack is for prospective Definitive Map Modification Order (DMMO) Applicants. Please read before proceeding.



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# 1 Before you get started

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- 1.1 We know what we know, but we don't know what we don't. The official record of public rights of way is just like this.
- 1.2 The Definitive Map and Statement (DMS) is a record of known public rights. It does not exclude the possibility that other rights may exist or other information may be incorrect. However, until proven otherwise the documents are legally assumed to be correct.
- 1.3 Amending the DMS is possible by a DMMO. The Council can make DMMOs of its own volition but it will also make them as a result of a formal Application. You do not have to make an Application, but if you do, this puts you in a better position if you do not agree with the Council's actions or lack of action over your Application.
- 1.4 Anyone can apply to the Council for a DMMO, however the Council can only act to make the change if there is sufficient evidence. Before making an Application you should collect your evidence as you are required to submit it with your Application.
- 1.5 There are two types of evidence:
  - User Evidence
  - Documentary Evidence
- 1.6 Either of these or a combination of both can form the basis of a successful Application. The key to making a good Application is this supporting evidence. Where the Application is to add a right of way to the Definitive Map and Statement, as in the majority of cases, the Council needs to be satisfied from the evidence, that on the balance of probabilities, a public right of way exists, or may be reasonably alleged to exist. It is almost impossible to lay down hard and fast rules as to how much evidence is necessary – especially as some evidence carries much more weight than others. However, certain key sources of evidence should always be investigated as described in this Information Pack.
- 1.7 When assessing evidence it is largely a matter of balancing it all up and deciding what carries the greatest weight. There may well be conflicting evidence particularly with cases based on usage. The decision maker, initially the Council, has to try and get to the truth and assess the evidence against the legal criteria.
- 1.8 Copies of all supporting evidence must be submitted with the Application. Case law has determined that it is not good enough to say that something is available at eg a particular library unless you can prove that copying or photographing the documents was not allowed by the depository.

# First Step: Collecting Your Evidence

## 2 User Evidence - Background

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- 2.1 The establishment of a right of way through long use by the public relies on a legal concept known as presumed dedication whereby a public right of way comes into being by regular uninterrupted use of a route by the public so long as the owner of the land hasn't taken any actions to prevent use or made it known that the way is not to become a public right of way.
- 2.2 The above is a summary of Section 31 of the Highways Act 1980, which states:  
*"Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."*
- 2.3 Usage of a route will be calculated over the 20 years prior to an initial challenge to usage. If use of the route has not been challenged, you can make your Application (often called a Schedule 14 Application) and the date of your Application will be used as an end date for the 20 year period of use.
- 2.4 In the legislation the term 'public' means use by the public at large. Any use by the landowner's employees, customers, friends, relatives, the milkman or postman does not represent use by the public. Likewise if usage is by a specific group of people for a particular reason this would not represent the public at large.
- 2.5 'As of right' means using a route:
- without force - not breaking a lock on a gate, breaking or climbing a fence to gain passage
  - without secrecy – openly walking the route in plain view so that the landowner is in a position to object and protect their interest and take action to stop or deter use, should they wish
  - without permission - if a landowner can prove that the way was used only with their permission or they have erected a sign saying that the route is a 'permissive footpath' it would not give rise to a public right. Similarly, if a user asks for permission to use a route, they are admitting that they do not have a right to use it.



- 2.6 An interruption or challenge to use of a route or evidence of a lack of intention to dedicate a way, by an owner of land, can rebut presumed dedication. A few examples are:
- a verbal request not to use the route by the landowner
  - a sign indicating that the public does not have a right of way
  - a locked gate thus showing the landowners intention not to dedicate
  - a formal declaration and deposit with North Tyneside Council by the landowner, is evidence of the landowners intention not to dedicate a right of way.
- 2.7 There is also the possibility that a public right of way may be acquired by common law and this is often cited where user evidence does not manage to make the 20 years. However, the possibility has to be treated with great caution as the burden with common law is to prove a greater acceptance of the user by the owner (whereas Section 31 as described at 2.2 (p.2) places the burden with the owner to rebut the user evidence). The statutory provision we know today was introduced to deal with the difficulties presented with the common law position and although it is still possible for dedication at common law it is a far more precarious argument to make. The Council is unlikely to take a case forward based on common law.

