

Cranborne Chase and West Wiltshire Downs  
Area of Outstanding Natural Beauty



# The Legal Record of Rights of Way



[www.ccwwdaonb.org.uk](http://www.ccwwdaonb.org.uk)

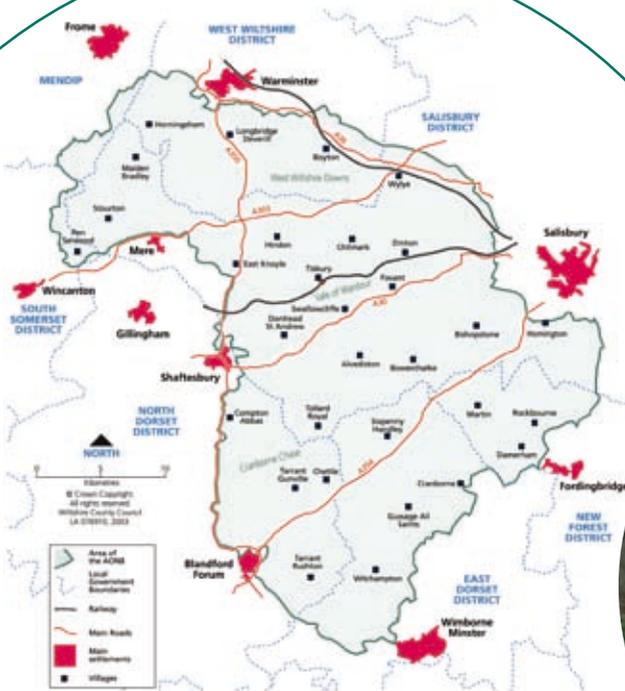
## Who records and manages Rights of Way (RoW)?

County Councils have the responsibility for managing RoW. Each has a team of RoW Officers whose duties and work include:

- Maintenance of the Legal Record of Public Rights of Way
- Maintenance of Rights of Way
- Enforcement
- Accessibility for mobility and visually impaired users
- Rights of Way Improvement Plan
- Local Access Forum
- Access Land - Registered Common and Open Country

This booklet focuses on the first of these duties only, the 'maintenance of the Legal Record of Rights of Way'. Changes can be made to this 'Legal Record of Rights of Way' but the process that must be followed is determined in law.

*Within Cranborne Chase and West Wiltshire Downs AONB, four County Councils have responsibility for rights of way in the area - Wiltshire, Dorset, Hampshire and Somerset.*



## Definitive Map Modification Order (DMMO)

### What is the Legal Record?

All rights of way are classed as 'highways' and as such are recorded in two ways:

**The Definitive Map** - showing the right of way from start to finish on a map.

**The Statement** - most rights of way shown on the Definitive Map also have an accompanying statement describing the route in words.

Each County Council holds the Definitive Map and Statement for its county. It should be a true legal record of all public **footpaths**, **bridleways**, **restricted byways**\* (formally roads used as public paths) and **byways open to all traffic**.

\* *see later explanation*

Changes can be made to the Definitive Map and Statement in only two ways:

1. Legal Event Modification Orders
2. Definitive Map Modification Orders

### Public Path Order (PPO)

Changes can be made to the existing rights of way network by:

- Creation Orders, Agreements and Dedications
- Diversion Orders
- Extinguishment or Stopping-up Orders

Bringing the Definitive Map and Statement up-to-date by:

- Correcting errors
- Adding rights acquired through express or presumed dedication
- Adding rights that already exist but that were previously unrecorded or under-recorded



## Adding rights that already exist but that were previously unrecorded

There have been many 'claims' submitted to the County Councils in recent times, to change the classification of different rights of way.

Many of these have been claims to upgrade a RoW to a 'byway open to all traffic', but not exclusively.

These 'claims' are dealt with through the Definitive Map Modification Order (DMMO) process. The process is not exclusive to this AONB. Any person may make a DMMO application or 'claim' at any time, to the relevant County Council, to change the classification of a right of way - as long as they have the relevant and required evidence.

