

HAMPSHIRE RAMBLERS FPAWE BEST PRACTICE GUIDELINE
NUMBER 6 – RESTORING UNRECORDED RIGHTS OF WAY (CROW ACT 2026
CUT-OFF)

BACKGROUND

Best Practice Guidelines

1 The Hampshire Ramblers FPAWE Committee has produced a series of Best Practice Guidelines that it encourages Groups to adopt. However, Groups are free to adapt the Guidelines in order to meet local circumstances and restrictions. If any Group has suggestions to improve the Guidelines they should send them to the FPAWE Secretariat.

Recording unrecorded Rights of Way

2 In Hampshire there are nearly 3000 miles of rights of way (RoW) recorded on the definitive map. It is estimated that another 20% of unrecorded rights of way are waiting to be found across Hampshire, based on a survey of lost ways carried out in the Andover Ramblers area.

This means that across Hampshire there are up to 600 miles of unrecorded footpaths, bridleways and restricted byways and, as explained below, these could be lost forever on 1st January 2026 unless formal applications for them to be recorded on the definitive map are made before that date. This work is therefore **important and urgent** and this guide explains how to set about recording these lost ways.

3 Here is a summary of the three main legislative milestones that led to this situation.

- **The Definitive Map:** The National Parks and Access to the Countryside Act 1949 required County Councils to survey and record on a definitive map all rights of way in their county. This resulted in formal legal documentation of the Rights of Way Network across England and Wales. In Hampshire that process was largely delegated to the Parish Councils and was often under resourced and imperfectly carried out. In some cases little or no historic research was carried out and routes put forward for consideration were often based only on their reputation at the time. As a consequence of this, many eligible routes were missed out. Several subsequent acts sought to improve the process.
- **Definitive Map Modification Orders:** The Wildlife and Countryside Act 1981 established, amongst other things, a process to enable new Rights of Way to be recorded by anyone, based on historic and/or user evidence. This enabled rights of way to be created even though they were not recorded during the initial survey or subsequent reviews of the definitive map. It also enabled routes to be upgraded or downgraded based on such evidence. This was to be achieved through what are known as Definitive Map Modification Orders (DMMO) and the process for applying for DMMO's based on historic evidence is explained in this guide. There is also an appeal process associated with this that is not covered in this guide.
- **The Deadline:** The Countryside and Rights of Way Act (2000) created a deadline of

1st January 2026 for the recording of unrecorded historic rights of way. After this date all historic routes will be extinguished. An option to extend this date by up to five years was also included but it is not known if an extension will be sought.

4 This guide is intended to help groups wishing to ensure that all historic Rights of Way are recorded. The process is straightforward but rather long-winded. It involves four distinct phases. A map search of potential rights of way, an initial assessment of basic evidence, a detailed analysis and finally a DMMO application.

It is worth emphasizing that this is interesting work for anyone with a fascination for the changing landscape or local history.

This Guide does not cover claiming new RoW following regular unobstructed use over 20 years.

HAMPSHIRE RAMBLERS' ACTIONS

Getting started - A Map Search of Potential RoW

5 How much time do you have?

Each new route takes around 30 – 50 hours worth of research and application preparation. Doing several routes in an area reduces the time for each route because much of the evidence will be useful for several routes. Routes need to be checked on the ground if possible so it's a good idea to choose an area you know well and can get to easily. Working in a team is a great idea but not essential.

6 Identify missing routes

The first step is to identify routes that may not have been recorded. Remember they may be well-used unofficial paths, permissive paths or routes that have long since disappeared and can only be traced from records.

Routes today known as **byways** were usually shown on old maps and in Hampshire Old Series OS maps (c.1810) and the Hampshire maps of Taylor (1759), Milne (1791) and Greenwood (1826) are especially useful and are available online from Old Hampshire Mapped (See Below). Early OS maps, available online from National Library of Scotland (NLS) are also very useful at this stage (See Below).

Footpaths and Bridleways are trickier, as they were not shown extensively on many early maps and so evidence for them tends to be more recent. Probably the easiest way to check these is to use OS maps from 1870's to 1945 at 1", 6" or 25" scales and available online at NLS.

Compare these to the online definitive map, available online from HCC (See Below).