### 3 Collecting User Evidence

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- 3.1 Path users must provide their user evidence by completing a user evidence form (questionnaire), Form D.
- 3.2 You will need to collect evidence from as many witnesses as possible who have used a route over a long period of time. A period of at least 20 years uninterrupted use prior to challenge needs to be demonstrated. This date of challenge may be easy to determine if, for example, a path was physically blocked, however, if the bringing into question was the challenging of people, it may not be possible to decide until all the evidence has been assessed by the Council.
- 3.3 The 20 years may be shown by a number of witnesses' accounts collectively. For example a path primarily used to go to school may have been used by individual people for less than 20 years, however, combinations of users can be added together so long as between them they have used a path for the 20 years prior to challenge. In practice we recommend you find 20 or more users (or combinations of users) of 20 years. This is not a hard and fast rule and in very rural communities it is less likely to be possible and a lower threshold may be acceptable.
- 3.4 It is important that the way claimed follows a specific route and it is not based on the public wandering at large.
- 3.5 Evidence of use should be first hand. For example, if a bridleway is being claimed, evidence should be obtained from people who have actually ridden horses along that route. Evidence from users who have merely walked the route, but claim to have seen people riding along it, or knew of people who rode along it, would not, on its own, be sufficient. The overall quality and reliability of the user evidence is also very important – users who can give accurate and consistent information about when and how they used a route will be most valuable. Witnesses may have to give evidence to a public inquiry and be cross examined so keep this in the back of your mind when collecting user evidence. Reliable witnesses are crucial.
- 3.6 Each witness needs to complete a separate Form D and mark the route/s they have used on an attached map.
- All questions need to be completed even if the witness notes 'no', 'none' or 'not applicable'

- Please ensure a map is included with every form that is given to a witness and that it is marked by them with their name printed and also a signature. We can provide you with a master copy but you can obtain maps from other sources. Please do not use a Google map or something similar as these maps are not of a good enough quality
- For user evidence to carry any weight it must include a name and address and the users should be aware that their identity will eventually have to be made publicly available. Normally we will reveal the identities of path users once the issue is considered by the Council's Highways Committee (see 12.3 – 12.6, p.12)
- It is better for one person to collect all the completed user evidence forms and return them to us in one batch (best to send them by recorded delivery or hand deliver)
- It helps us considerably if the co-ordinator of the user evidence collection completes **Form E** which is a summary of all the names and contact details of the path users. This is for the Council's use only and will not be made publicly available. It is easier and cheaper for us to deal with large numbers of people by email, so please encourage witnesses to provide their email addresses

3.7 It is possible for a Statutory Declaration to be completed if a witness is eg particularly elderly and unlikely to be able to attend a public inquiry. You would need to arrange this with a Solicitor, Magistrate or Commissioner of Oaths and there will normally be a fee payable. It is generally unusual to obtain any Statutory Declarations as part of the DMMO process but there may be circumstances in which it may be appropriate.

## 4 Documentary Evidence

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- 4.1 Section 32 of the Highways Act 1980 deals with documentary evidence and its place in determining whether a public right of way has come into existence: 'A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced'.
- 4.2 It is possible that an Application may rely entirely on documentary evidence, partly, or not at all. Paths that have only started to be walked more recently eg over a reclaimed area of land or leading out of a modern housing estate are unlikely to rely on any documentary evidence whereas a hedged or walled old lane is more likely to have old documents associated with it.
- 4.3 If relying on documentary evidence, it is probable that a number of different documents will together be required to prove the existence of a public right of way. Researching documents is time consuming and may require some historical or specialist knowledge and visiting where they are stored.
- 4.4 You should be aware that documents can be interpreted in different ways and as such, they may well be contested.
- 4.5 There are many sources of documentary evidence and a summary of the main types is found at 14.1 – 14.6.



