

A guide to making a deposition under Section 31(6) of the Highways Act 1980

New public rights of way can come into existence through public use, and Solihull Metropolitan Borough Council has a duty to investigate claims to have additional public rights of way recorded on the definitive map. One of the first questions the investigating officer asks 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 maps and statements which admit the public rights of way that already exist on their land. If the landowner follows this by depositing a statutory declaration to confirm that no new rights of way have been dedicated, and renews this every ten years, any public use of his land will not count towards the establishment of new public rights of way. This gives the landowner a way of protecting his 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 available for public inspection.

Making a disclaimer in this way will prevent future use counting towards the establishment of new public rights of way, but it will not necessarily prevent members of the public from making claims for public rights of way. This is because there is no time limit on claims. If evidence comes to light which shows that a public right of way came into existence at some time in the past, an application can still be made to have it recorded on the definitive map. Nor will a s.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 disclaimer was first made. Both the Country Land and Business Association and the National Farmers' Union have promoted wide use of s.31(6) disclaimers.

The attached document contains details of all current and recently expired declarations made under section 31(6) of the Highways Act which have been received and deposited with the council. Further information including plans and the original applications, are held at the Council by the Walking and Public Rights of Way Officer. If you wish to see the register or would like advice on completing a Statutory Declaration for your own land, Please contact David Keaney, Walking and Public Rights of Way Officer on 0121 704 6429.

This register and its associated statements and plans will shortly be made available electronically on this page in line with the 'Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England

Step by step guide for landowners preparing maps, statements and statutory declarations under the Highways Act 1980 s.31(6)

1. Obtain a recent or current map at the largest scale available of the entire area which you own. (The Act specifies a scale of 1:10,000 and this is the minimum recommended.)
2. Examine the definitive map and statement to ascertain what public rights of way 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 should examine the definitive map yourself or employ a land agent. Please contact the rights of way section to arrange an appointment to examine the map.
3. It is also advisable, though not necessary:
 - (a) to 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) to check legal documents such as inclosure awards which may indicate that other public rights of way exist which are not shown on the definitive map;
 - (c) to consult the list of publicly maintainable highways held by the county surveyor under s.36(6) of the Highways Act 1980 to identify unmetalled roads which may be recorded there and not on the definitive map. Your map should show any roads that are highways as well as the public rights of way;
 - (d) to 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. The rights of way section may also have records of possible claims - contact them for further information.
4. Carefully mark on the map the precise route of all public rights of way shown on the definitive map or otherwise acknowledged by you to exist.
5. Except as indicated below, you should not try to deny the existence of any public rights of way shown on the definitive map. As a matter of law the definitive map provides conclusive evidence of the existence and status of any public right of way shown on it until the map is altered by a formal definitive map modification order or public path order.

6. If you have made an application for a definitive map modification order 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 s.53 of the Wildlife and Countryside Act 1981 to North Yorkshire County Council for a definitive map modification order to be made to [state the effect of the order applied for].

7. If you wish to divert or extinguish a public right of way, you should apply for a public path order. Unofficial diversions should not be shown; the effect of the statutory declaration would be to confer public right of way status on such routes. The route on the definitive map will still remain a public right of way.
8. Draw up the statement and statutory declaration following the model documents shown below. 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 statement should be signed before a witness, and the statutory declaration must be declared before a commissioner for oaths, solicitor or JP. The statement should be made first and the statutory declaration shortly afterwards.

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.

9. Submit the statement with the map and statutory declaration to the Public Rights of Way Officer, Solihull MBC (see addresses below). The map will not be checked by the rights of way section. Subsequent statutory declarations should be accompanied by further maps as necessary.
10. 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 ten years.
11. If there are tracks that cross the land which are not admitted to be public rights of way, it may be useful to place notices to make clear that this is the position.
12. Do not show on the map any permissive paths which are the subject of a formal agreement with the county 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 county 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.

For further advice and information on the preparation of the statement and statutory declaration, to arrange for an appointment to view the definitive map, or for further advice and information on any other rights of way matters, contact: Public Rights of Way, Transport Highways and the Environment, Solihull MBC, The Council House, Solihull , West Midlands B91 3QT, or ring 0121 704 6429.

Example Deposit of Statement and Plan

PLEASE NOTE: this is not a form to fill in, but an example to assist you in preparing your statement. For a form to fill in see the end of this document.

