

## Public Guidance Note 18

### Prevention of new rights being claimed Landowner Guidance

*This guidance note reflects changes made by the Growth and Infrastructure Act 2013*

#### **What are Highways Statements and Declarations?**

A highways statement and map followed by a 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 over a piece of land.<sup>1</sup>

#### **Why make a Highways Statement and Declaration?**

By depositing with Shropshire Council, a Highways Statement and Map specifying any routes that have been dedicated as Public Rights of Way and making clear that no additional ways are admitted to have been dedicated, the landowner will enjoy a degree of protection from new rights being claimed over that land through evidence of long use by the public. The landowner can, at any time within 20 years of the statement, submit a Highways Declaration to confirm that no new Rights of Way have been dedicated and may renew this, by resubmission, with twenty years of any preceding declaration.

*The deposit of a Highways Statement and Declaration will not protect a landowner from claims supported by evidence of use by the public before the date of the Highways Statement, those made under common law<sup>2</sup> or from claims supported by historic or documentary evidence.*

#### **What is the procedure for making Highways Statements and Declarations?**

The process is in two parts and applications can be made using relevant parts of the prescribed application form which can be supplied by the Council. Both the Highways Statement and Declaration must be made by the owner/s of the land concerned (or their duly authorised representative).

#### **1. The Highways Statement**

##### What effect does the Highways Statement have?

The Highways Statement only refers to what the owner accepts as the current situation. It does not **in itself** provide any protection against claims, but it does act as a necessary starting point for any subsequent Highways Declaration.

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<sup>1</sup> Landowners may also wish to make a Landowner Statement at the same time to prevent any part of their land being registered as a green. Part D of the prescribed form allows for this. Please contact the Council's Commons Registration Officer on 01743 252739 for further information regarding this part of the application.

<sup>2</sup> Common law does not rely on the statutory '20 years' test in the Highways Act but instead relies on evidence of use by the public (there is no specified minimum duration) together with evidence that the owner must have been aware of it and acquiesced in it or that they otherwise acted in a way that demonstrated that they were dedicating the way as public. Under Common Law the burden of proof would be on the claimant to prove that dedication had occurred rather than for the owner to rebut a presumption of dedication as may be the case under the statutory test.

## Making a Highways Statement

The landowner(s) must take the following actions: -

- Submit the application form with Parts A, B and F completed and Part D if the applicant also wishes to make a Commons Declaration. Part E allows for any additional information.
- Include a recent or current map of the land (with the boundary outlined) at a scale not less than 1:10,560 (6" to 1 mile) showing any routes accepted to have been dedicated as Public Rights of Way coloured appropriately (see later sections about what to include).
- Ensure the application is signed by the landowner/s or a duly authorised representative of the owner/s. Where there are multiple owners, each owner must complete paragraphs 2 and 3 of Part A and complete and sign the application in Part F: alternatively, a duly authorised representative may complete the form on behalf of all the owners.
- The completed application form must be accompanied by the correct fee (see end of this guidance note).

The responsibility to ensure that the application 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.

The landowner should keep a copy of the completed forms and maps.

Provided that the application has been correctly made and is accompanied by the correct fee, the Council will acknowledge receipt of it by letter or email, and in the case of application that include the Commons Act publish notice of the application on site for at least 60 days at one obvious place of entry or conspicuous place on the boundary of the land relating to the application. Details of the application will be recorded on the Council's paper and online register and details of Highways Statements and Declarations may be sent to interested parties like user groups or local councils.

### Do I need to mark existing, recorded Rights of Way on the map?

You are required to mark on any Rights of Way that you admit have been dedicated over the land. This should include routes that are recorded on the Definitive Map and any additional routes that have been dedicated as public but not yet recorded. Care should be taken when marking routes on the map as any errors could potentially be taken as evidence of a dedication.

Landowners wishing to clarify the location and extent of public rights of way already recorded on the Definitive Map before making a Highways Statement and/or Declaration can ask the council for this information for a fee or may inspect the Definitive Map at the Shrewsbury Library, free of charge during working hours (appointments preferable)

If you are unsure what to include you should seek the view of a competent independent legal advisor.

## 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 Highways 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 their land, they 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.

## **2. The Highways Declaration**

### What effect does the Highways Declaration have?

The Highways Declaration is retrospective; provided it is lodged in time it can be used as evidence to negate a presumption of dedication based on use between the date it is lodged and the date of the preceding Highways Statement, or any previous Highways Declaration.

### Making a Highways Declaration

The landowner(s) must take the following actions: -

- Within 20 years of the submission of the Highways Statement or an earlier Highways Declaration, apply to the Council using the relevant form with Parts A and C completed. Part E allows for any additional information.
- Where the applicant wishes to admit to having dedicated any additional ways since the earlier Highways Statement or Highways Declaration, attach a plan showing those ways marked in the appropriate colour and refer to them in section 4 of Part C
- Ensure the application is signed by the landowner/s or a duly authorised representative of the owner/s. Where there are multiple owners, each owner must complete paragraphs 2 and 3 of Part A and complete and sign the application in Part F; alternatively, a duly authorised representative may complete the form on behalf of all the owners.
- The completed application form must be accompanied by the correct fee (see end of this Guidance Note)

### When should the Highways Declaration be submitted?

The Highways Declaration can be submitted at any time up to 20 years from an earlier Highways Statement or Highways Declaration. Earlier guidance, predating the changes made by the Growth & Infrastructure Act 2013, may recommend that the first Declaration be submitted very shortly after the Statement. The intention of this seems to have been to establish a brief interruption to any on-going period of use as a precaution against the applicant forgetting to lodge the Declaration within the prescribed time period, which would otherwise have resulted in the land being unprotected. It has been suggested that a Declaration covering a very short period (a few days or a week for instance) might have a questionable effect on a claim but prior to the changes brought about by the 2013 Act such Declarations would not have added any significant costs to the process. The current process however places the same duties on the receiving authority with regard to publishing and posting notices as for the initial Statement and therefore the same costs may be recovered from the applicant. Whilst there is nothing to stop a landowner

choosing to submit a precautionary declaration under the new regulations it seems unlikely that to do so would present good value.

It is likely to be considered more expedient to lodge the Declaration shortly before the expiry of the 20 year period following the statement, or on receipt of notice that there is a claim for a Public Right of Way over the land based wholly or in part on evidence of long use; whichever comes first. If the land is subject to a claim it would be advisable to submit the Declaration as soon as possible after notification of the **application**. Waiting until a Definitive Map Modification Order is made, or even confirmed, could be taken as evidence that the application was not challenged.

#### How is a Highways Declaration renewed?

The initial Highways Declaration may be renewed, by resubmission, at any point up to 20 years from the previous Declaration.

It is your responsibility to ensure you keep your declarations up to date; the Council will not send any sort of reminder.

#### **What costs are involved?**

The Council may recover its reasonable costs of processing Statements and Declarations made under Section 31(6) and there is a fee of **£330.44 per application**. (Payment to be made online via the Councils website [www.shropshire.gov.uk](http://www.shropshire.gov.uk) This fee covers the costs of administration and publicising the application. If the application also includes Part D (Statement under Section 15A(1) of the Commons Act 2006), or is only a Part D Statement, the fee is **£473.83 per application** to cover the additional cost of posting the required notices on site.

#### **IMPORTANT**

**Applications submitted without the requisite fee will not be processed and there is no obligation on the Council to contact the applicant to inform them of this. Receiving authorities are required to acknowledge receipt of valid applications that fulfil the requirements; if you do not receive an acknowledgement, you should contact the Council.**