So you have identified a potential unrecorded route. How best to record it for future reference? One very useful free tool is Google Earth, which can be downloaded from here: <https://www.google.com/earth/download/gep/agree.html>

The great thing about this software is that you can plot your new routes onto the satellite
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image and then overlay the Hampshire Rights of Way onto your newly discovered routes and see how they connect up or are already recorded. The Hampshire Rights of Way file for Google earth can be downloaded here: <https://data.gov.uk/dataset/hampshire-rightsofway/resource/39d681b9-f24b-404e-9270-f0aa6da3d46c>
Once Downloaded, just go to the Google Earth Menu => File => open and choose the file you have just downloaded.

Another useful method is to purchase an OS map and mark it up in pencil with each new route.

7 Getting Organised

Being well-organised will help you avoid duplication and confusion later. Name your new routes with the parish and a number for your own personal use. Use numbers not already used for the current RoW network. Starting your numbering at 300 for each parish usually avoids that problem! At this stage you will need to start organising your information carefully as you will soon have quite a big collection of data comprising the routes and the evidence you accumulate on them. Later you will also have to record your progress with the application.

A well-organised directory structure on your computer is a good start. Once you really get into the work you will have a variety of routes at different stages of research and application. There is no one-way to do this but spreadsheets can be a handy way to keep tabs on progress if you are familiar with them. Log-books are another option. Good organisation prevents burgeoning data from becoming a burden.

In order to help coordinate and report this work, your local footpath secretary should be kept informed of your progress. They should also be regularly informed of the total hours you spend on the task.

Initial Assessment of Basic Evidence

8 Preliminary checks

Before expending effort researching a particular route check to see if someone has already made an application. You can check applications awaiting review or completed here (warning – this list tends to be rather out of date!):

<https://www.hants.gov.uk/landplanningandenvironment/rightsofway>

Also check to see if the path in question has been formally extinguished (stopped-up) or diverted by checking the publication of orders at the Hampshire record Office or online by searching the London Gazette Notices here <https://www.thegazette.co.uk/all-notices>

Next check to see if your new proposed route is going to make a real contribution to the path network. For example is it a significant length, does it allow walkers to reach special parts of the countryside and most important of all, does it improve the connectivity of the path network by linking current Rights of Way or minor roads? If the answer is yes to any one of these questions then the route is worth pursuing.

The next step is to do a bit of preliminary research to determine if the route has sufficient supporting evidence for its existence as a public Right of Way. The following types of

evidence are a good start:

- Historic maps (Old Hampshire Mapped online)
- Tithe Maps (National Archives, Hampshire Record Office, thegenealogist web site).
- Enclosure Maps (Hampshire Record Office)
- Old OS maps (NLS website)

If your route is in at least two of the above categories you are probably in with a fighting chance of finding enough evidence for an application. If your route does not appear in at least two of these categories of evidence be prepared to drop it. Much time can be wasted chasing hope rather than reality.

9 Prioritise Routes

So by now you should have a list of potential new routes, some looking more promising than others. There is merit in going for easy hits. These are routes with clear evidence over a long period. Its great to work on these routes first because it will give momentum to your project and hopefully get you in the swing of things before you have to deal with some more difficult or marginal cases. Spreadsheets can come in handy here too, enabling you to record all the evidence to date and work out which are your with most evidence routes.

Detailed Analysis

10 Completing the Research

The application will require you to list, reference and explain the relevance of all the evidence. Pictures of all the documents relevant to your application will need to be obtained if possible.

In addition to the above categories the following evidence is also often helpful. This is not the definitive list. For that see some of the references below.

- Estate Sales Documents
- Early Parish and Estate Maps
- OS 1st Edition Maps with Area books (1870's)
- If your route touches a parish boundary, OS Boundary sketch maps (1870's)
- Inland Revenue Maps (1910)
- Ministry of Agriculture Survey (1941)
- Highway Handover maps (1930)
- Highway Department maps (1930's to 1940's)

11 Check the route on the ground

If possible it is good to check the route on the ground. This will often reveal a sunken way or double hedgerow. Photograph the route to help confirm its value and relevance to the Countryside Access Plan (See DMMO application below).

