

INTRODUCTION

A new public right of way (PROW), such as footpath or bridleway, can under certain circumstances be created by 20 years of uninterrupted use. Bath and North East Somerset Council has a statutory duty to investigate claims to have those new routes recorded on the legal record – called the Definitive Map and Statement. One of the first questions the investigating officer must ask is “*Has the landowner taken sufficient action to make it clear to the public that they have no right to cross his land?*” This is not always an easy question to answer. The landowner may have fenced his property, but the fences may be broken down. He may have erected notices, but they may have been removed. While it is important to take these basic steps, the law recognises there are problems.

Section 31(6) of the Highways Act 1980 allows landowners to make their intentions clear by depositing with the highway authority (e.g. Bath and North East Somerset Council) maps and statements which identify and accept the PROWs and public roads that already exist on their land. If the landowner follows this with a statutory declaration to confirm that no new PROWs have been dedicated, and renews this every 20 years, any public use of his land during the period of the declaration(s) will not count towards the 20 years necessary to establish a new PROW.

This gives the landowner an effective way of protecting his/her property, while still allowing a degree of permissive public access. Once lodged with the highway authority, the map, statement and declaration become public documents and are available for public inspection.

Making a disclaimer in this way prevents future use counting towards the establishment of new PROWs, but it will not entirely prevent members of the public from making claims for PROWs on a landowner’s property. This is because there is no time limit on claims. If documentary evidence comes to light that shows that a public right of way came into existence at some time in the past, then an application can still be made to have it recorded on the Definitive Map and Statement.

Nor will a section 31(6) disclaimer prevent a claim from succeeding if the claimants can prove there has been unchallenged public use over a period of 20 years leading up to the date when the deposit was first made. Despite these limitations, section 31(6) provides a valuable line of defence for landowners.

Both the Country Land and Business Association and the National Farmers’ Union have promoted wide use of section 31(6) deposits. The following advice is based on the practice guidance notes issued by the Rights of Way Review Committee, and endorsed by all its members. Further advice and information can be obtained from the Council or from your local CLA or NFU representative.

For general advice and information on the preparation of the statement and statutory declaration or for further advice and information on any other rights of way matters, please contact:

Public Rights of Way Team
Bath and North East Somerset Council
Floor 2 South
Temple Street
Keynsham
BS31 1LA

Telephone: 01225 477532

Email: pro@bathnes.gov.uk

PLEASE NOTE: The following information is intended for guidance only. It is not a full statement of the law. If you require more detailed information you are advised to contact a solicitor.

The **basic procedure** for section 31(6) deposits is as follows:

1. The landowner begins the process by sending a statement (generally in the format given as Form 1 of these notes) to the Highway Authority (e.g. Bath and North East Somerset Council). The statement sets out the land in question and details any PROWs that are acknowledged to exist on that land. The statement must be accompanied by a plan at a scale of not less than 1:10000, showing the land in question and the acknowledged PROWs. The plan should be signed and dated by the landowner.
2. The landowner should then follow up this statement by submitting a statutory declaration in the general format given as Form 2 to these notes. This 'legal statement' has the effect of confirming the previous statement or acknowledging any changes or additions to the PROWs over the land. It is advisable that this too is accompanied by a similar plan showing the land in question and the acknowledged PROWs. The process does not become 'effective' until this first Statutory Declaration has been deposited with Bath and North East Somerset Council.
3. A new statutory declaration, as in (2) above, needs to be submitted to the highway authority not longer than 20 years after the date of the previous submission for the process to remain valid.
4. **NO REMINDERS will be issued by Bath and North East Somerset Council: it is the landowners' responsibility to make any submissions within the defined timescales.**

A Step by Step guide for application

1. First, obtain a recent or current map at the largest scale available of the entire area that you own. The Act specifies a scale of at least 1:10,000 and this is the minimum that can be accepted.
2. Examine the Definitive Map and Statement to see what PROWs are already recorded over your land, and their precise routes. (This should avoid the need to rectify mistakes after the map, statement and statutory declaration have been formally submitted.) You can examine the Definitive Map yourself at the Council's Riverside Offices in Keynsham. Alternatively, Bath and North East Somerset Council will carry out a standard search of the Definitive Map for you and provide you with a map which can be used to make your deposit; there is a £10 charge for this service. Please contact the PROW team to request a search, or to arrange an appointment to examine the Definitive Map yourself.
3. It is also advisable, though not necessary to:
 - a) Check the status of any paths, tracks, farm roads or short cuts on your land to ascertain whether the public has been using them for 20 years or more;
 - b) Check legal documents such as Inclosure Awards which may indicate that other PROW exist which are now shown on the Definitive Map;
 - c) Consult the list of publicly maintainable highways held by the county surveyor under section 36(6) of the Highways Act 1980 to identify unmetalled roads which may be recorded there, but not shown on the Definitive Map. Your map should show any public roads as well as PROWs;
 - d) Consult the parish council or local user groups to see whether there are any other paths likely to be claimed which you may wish to recognise;
 - e) Check with Bath and North East Somerset Council to see if there are any claimed routes over your land.
4. Carefully mark on the map the precise route of all PROWs shown on the Definitive Map, or otherwise acknowledged by you to exist.
5. Except as indicated below at 6, you should not try to deny the existence of any PROWs shown on the Definitive Map. As a matter of law, the Definitive Map provides conclusive evidence of the existence and status of any PROW shown on it until the map is altered by a formal Definitive Map Modification Order (DMMO) or Public Path Order (PPO).
6. If you have made an application for a DMMO to amend the map and statement in relation to any way shown on it, this may be referred to in the statement and statutory declaration. For example:

The way coloured [something other than green] on the said map is recorded on the definitive map as a bridleway, but I do not accept that the map and statement are correct and have applied under section 53 of the Wildlife and Countryside Act 1981 to Bath and North East Somerset Council for a definitive map modification order to be made to [state the effect of the order applied for, e.g. to redesignate the way to footpath].

7. Do not show on the map any permissive paths which are the subject of a formal agreement with the Council, or any other permissive paths, unless it is intended that they should be dedicated as public rights of way. If you wish to advise the Council of the existence of such paths, you should provide a separate map showing these paths only and stressing that it is not intended to dedicate such paths as public rights of way. You should also consider placing notices on these paths to make it clear that use is with the permission of the landowner.
8. Draw up the statement and statutory declaration, following the model documents (Forms 1 and 2). Please note that these examples are not forms to fill in – you will need to have them retyped, and you may wish to consider consulting a solicitor to ensure that they are accurate. The statutory declaration must be declared before a Commissioner for Oaths, a Justice of the Peace, or a Solicitor.
9. The statement should be made first and the statutory declaration shortly afterwards.
10. The statutory declaration should be made by the owner of the land concerned (i.e. the person who is for the time being entitled to dispose of the fee simple in the land). This includes the tenant for life (land held under a strict settlement) or the trustees (land held under a trust for sale). If an estate is divided, then it is important that the appropriate person makes the declaration for each part of the estate in each case.
11. Submit the statement, together with the map and statutory declaration, to the PROW Team at Bath and North East Somerset Council. Subsequent statutory declarations should be accompanied by further maps if changes have been made.
12. Keep copies of maps, statements and declarations with the title deeds for the property or land or charge certificates for future reference. Make a note to renew the statutory declaration within 20 years.
13. If there are tracks that cross the land which are not admitted to be PROWs, it may be useful to place notices to make clear to the public that this is the position.
14. If you wish to divert or extinguish a PROW, you should apply for a public path order. Unofficial diversions should not be shown – the effect of a statutory declaration would be to accept them as PROWs. The original route on the definitive map would still remain a PROW.

FORM 1

**STATEMENT OF LANDOWNER
under Section 31(6) of the Highways Act 1980**

To Bath and North East Somerset Council:

1. I am and have been since (insert date) the landowner of the land at (insert description of location), more particularly delineated on the plan marked "PLAN1" accompanying this declaration and thereon edged red.
2. I *admit that the ways described below and shown on PLAN1 / deny that any ways on PLAN1* * have been dedicated as highways:

Description of highways (if any):

- A way ~~for foot use / equestrian use / pedal cyclists / all traffic only~~* beginning at (insert location / grid reference) and ending at (insert location / grid reference) and shown in ~~purple / green / brown~~* on PLAN1.

Dated:

Signed:
(signature of landowner)

Name of owner:

Address of owner:

** delete as appropriate*

FORM 2

**STATUTORY DECLARATION OF LANDOWNER
under Section 31(6) of the Highways Act 1980**

To Bath and North East Somerset Council

I, (insert name) of (insert address) do solemnly and sincerely declare as follows:

1. I am and have been since(insert date) the landowner of the land at(insert description of location), more particularly delineated on the plan marked "PLAN1" accompanying this declaration and thereon edged red.
2. On (insert date), I deposited with Bath and North East Somerset Council a map of my land at (insert description of location) together with a statement *of the highways over that land then dedicated to the public / denying that any of the ways over that land had been dedicated to the public**.
3. Since such deposit and statement *no ways additional to those on such map and described in such statement / no ways** have been dedicated by me for the use of the public as highways *other than a way for foot passengers / equestrian use / pedal cyclists / all traffic only beginning at(insert location / grid reference) and ending at(insert / grid reference) indicated in purple / green / brown on the plan referred to in 1. above**.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835.

Dated:

Signed:
(signature of landowner)

Name of owner:

Address of owner:

Before me: _____
(Commissioner for Oaths or Justice of the Peace or Solicitor)

** delete as appropriate*