

INFORMATION SHEET - Byways Open to All Traffic and Definitive Map Modification Orders

Q What is a Byway Open to All Traffic (BOAT)?

They are essentially recreational lanes and tracks which, usually by virtue of their origins as public cart or carriage roads, carry public vehicular rights but which are used mainly by walkers and horse riders (and cyclists). The County Council is required by law to show BOATs on its Definitive Map of public rights of way.

Q What is a Definitive Map Modification Order (DMMO)?

Any modification to the Definitive Map requires a DMMO. Under the provisions of the Wildlife and Countryside Act 1981 anyone can apply to the County Council for a DMMO to be made, either by adding a route that isn't currently recorded, upgrading or downgrading an existing route or by deleting a route entirely. These are called DMMO applications.

Before the County Council makes a DMMO it has to be satisfied that there is a good evidential basis for doing so. The evidence must relate solely to the existence or otherwise of public access rights. For example, where recreational motorists claim that a route ought to be shown on the Definitive Map as a BOAT they may do so on the basis that old map evidence and other historical documentation (such as Enclosure Award and Tithe Map evidence) point to the existence of such rights.

Evidence of a history of use by recreational motorists may also be cited as being supportive of such rights. However, where the BOAT claim relates to a route carrying public footpath or bridleway rights and vehicular use has given rise to a public nuisance e.g. to walkers and/or horse riders, in the absence of any other evidence indicating public vehicular rights the use would not support a BOAT claim.

Under the Natural Environment and Rural Communities Act 2006, use with motor vehicles from 2nd May 2006, wherever occurring, will not be capable of giving rise to such rights and will be disregarded.

Q How are DMMO applications processed?

The first stage of the DMMO process is the serving of a notice on the presumed landowner(s) by the applicant informing them of the intention to submit a DMMO application to the Council – at this stage the County Council will not necessarily be aware of any impending application.

After it receives a claim the Council consults with the relevant local councils, elected members, affected landowners and local rights of way user groups in an attempt to gather as much relevant information as possible.

Information relating to the history or origins of the route, including personal evidence from other users and from long standing members of the community, is of particular importance, since it enables the Council to build up a more accurate picture of the route and what rights exist over it. For example, where documentary evidence cited in support of the existence of public vehicular rights is under consideration, evidence of instances where vehicular use of the route either; a) constituted a public nuisance to other categories of user or; b) was challenged or brought into question in any way, will also be relevant.

Based on the information obtained, the Council then decides whether the DMMO claim has been substantiated and makes and advertises an Order accordingly – if public vehicular rights have been found to exist, a BOAT Order is usually made and advertised.

The Order is advertised in at least one local newspaper and by notices on the route. Consultees or anyone else wishing to object to the Order must write to the Council within a 42 day period. If no objections are received during this period, or those that were received are subsequently withdrawn, then the Council can move to confirm the Order as unopposed and arrange for it to take effect.

It is important to bear in mind that under current legislation the County Council cannot be swayed by matters such as suitability, environmental impact or even public safety when deciding what the correct recorded status ought to be. Only matters relating to the existence or otherwise of public access rights over the particular route concerned are deemed to be relevant when this decision is made.

The County Council will request the withdrawal of objections that are made on grounds deemed not to be relevant to the determination of the claim.

Where objections are received and not withdrawn the County Council then has to refer the case to the Secretary of State who would appoint an Inspector to decide the matter. Depending on the number and nature of the objections this would either be by means of a hearing, by written representations or by means of a locally held public inquiry.

Just as the Council is limited in the matter of what objections it can consider as being relevant to the decision making process, an Inspector would be similarly constrained. The only material considerations would be those relating directly to the existence of public access rights, i.e. documentary or historical evidence or evidence of usage.

Q What will happen if a route becomes a BOAT and is it possible to regulate vehicular use?

Many routes claimed for inclusion on the Definitive Map as BOATs are already used by recreational motorists in the belief that public vehicular rights exist. Where this is the case, the only change likely to be observed if a route becomes confirmed as a BOAT is the provision of fingerposts (usually wooden) such as those used on footpaths and bridleways but with the wording 'Byway'.

Where there are on-going problems associated with vehicular use on particular routes (e.g. where such use is jeopardising the safety of other users and/or is harming the surface or the immediate environment), the County Council may promote orders to restrict or prohibit their use by types of traffic. These are known as Traffic Regulation Orders (TROs). For those parts of Derbyshire in the Peak District National Park, the National Park Authority can also make TROs in some situations. Temporary TROs generally have effect for weeks or months only, but permanent TROs can stay in force indefinitely.

Other measures, for example voluntary restraint commitments by users, can sometimes deal with the problem effectively, and so avoid the need for a TRO. However, even when a route is subject to a TRO, neither that TRO, nor the problem or problems which gave rise to it, are likely to be relevant in any way to any DMMO application concerning the same route. This is because TROs are made under entirely separate legislation (the Road Traffic Regulation Act 1984), and the tests in that legislation are very different to those in Part III of the Wildlife and Countryside Act 1981, which govern DMMO applications

The County Council has produced a 'Policy for the Management of Motor Vehicle Use in the Countryside' which provides further information on the management of these routes, including contact details for members of the public to use for reporting any practical problems observed on them. It also sets out the criteria that would be applied in situations where the Council considered it necessary to regulate vehicular use. Copies of this document can be obtained by contacting the Council's 'Call Derbyshire' on 01629 533190.

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WARNING – This information is offered to provide an introduction for the general assistance of those who are notified about applications under the Wildlife and Countryside Act 1981 (as amended) for the recording of Byways Open to All Traffic on the Council's Definitive Maps. Whilst this information is believed to be correct as at June 2020, no responsibility is accepted for any errors, inaccuracies or omissions. Anyone who requires legal advice on their position concerning such an application should seek advice from an independent solicitor.