Most County Councils around the country have had an increased number of 'claims' submitted over the past few years. There are two potential reasons for this:

- 1. 'Discovering Lost Ways' project.** This is a national project, led by what was the Countryside Agency, now Natural England, aimed at making the Definitive Map and Statement a true and final record of public rights of way by 2026, when the Definitive Map will be closed against the registration of any further unrecorded historic rights of way. Wiltshire County Council, for example, already has over 180 cases of alleged unrecorded rights to resolve.
- 2. The Countryside and Rights of Way Act 2000 (CRoW) and the Natural Environment and Rural Communities Act 2005 (NERC).**  
The CRoW Act introduced a new category of RoW - the 'Restricted Byway' but this was not enacted until 2nd May 2006. All Roads Used as Public Paths (RUPPs) became Restricted Byways on 2nd May 2006. Restricted Byways are carriageways, mainly used as footpaths and bridleways, but with a right of way for non-mechanically propelled vehicles. Existing private access rights are not affected.  
NERC affects claimed byways open to all traffic, if the application for the modification order was made after 20th January 2005. If that is the case, they can become Restricted Byways but not Byways Open to All Traffic provided that the route was not specifically built for mechanically propelled vehicles or that the main public use of the route was by mechanically propelled vehicles between the years 2001-2006.

## The Definitive Map Modification Order process

1. Where the County Council discovers or is provided with evidence of unrecorded rights of way, **it has a legal duty to investigate**. Claims may be for footpaths, bridleways, restricted byways or byways open to all traffic.
2. **The Council must assess or 'test' the evidence** to decide if unrecorded rights are reasonably alleged to exist. Is there any indisputable evidence that they do not exist...?
3. **A decision is made on the balance of probabilities** - there does not have to be conclusive evidence. *The final decision on whether to change a category of RoW, depends purely on the evidence available, not any desire to change or not to change it.*

The evidence can be based on long-standing public use, as of right, over at least twenty years, in order to meet the statutory requirements of the Wildlife and Countryside Act 1981 or there may be evidence of an overt act by the landowner and a shorter period of use which will satisfy the requirements of Common Law and/or

There may be documentary evidence of historic public rights of way, from such sources as Inclosure Awards, Tithe Maps, 1910 Finance Act records, etc. In some cases there can be many individual pieces of evidence, some conflicting, that enable an overall conclusion to be reached on the balance of probabilities.



4. **If the evidence is sufficient** or undeniable, the County Council must make a Modification Order
5. **If the evidence is insufficient** or questionable, the application is refused, but the applicant may appeal to the Government Office's Rights of Way Team. The County Council can sometimes be directed to make an Order against its own judgement
6. If the County Council decides it should **make a Modification Order**, it must consult the public on the Order through an advertisement by newspaper and site notice. Any known landowners are consulted.
7. **Representations and/or objections** can then be made to the County Council but any objections **must relate to the evidence** to be relevant
8. **Confirmation of the Order:**
  - If there are no objections, the County Council confirms the Order
  - If there are objections, the County Council must re-consider the case and all the available evidence (there may now be additional relevant information to take into account)
  - The County Council must send the Order and copies of all representations and objections to the Secretary of State, saying whether it believes that the Order should or should not be confirmed. In certain circumstances, the Council may remain neutral
9. **The Secretary of State** (Planning Inspectorate) decides whether to determine the Order either by:
  - Written representations
  - A Hearing led by an Independent Inspector
  - A Local Public Inquiry led by an Independent Inspector
10. **The Secretary of State's decision** can be:
  - To confirm the Order as made
  - To confirm the Order with amendments (this may require re-advertisement and consideration of objections to the amendments)
  - Not to confirm the Order

## Managing Rights of Way

There are options available for managing RoW:

**Adequate maintenance** - Restricted Byways (RB) and Byways Open to All Traffic (BOATS) are maintainable at public expense (as are bridleways and footpaths). On BOATS, however, there is no duty to maintain a surface passable by mechanically propelled vehicles, but if vehicular use is heavy, RoW teams can undertake maintenance, to enable use by walkers, cyclists, horse-riders, carriage drivers and mechanically propelled vehicles.