## 5 Determining what you are applying for

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- 5.1 There are a number of possible scenarios that you can apply for.
- 5.2 The most common Applications are to register public footpath rights. It is also possible that additional rights may exist so an Application can be made to upgrade a footpath to a bridleway where there is sufficient evidence of equestrian use.
- 5.3 An Application can be made that a path is recorded incorrectly. This may be something like the width of the path as recorded in the Definitive Statement. Where an Application is to alter the line of a path then it is recommended that this is made by two Applications, one to delete the 'incorrect' line and the other to add the 'correct' line.
- 5.4 An application can be made that a path recorded as a public right of way does not exist or that it should be downgraded.

## 6 What status to apply for if you are seeking additional rights to be registered

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- 6.1 Once your research is complete you will need to determine the status of the route you will apply for. If your evidence is based on user evidence the following applies:
- Use on foot will give rise to a footpath
  - Use on a horse will give rise to a bridleway
  - Use with a non-mechanically propelled vehicle (pedal cycle or horse and cart) may give rise to a restricted byway
  - Use by a mechanically propelled vehicle does not create a public right of way.
- 6.2 If your evidence is documentary, the documents will indicate the status of the route you are claiming. If the evidence indicates vehicular rights, it may be that the right for motor vehicles has been extinguished by the Natural Environment and Rural Communities Act 2006. The Council will consider this when they determine the Application.
- 6.3 The following are the only descriptions of highway that can be recorded on the Definitive Map and Statement:
- **Footpath** is a highway over which the public have a right on foot only (does not include pavements/paths at the side of a public road).
  - **Bridleway** is a highway over which the public have a right of way on foot or horseback, or leading a horse. Pedal cyclists also have a right of way, but must give way to walkers and horse riders.
  - **Restricted Byway** is a highway over which the public have a right of way on foot, on horse back or leading a horse and with vehicles other than mechanically propelled vehicles (in some instances with a right to drive animals of any description along the highway), but no other rights.
  - **Byway Open to All Traffic (BOAT)** is a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used mainly for the purpose for which footpaths and bridleways are so used.

# Second Step: Making Your Application

There are three sets of forms that you need to complete and send off in order to fully make your Application. You must apply to the Council, and at the same time send notice of your Application to the landowners and finally you must complete a signed form confirming that you've served notice on the owners. These forms are all in a specified format so you are recommended to use the forms attached to this booklet (**Forms A, B and C**).

## 7 Making your Application to North Tyneside Council Form A

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- 7.1 When completing **Form A** please ensure that all fields are completed and that you attach a map showing the route/s you are applying for and copies of all your evidence. The map must be at a scale of not less than 1:25,000. Indeed the more detailed the map the better.
- 7.2 Copies of documents or photos should be certified by their source. Normally libraries will have a stamp that they will mark on the back of documents. It is advisable to provide coloured photocopies where the originals are coloured or the detail unclear. Exemption to inclusion of a document will be made where the document custodian prohibits photocopying or photography, but this should be confirmed in writing.
- 7.3 You should list the documents submitted in evidence including the source and reference details. If you have provided completed user evidence forms please provide a list of those who have completed an evidence form. If you have already completed Form E use this.
- 7.4 Return your completed **Form A**, including attachments to:

Graeme Clark (MIPROW),  
Public Rights of Way, Definitive Map & Cycle Network Officer,  
North Tyneside Council (Traffic), Quadrant, Cobalt Park,  
Newcastle upon Tyne, NE27 0BY.

It is recommended that you send this by recorded delivery or drop it off by hand.

