

**THE BASIS UPON WHICH A MODIFICATION ORDER MAY BE MADE TO
MODIFY OR DELETE A PUBLIC RIGHT OF WAY**

1. This Council must be satisfied that the existing entry in the Definitive Map and Statement is incorrect. This means that the evidence should show a mistake was made at the relevant date of the First Definitive Map, which in this case is 14th September 1954.
2. The provisions of Section 32(4)(b) to the National Parks and Access to the Countryside Act 1949 required the Authority to produce a Definitive Map and Statement. Section 56(1)(b) and (d) of the Wildlife and Countryside Act 1981 provides that, “the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein to the following extent, where the map shows a footpath the map should be conclusive evidence that there was at the relevant date a highway as shown on the map...”. So if a challenge is being made to an entry to the Map and Statement the evidence must show a mistake was made at the earliest relevant date which is the first date the path was recognised as having legal status.
3. The question therefore is what is considered sufficient evidence to show that such a mistake had been made. The 1981 Act permits a correction to be made when evidence is discovered and considered with all other relevant evidence and so a decision has to be made on the balance of probabilities that an error had been made.
4. The real difficulty lies when the evidence upon which the entries were made into the Definitive Map have been lost or that record is incomplete. This is a common predicament that this and other Authorities face, as once the procedure for finally showing a public right of way has been completed the conclusivity of the Map and Statement would have led many Authorities to be less concerned on retaining the

reasons for its final inclusion. Nonetheless as a result of previous case concerning R -v- S for Environment ex parte Simms and Burrows (1990), such deletions, or downgrading and other amendments are deemed possible.

5. The issue therefore is what weight is to be given to the entry into the original map especially when the evidence which led to its inclusion is absent. It was a document prepared pursuant to an Act of Parliament and which was to be an authoritative record, it required various stages leading up to its preparation to be satisfied and gave landowners several opportunities to challenge any proposed entry. It should also be borne in mind that the map was prepared at a time when one could find local people whose memories went back very much further than today's residents.
6. This issue was addressed at the Court of Appeal concerning the case of Trevelyan -v- Secretary of State for the Environment (2000). It concluded there must be an initial presumption in favour of the existence of that public right of way and unless there is evidence to the contrary, it should be assumed the proper procedures were followed and that evidence did exist which made it seriously arguable that the right subsisted at the relevant date, even if no trace of that evidence survives.
7. Two earlier Welsh Office Circulars assist, that numbered 45/90 on 'Modifications to the Definitive Map', advises that: 'in making an application for an order to delete...a right of way, it will be for those who contend that there is no right of way..., to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. ...it is not for the authority to demonstrate that the map is correct, but for the applicant to show that an error was made.'

8. The second Welsh Office Circular 5/93 on 'Public Rights of Way' states that: 'Surveying authorities, whenever they discover or are presented with evidence which suggests that a definitive map and statement should be modified, are required to take into consideration all other relevant evidence available to them concerning the status of the right of way involved. Moreover, before making an order they must be satisfied that the evidence shows on the balance of probability that a right of way....shown on the map is not in fact a public right of way. The mere assertion, without supporting evidence, that a right of way does not exist would be insufficient to satisfy that test.'