**Voluntary Restraint** - there are many examples, both here and from around the country, where user groups have voluntarily agreed to restrict their use of various RoW and/or at different times of year.

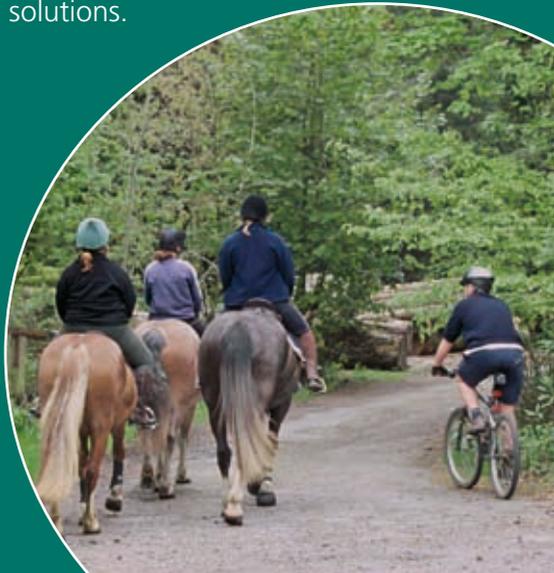
**Traffic Regulation Order (TRO)** - a temporary TRO can be made to allow specific repairs, a seasonal TRO as on 'The Ridgeway', to reduce usage at certain times of year or an all-year-round TRO can be made, if absolutely necessary. TRO's are time consuming and expensive to obtain (another legal process to be pursued) and they must then be enforced to be effective.

**Highway Authorities have the duty to legally protect and assert the rights of all legitimate users.**

Excluding any legitimate user of a RoW, usually requires the use of additional Highways legislation, in just the same way as excluding someone from using metalled roads

Within CCWWD AONB, 5.7% of RoW are currently open to mechanically propelled vehicles. Many users of mechanically propelled vehicles on RoW do want to enjoy their hobby responsibly and many are also walkers, horse-riders and cyclists. Several of the representative groups do what they can, to promote legal and responsible use.

There are also those who drive, walk or ride where they shouldn't. Conflict situations do arise, together with issues of safety between different users. The four Rights of Way teams and the AONB Partnership are aware of this and continue to look for solutions.



## AONB Access Group

The AONB Partnership has an Access Group that meets 2/3 times a year. It is made up of RoW Officers from the four County Councils involved, together with representatives of user groups and other interested bodies. Its purpose is to try to resolve the wide range of RoW and access issues raised by local communities and others, during the preparation of the AONB Management Plan.

The Access Group is pursuing:

- 'best practice' schemes from around the country set up to manage mechanically propelled vehicles on RoW
- drawing in additional, external funding to improve RoW/access across the area
- commenting on the four Rights of Way Improvement Plans (RoWIPs) to seek consistency across the AONB
- the ongoing exchange of ideas and experience between all those with an interest in and/or responsibility for RoW and access management

To find out more about the RoW / access in your part of the AONB, look at the vast array of information on the relevant County Council website:

[www.dorsetforyou.com](http://www.dorsetforyou.com) then click on the heading *Enjoying*; then underneath *Coast and Countryside*; then on the left *Dorset Countryside*; *Public Rights of Way*

[www.wiltshire.gov.uk](http://www.wiltshire.gov.uk) then click on *Environment and Planning* on the left; and then *Walking and Cycling* at the bottom of the list that appears

[www.hants.gov.uk/countryside/row](http://www.hants.gov.uk/countryside/row)

[www.somerset.gov.uk](http://www.somerset.gov.uk) the click on *Environment and Planning* on the left; then *Rights of Way* half way down the list that appears

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