## 8 Serving Notice on the landowner/s and occupiers Form B

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- 8.1 At the same time as serving Form A or shortly after, the applicant must serve notice on all landowners and occupiers of land to which the Application relates using **Form B**. If you are not sure of the owners/occupiers you can make enquiries locally or you can apply to find out ownership (not occupancy) from the land registry, for a small fee. Ownership of approximately 80% of land in England and Wales is registered with the Land Registry.
- 8.2 If, after reasonable inquiry, you cannot ascertain the name and address of an owner or occupier of any land to which the Application relates and North Tyneside Council accepts this we can direct you to affix a notice on site to be addressed to the 'owner' and 'occupier'.

## 9 Certifying that you've served Notice on the landowners and occupiers or affixed a Notice on site Form C

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- 9.1 Please ensure that you fully complete Form C and the details are consistent with your other forms. This should be returned to the address at 7.4.

**All the steps described for making an application are prescribed by legislation and if you do not complete them then your application will not be considered valid**

# What happens next?

## 10 Immediately after you've made your Application

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- 10.1 On receipt of the Application we will check it and confirm with you its validity, and if there are any issues we will advise how they can be addressed.
- 10.2 We will inform you of the timescale in which we propose to deal with your Application.

## 11 Your rights of appeal as DMMO Applicant

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- 11.1 If we have not made a decision on your valid Application within 12 months of us receiving your Form C (certification) you have a right to apply to the Secretary of State for Environment, Food and Rural Affairs\* for a direction to be given to us about dealing with your Application. The Secretary of State may decide to impose a deadline for the Application to be determined or may refrain from giving any direction.
- 11.2 If the Council decides to turn down your Application you can appeal to the Secretary of State under Schedule 14 to the Wildlife and Countryside Act within 28 days of us notifying you in writing of that decision.



## 12 How we investigate and determine your Application

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- 12.1 Once we take on a case our first job is to investigate the evidence further. If you have provided user evidence we will interview about 10 key witnesses whose evidence appears the strongest ie the longest period and greatest frequency. We will also give the owners of the land the opportunity to comment on the evidence as well as looking into any documentary evidence that may be relevant. All of the above can take a number of months and if there is any contradictory evidence submitted we may have to come back to you and paths users for further comments/evidence on what else has been submitted. We will also consult with path user groups, Councillors and any other relevant consultees.
- 12.2 We will start to prepare the case for consideration by the Council's PROW Committee. This meeting will decide whether the Council should go forward with a DMMO to make the change you have proposed.
- 12.3 Officers dealing with a case have to be certain that they have properly presented all the relevant evidence to the Committee. To be sure of this we will prepare a draft report for the Committee that we will send out to the Applicant and to the owners of the land concerned. This ensures that the main interested parties have all seen all the evidence and have a final opportunity to comment on everything. It is inevitable that there may be contradictory evidence which all needs to be considered in advance.
- 12.4 The Committee will be guided by the final report prepared by officers. Representations can be made directly to the Committee but they should only include what has been provided before hand. New information brought to the meeting on the day could lead to the meeting being adjourned which will create bad feeling and be expensive for the Council.
- 12.5 The Committee will decide whether a DMMO will be made. If it accepts the proposal, an Order will be made a few weeks later which will follow a set process which is described below. If it turns down the application then, as Applicant, you have the right to appeal as laid out in 11.2.

## 13 Making a DMMO and afterwards

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13.1 The process for a DMMO is described below.

13.2 An Order has to be made in the form set out in the relevant regulations. There also has to be a notice to be used in advertising the Order that briefly describes what effect the Order will have; states where the Order and plan can be inspected free of charge and where a copy can be purchased; and gives the address to which any objections should be sent and the date by which they must be received. A 42 day period starting on the date the notice is first published must be allowed for objections.

### Advertising an Order

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13.4 On making an Order a Notice will be prepared and publicised in the following ways:

- In a local newspaper
- Sent to all who have formally requested and paid for notice of such an order
- Displayed at any places the Authority considers appropriate
- Displayed with a plan at the ends of the part of a path affected by the order
- Sent to other local authorities in the area
- Sent to the owners, occupiers and lessees of any land affected by the order
- Sent out to prescribed bodies.

