

Prevention of new rights being claimed Landowner Guidance

What is a statutory declaration?

A statement and plan followed by a statutory declaration made under section 31(6) of the Highways Act 1980 is intended to show that there is or has been no intention on the part of the landowner(s) to dedicate any additional Public Rights of Way (PROW) over a piece of land.

Why make a statutory declaration?

By depositing with the council (the Highway Authority) a map and statement which specifies any routes that have been dedicated as public rights of way and making clear their intention not to dedicate any additional ways the landowner will enjoy a degree of protection from new rights being claimed over their land through evidence of long use by the public. The landowner will need to follow the statement with a statutory declaration to confirm that no new rights of way have been dedicated and renew this every ten years*. Any public use of their land will not count towards the establishment of new PROW from the date of deposit of the statement and plan.

The making of a statutory declaration will not protect a landowner from claims supported by evidence of use by the public before the date of the declaration or from claims supported by historic or documentary evidence.

What is the procedure for making a statutory declaration?

The process consists of two parts - the deposit of a statement and plan followed by a statutory declaration. Both the statement and declaration should be made by the owner of the land concerned.

A landowner deposits with the council the following documents:-

- a recent or current map of the land (with the boundary outlined in red) at a scale not less than 1:10,000 (6" to 1 mile) showing any routes accepted to have been dedicated as public rights of way
- a statement accompanying the map referring to the land in question
- a statutory declaration based on the statement and plan

The statement should be signed before a witness, and the statutory declaration must be declared before a commissioner for oaths or solicitor. The statement should be made first and the statutory declaration shortly afterwards.

The council can supply standard forms for submitting both a statement and statutory declaration although a landowner may prefer to have the documents drawn up by a solicitor. The responsibility to ensure that the declaration is properly made rests with the landowner. Whilst the receiving officer might highlight any errors or omissions that are

apparent Shropshire Council will only hold s.31 (6) declarations on deposit and do not make any judgement about the validity of the information therein.

Landowners might wish to clarify the location and extent of public rights of way already recorded on the Definitive Map before making a declaration. The council can provide landowners with these details for a fee or landowners may inspect the Definitive Map at the Shirehall free of charge.

The landowner should keep a copy of the completed forms and maps and make a note to renew the declaration within ten years. Details of each statutory declaration are entered onto an online register and will be available for public inspection. Details of statutory declarations may be sent to interested parties like user groups or local councils.

What about permissive rights of way?

Permissive paths, whether or not they are subject to a formal agreement with the council, should not be shown on the map accompanying the statement unless it is intended that they should be dedicated as public rights of way. If the landowner wishes to advise the council of the existence of such paths over his land, he should provide a separate map showing these paths only and stress that it is not intended to dedicate such paths as public rights of way.

How is a statutory declaration renewed?

It is the landowner's responsibility to renew a statutory declaration within ten years of the date of deposit. The council's standard forms may be used for this purpose. If there have been legal changes to PROW marked on the initial plan and statement during the ten year period it might be important to refer to these in the new statutory declaration and the amendment(s) marked on the plan accompanying the declaration. If these changes have been the result of the Definitive Map Modification process it will be up to the landowner whether or not they include them in their declaration as by doing so they will be accepting the changes formally. If you are unsure what to include you should seek the view of a competent independent legal advisor.

**The period of renewal for a Statutory Declaration has been increased from six years to ten years under the provisions of the Countryside and Rights of Way Act 2000.*