Deposit of Statement and Plan Highways Act 1980 s.31(6)

To Solihull MBC

1. I am and have been since [*day, month, year*] the owner within the meaning of the above section of the land known as [*name of farm, etc.*] more particularly delineated on the plan accompanying this statement and thereon edged red.
2. The aforementioned land lies in the parishes/communities of [*name*] and [*name*].
2. *The ways coloured brown on the said plan have been dedicated as highways with vehicular status.
3. *The ways coloured green on the said plan have been dedicated as bridleways.
4. *The ways coloured yellow on the said plan have been dedicated as footpaths.
5. *No [*other*] ways over the land have been dedicated as highways.
7. The deposit shall comprise this statement and accompanying plan.

*Delete as applicable

Signed [*landowner*]

Name [*landowner*]

Address

Date

Signed [*witness*]

Name [*witness*]

Address

Occupation

Date

Example Statutory Declaration

PLEASE NOTE: this is not a form to fill in, but an example that will assist you in preparing your declaration.

Statutory Declaration Highways Act 1980 s.31(6)

I [*name of landowner*] DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am and have been since [*day, month, year*] the owner of the land known as [*name of farm, etc.*] more particularly delineated on the plan accompanying this declaration and thereon edged red.
2. On the [*xx th*] day of [*month, year*] I [*or my predecessor in title(name)*] deposited with North Yorkshire County Council, being the appropriate council, a statement accompanied by a plan delineating my property by red edging which stated that [*the ways coloured brown on the said plan and on the plan accompanying this declaration had been dedicated as highways with vehicular status*], [*the ways coloured green on the said plan and on the plan accompanying this declaration had been dedicated as bridleways*], [*the ways coloured yellow on the said plan and on the plan accompanying this declaration had been dedicated as footpaths*], [*no (other) ways had been dedicated as highways over my property*].
3. * On the [*xx th*] day of [*month, year*] I [*or my predecessor in title (name)*] deposited with North Yorkshire County Council, being the appropriate council, a statutory declaration dated [*day, month, year*], stating that no additional ways [*other than those marked in the appropriate colour on the plan accompanying this declaration*] had been dedicated as [*highways with vehicular status*] [*bridleways*] [*footpaths*] since the deposit of the statement referred to in 2 above.
4. No additional ways have been dedicated over the land edged red on the plan accompanying this declaration since the statement dated [*day, month, year*] referred to in 2 above [*since the date of the statutory declaration referred to in 3 above*] [*other than those (highways with vehicular status) (bridleways) (footpaths) marked in the appropriate colour on the plan accompanying this declaration*] and at the present time I have no intention of dedicating any more public rights of way over my property.

*Delete if not applicable

AND I MAKE this solemn declaration on the [*xx th*] day of [*month, year*] conscientiously believing it to be true and by virtue of the Statutory Declarations Act 1835.

Declared at [*address*] [*signature of landowner*]

Before me

(Commissioner for Oaths or Justice of the Peace or Solicitor)

DEPOSIT OF STATEMENT AND PLAN

HIGHWAYS ACT 1980 SECTION 31(6)

NOTICE OF INTENTION NOT TO DEDICATE PUBLIC RIGHTS OF WAY

To Solihull Metropolitan Borough Council

1) I am and have been since the owner, within the meaning of the above section of the act, of the land known as :-

*more particularly delineated on the plan accompanying this statement and thereon edged red.

2) The aforementioned land lies in the Parish(es) of :-

3)* The ways coloured blue on the said plan have been dedicated as Highways with vehicular status.

4)* The ways coloured brown on the said plan have been dedicated as Roads Used As Public Paths.

5)* The ways coloured green on the said plan have been dedicated as Bridleways.

6)* The ways coloured yellow on the said plan have been dedicated as Footpaths.

7)* No ways over the land have been dedicated as Public Rights of Way.

8) The deposit shall comprise this statement and accompanying plan.

• Delete as applicable.

Signed (landowner):-..... Date:.....

Name (landowner):-..... (BLOCK CAPITALS)

Address:- (BLOCK CAPITALS)

.....

.....

Signed (witness) :-

Name (witness):- (BLOCK CAPITALS)

Address:- (BLOCK CAPITALS)

.....

.....

Occupation

The completed form with DUPLICATE copies of the plan should be returned to:-

Public Rights of Way
Solihull MBC
The Council House
Solihull
West Midlands
B91 3QT