## Objections

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- 13.5 Objections must be in writing and reach the Authority by the closing date set out in the notice. They should state clearly the objector's reasons for opposing the Order. Relevant objections to a DMMO can only relate to the evidence and whether it satisfies the relevant tests. The Secretary of State has power to disregard objections which do not specify the grounds for objection or where the grounds put forward are irrelevant.

## Unopposed Orders

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- 13.6 If no objections are made within the objection period, or any objections that are made are later withdrawn, the Authority may confirm the Order itself as an unopposed Order. But it can only confirm the Order as it was made. If the Authority wants to change the Order in any way it must submit the Order to the Secretary of State (even if there are no objections) with a request that the Order be confirmed with appropriate modifications.

## Opposed Orders

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- 13.7 If there are objections to an Order the Order Making Authority cannot determine the objections itself or confirm the Order. The Council has to submit the Order for determination, although it can, if it wishes, submit it with a request that the Order be not confirmed (for example, if it has discovered an error in the Order, or if the objections have contained new evidence which has caused the Authority to change its conclusion about the correct status of the way).
- 13.8 Determination of opposed Orders is by the Secretary of State, but there is a power to transfer the decision-making to an Inspector from the Planning Inspectorate and this is normally used. In a few special cases the decision will be made, not by the Inspector, but by the Secretary of State, to whom the Inspector will report. In such cases the Secretary of State has to tell the objectors the reason. The Inspector can deal with the Order either by holding a public local inquiry, a hearing, or by an exchange of correspondence - the 'written representations' procedure. The Planning Inspectorate will correspond with all objectors to an Order about the procedure that will be followed but DMMO's will normally result in a public inquiry so that there is a full opportunity for the evidence to be tested. There is in particular a set timetable for the submission of statements of case and evidence which have to be followed by all the parties concerned.

## At a public inquiry

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- 13.9 The Planning Inspectorate notifies each objector of the details of the inquiry and also asks the Authority to put up notices and place an advertisement in a local paper. Anyone can attend an inquiry but only those who have made formal objections have a right to speak. Others may do so at the discretion of the Inspector.
- 13.10 Once the inquiry has opened, the Inspector has full jurisdiction over the proceedings. It may very occasionally be possible to make special arrangements for those who cannot get time off work. This should be raised with the Inspector at the start of the inquiry. At the inquiry the Inspector will ask for the names of those who wish to speak and, where appropriate, the organisations they represent. An order of appearance will then be decided with allowances made wherever practicable for anyone who has limited time to attend the inquiry, eg. they cannot get time off work.
- 13.11 A representative from the Order Making Authority will state its case, calling whichever witnesses it wishes. Statements made by such witnesses should be made available to objectors. The objectors are entitled to cross-examine the witnesses but not question the representative.
- 13.12 The objectors will then be called upon to make their case and their witnesses may be called and cross-examined. The Inspector may question any of the participants at the inquiry. The Authority will then make a closing statement.
- 13.13 After the closing statement, the Inspector will hear no further representations but will announce the arrangements for the site inspection. This will either be alone or accompanied by both parties. During the visit the Inspector may ask questions about the route to clarify any of the points raised at the inquiry. However, there will be no reopening of issues raised during the inquiry. The Inspector may also make an unaccompanied visit before the inquiry, without giving notice, or may choose to make an accompanied visit during the course of the inquiry. In making a decision the Inspector will consider the oral evidence given and also any written submissions presented during the inquiry, or received beforehand.

## At a hearing

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- 13.14 A hearing is less formal than a public inquiry, and takes the form of a round-table discussion led by the Inspector. Witnesses are not called or cross examined. A hearing is unlikely for a DMMO as the cross examining of witnesses is usually a vital component of the Inspector's assessment of the case.

## Written representations

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- 13.15 If an opposed Order is dealt with by written representations the Inspectorate will invite each party to comment on views expressed by the other. Correspondence continues to be exchanged, through the Inspectorate, until each side has had the opportunity to comment fully on everything the other party has said. The Inspector will also make a site visit (normally unaccompanied) before coming to a decision. It is rare that a DMMO would be considered by written representations.

