
Claiming public paths after twenty years' use

INTRODUCTION

1. On 1 January 2026, the official map of public rights of way (the definitive map) is scheduled to be closed to claims for public footpaths and bridleways which existed before 1949 but have not been recorded on it. These pre-1949 public paths will then be formally extinguished.

2. At that point the rule *once a highway, always a highway* is in effect revoked.

3. At present, it is possible to claim for inclusion on the map routes which have been used by the public, without being stopped, without asking permission and without being secretive, for 20 years. After 1 January 2026 it may not be possible to submit claims for routes until a further 20 years' use has accrued, ie on 1 January 2046. And any landowner, during that time, can simply block that process.

4. Although January 2026 is 20 years away, it is not too soon to be gathering the evidence and submitting claims now. Recording a route on the definitive map offers it protection, from being built on for instance. Therefore it is important to be identifying now any routes which the public has used for 20 years and which are not on the definitive map.

5. You may be considering getting a path recorded because of some questioning of its publicness; perhaps there is a new landowner. Or you may wish to preserve and enhance the path network. In either case, looking at the current definitive map with its accompanying statement (at most libraries and council offices) is a first step. As well as actual routes between other paths or roads, look out for short lengths of path at parish or community boundaries and where the paths join roads. In 2026 even an unrecorded length of path just a few feet long could allow the landholder to stop up the path for ever. Also, don't assume that a green lane, even a tarmacked one, is safe from the 2026 chop. And it is not just country paths and green lanes, another poorly recorded category of public path is the village or urban alleyway. These need to be on the definitive map by 2026 too.

How to claim a path

6. Check with the surveying authority (county, unitary, metropolitan borough or London borough council) that the path is not already accepted by it as a public highway. (Note that inner London boroughs are not required to have a definitive map of rights of way.) If it is, the authority may be able to assist in asserting your rights, possibly without the path needing to be claimed for the definitive map. For example, it

may have proof of some event such as a legal diversion onto the route, or if it doesn't have conclusive evidence, it may nevertheless have enough to persuade the landowner to enter into a creation agreement so as to avoid years of uncertainty.

7. If the authority cannot assist, or process it itself, you need to gather evidence of use over 20 years or more. There is an alternative, or complementary, way of getting paths recorded and that is by unearthing historical evidence, but this information sheet does not cover that.

Gathering evidence

8. We suggest you obtain at least half a dozen witnesses who have used the path during the 20-year period.

9. The 20-year period must run back from the date when the public right to use the path is brought into question. This usually means when someone with an interest in the land informed people that they must not use it, for example by erecting a 'private' notice or locking a gate across the path. If there has been no physical deterrent, the date when you apply for the path to be added to the map can be treated as the date when the way was brought into question.

10. You should then collect evidence for at least the 20-year period you have identified. Not every witness needs to have used the way for the whole period, but between them the whole period must be covered. If your witnesses are elderly, or are unlikely or unwilling to attend a

public inquiry, it is advisable for them to make a statutory declaration so that their evidence will carry more weight at the inquiry.

11. Claims must not be made for ways where access is already prohibited (eg motorways, railway lines). The use must be without interruption and without permission.

12. Most surveying authorities produce a user-evidence form on which to gather the evidence. However, if yours does not, you can use the one attached (annex 1) or, with care, design your own (an example is at annex 2).

13. It is important to be clear and reasonably consistent as to the route claimed. Some application forms ask for a sketch map, but many people fill these in inadvertently on routes that differ from what they use. It is recommended that a little research is done in places where the path, perhaps a cross-field path, doesn't follow a well-defined way. Many counties have air photographs that can indicate old crossing-points of long-gone hedges. Then if the route ties in with the modern route it can be shown on the map, but make it clear that people should verify it or modify it to where they walk or ride.

Applying for the path to be added to the definitive map

14. In applying for the path to be added to the map, you are asking the surveying authority to make a modification order under section 53 of the Wildlife and Countryside Act 1981.

15. The surveying authority is under a duty to keep the definitive map and statement under continuous review. It must amend them if evidence comes to light that a path should be recorded as a public right of way.

16. You should ask your surveying authority to send you the information for claiming a path. It will send you the forms to complete. There is no charge for applying for a modification order.

17. You will have to complete the following:

- a. An application form and map drawn to a scale of at least 1:25000 which you send to the surveying authority together with the witness forms⁽¹⁾.
- b. A notice which must be sent to every landowner or occupier affected by the application⁽²⁾. You may not know who they are, but you can undertake a search with the Land Registry, see www.landreg.gov.uk. If this does not provide the information, the authority has the power to say that the notice can be placed on the land.
- c. A certificate of service of notice which has to be sent to the surveying authority, to say that the notice of application has been sent to all who own or occupy the land affected⁽³⁾ or that you have placed the notice as above.

18. It is essential to submit the forms listed above. Sending the witness forms alone does not constitute a valid application.

What happens next?

19. The highway authority will analyse your claim and in due course should decide whether to proceed with it. It must make an order if it is satisfied that the way is ‘reasonably alleged to subsist’, not at this stage that it is definitely, or even probably, a public highway.

20. If it decides to proceed, it will make a modification order, which will be advertised in the press and sent to prescribed organisations which include the Open Spaces Society. If there are no objections within the stated period the authority normally confirms the order itself and the path is added to the map. If there are objectors, the order is submitted to the Planning Inspectorate for determination, usually by a public inquiry. If an inquiry is held, you may need to call some or all of your witnesses to give evidence.

21. Many authorities have a large backlog of claims so this could take some time. If the authority has not made a decision on your application within 12 months of receiving the certificate referred to above, you can apply to the Secretary of State for Environment, via the Government Office North East, Defra National Rights of Way Casework Team, Environment Group, Citygate, Gallow Gate, Newcastle upon Tyne NE1 4WH to direct the authority to make the order. If the Secretary of State decides not

to make a direction, you can apply again for a direction if the authority continues to fail to make a decision.

22. Also, if your application is rejected, you can appeal to the Secretary of State via the Government Office North East within 28 days of receiving the notice of decision⁽⁴⁾. If the Secretary of State allows your appeal she will direct the authority to make the order.

Notes

1. Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 no 12, schedule 7
2. ditto, schedule 8
3. ditto, schedule 9
4. Wildlife and Countryside Act 1981 schedule 14 paragraph 4.

Further reading

Rights of Way, A guide to law and practice, 3rd edition, by John Riddall and John Trevelyan, 2001, published by the Open Spaces Society and the Ramblers' Association, obtained from the Ramblers' Association, 2nd floor, 87-90 Albert Embankment, London SE1 7TW, bluebook@london.ramblers.org.uk, £20 + £5.50 post and packing.

Losing unrecorded ways?, an article on our website www.oss.org.uk, select 'features' then item 6. This is also reproduced in *Open Space*, summer 2004, page 2.

There are also some websites triggered by the 2026 deadline, for example www.unrecordedways.org.uk

Open Spaces Society
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