## The decision

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- 13.16 The decision is contained in a letter that summarises the evidence presented to the Inspector, and explains the reasons for the decision. A copy of the letter will be sent to the Order Making Authority, to those who made formal objections, and to anyone who requested a copy.

## Modifications to the Order

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- 13.17 The Inspector will sometimes decide that the Order should be modified, and can make minor modifications as part of the decision unless the modifications affect land not affected by the Order. If this is the case, the Inspector's proposals must be advertised and a second local inquiry may have to be arranged if further objections are received. The second inquiry is primarily concerned with the proposed modifications, however, and the Inspector will only consider representations about the unmodified part of the order if they raise new issues. Modifications cannot be made to correct serious legal errors or discrepancies. If the Order is found to be defective it will have to be rejected, regardless of the merits of the proposals. A new Order will then have to be made if the Authority wishes to proceed with the proposal.



## Confirmation

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- 13.18 If and when the Order is confirmed, either by an Inspector or by the Authority, the Authority must give notice of its confirmation in the same way as it gave notice of the making of the Order. If the Order is not confirmed, then the Authority has to inform those people or bodies who were notified of the making of the Order, but does not have to publish notice of the decision in the press, nor put notices up on the path.

## Challenge in the courts

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- 13.19 Legal action of this sort can be very costly and should not be commenced without first seeking legal advice. A decision to confirm an Order can only be challenged on legal grounds in the High Court. To be successful, it would be necessary to show either:
- that the Order Making Authority, the Inspector or the Secretary of State exceeded their powers in some way; or
  - that any of the relevant requirements were not complied with, and that consequently your interests were substantially prejudiced

The High Court cannot change the decision: it can only quash the Order. Any application to challenge a decision must be made to the High Court within six weeks of the confirmation of an Order.

## Challenging a decision not to confirm an Order

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- 13.20 There is also power to challenge, by way of application for judicial review, a decision not to confirm an Order (this would only apply if the local authority or the Inspector had abused their powers or had acted unreasonably). In such a case, the Court has power to direct the Authority or Secretary of State to reconsider the case. Application has to be made promptly and within three months of the date of the decision you are challenging. If the High Court does not uphold a challenge, there is no other way that the decision can be overturned.

## Coming into operation of Orders

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- 13.21 DMMOs come into operation on the date they are confirmed, and so provide conclusive evidence of the existence of public rights as specified in the Order as from that date. The Definitive Map and Statement will be changed to reflect the alteration made.

## **Amending the Ordnance Survey map**

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- 13.22 The Order Making Authority has to notify Ordnance Survey of the confirmation and coming into operation of DMMOs. It will amend its paper maps when they are next revised, but this may be some years later. However, Ordnance Survey digital mapping will be altered more quickly.

## **Marking the change on the ground**

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- 13.23 The Council will mark any newly recorded route with signposts and/or waymarks and make any other changes on site as are appropriate.

# Other information

## 14 Some commonly researched documents used for determining the status of a path

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Old maps

Inclosure Awards

Quarter Session records

Estate maps

Railway and Canal records and plans

Tithe Maps

Finance Act 1910 records

Parish Council minutes

Ordnance Survey maps

Modern records, as follows:

Property Deeds

Building plans

Published articles & books

Landowners, occupiers and other interested parties will be consulted as part of the investigation by the Council, and their evidence could rebut the claim.

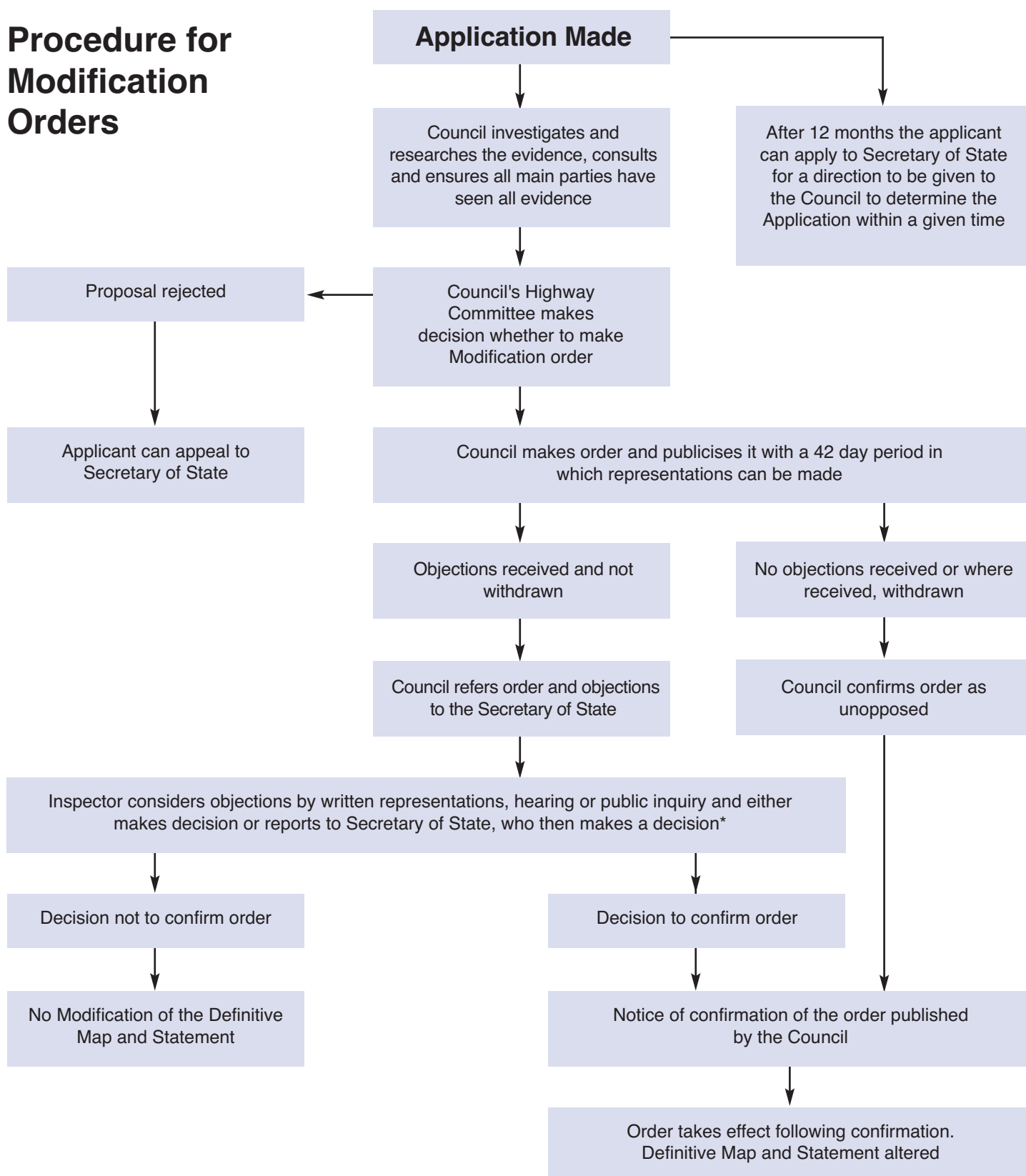
## 15 Index of forms to use for a DMMO Application

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Form A	Application form to North Tyneside Council for a Modification of the Definitive Map and Statement
Form B	Notice to owners and occupiers of Application made at form A
Form C	Certification of Service of Notice of Form B on owners/occupiers or on site where unable to identify all owners/occupiers
Form D	User evidence questionnaire
Form E	Summary of contact details of all users completing Form D

## 16 Flow chart showing DMMO process

### Procedure for Modification Orders



\* An Inspector who considers an opposed order can alter an Order. Depending on the type of alteration this may allow for representations to be made again or it may be that it can be confirmed with the change.