If the route is not accessible a second best option is to examine aerial photographs of it on Google Earth/Maps or Bing. These will often reveal the double hedgerows of ancient highways. Google Street View will often enable you to see the route where it meets a public road.

In this short guide it is be impossible to go through every detail of the research. The following
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section lists some good guides. The bible for this work is a book called *Rights of Way: Restoring the Record* by Sarah Bucks and Phil Wadey the second edition of which was published in August 2017 (see below). It provides detailed advice on how to apply for a DMMO and how to use the evidence to best effect. See the References and Contacts Section below for hyperlinks with on-line guides.

Making an application

12 Summary of things to do

So by now you will have collected most of the documentary evidence and the next step is to put it all together in the application. The application comes in several parts.

- The DMMO Application itself is a document defining the application route, explaining the evidence and formally making the request to modify the Definitive Map. It is typically between 10 and 50 pages long depending on how much evidence has been identified.
- The Certificate of Service confirms which landowners have been notified. (Pink Form)
- The Notice of Application confirms what is being requested. (Yellow Form)
- Notice to Landowners and Occupants lets them know that you are applying for a RoW across their land. (Peach Form)
- If the landowners are not known then a “Notice For the Attention of the Landowner” is to be posted at each end of the application route (permission required from HCC Countryside team).
- A covering note to HCC with your documents.

13 The DMMO Application

The DMMO Application defines the route and evidence and has several sections as follows:

Application route description

*This must have a description of the route, grid reference of each point along the route and its status (byway, footpath, bridle way). **It must also include a map of the application route clearly shown at as scale of at least 1:25000.** This last item is a legal requirement and failure to include that will result in the application being rejected or more probably returned with an instruction to include it.*

Application Route Utility

This is a statement as to why the route is worth applying for. Most importantly how does it contribute to HCC county access plan (available here:

<https://www.hants.gov.uk/landplanningandenvironment/countryside/accessplan>

This section is not a legal requirement but the council prioritises applications on the basis of whether or not they contribute to the access plan. By showing that your application does, you ensure that it will be dealt with more quickly than might otherwise be the case. At present the priority list is known as the C list and is worth mentioning in your covering note.

Documentary Evidence of Right of Way Status

This is the meat of the application. Each item of evidence should be dealt with in chronological order of source. Remember that the evidence needs to show the line of the route

on the ground and also demonstrate that it had the status of a public right of way. This may seem pretty onerous but the good news is that proof of a public right of way for a Definitive Map Modification Order (DMMO) has only to be on the balance of probabilities, not beyond reasonable doubt. So spend time explaining how each piece of evidence contributes to the story and then taken as a whole, how the evidence should on the balance of probability show that the route existed and was public.

- *Does the fact that the route is shown on a document confirm that it existed?*
- *Does it confirm that it was public?*
- *Can public access be inferred for example because the application route provides access for several different landowners or occupiers? Is it represented in the same manner as other routes that are today public rights of way?*
- *Does the document carry any legal weight? For example enclosures were authorized by Acts of Parliament. Sales conveyance documents are usually signed, sealed and witnessed etc.*

Conclusion

Once all the evidence has been presented there is a need for a short summary to explain what it all means. Hopefully, that a right of way has been shown, in all probability, to have existed over a given period of time that the evidence clearly implies that the route was understood to be public for much of that time and, that the status of the route was a highway and so should be a byway today (or a footpath etc.).

In Rights of Way – Restoring the Record each type of evidence is assigned a score and if you choose to use this system it can be summarized in the conclusion.

Request

A simple statement of what you are asking the Surveying Authority (HCC in this case) to do. For example “The applicant requests the surveying authority to add the application route from point A to point X to the definitive map with the status of byway.

Date and Signature

14 Certificate of Service (pink form) - Identify Landowners and Occupiers.

The next thing to do is to identify the landowners and occupiers whose land the application route passes. To do this, register with the Land Registry (its free) at: (<https://eservices.landregistry.gov.uk>). Paid for searches are not needed. Just use the map search and determine who owns the land on either side of your application route. However, often the owner is not identified by the Land Registry. Land registered with the Land Registry can easily be seen on the Land Registry map here: <https://data.gov.uk/dataset/land-registry-inspire-view-service-and-metadata>

Another Way of identifying landowners is to check the Hampshire Register of Landowner Deposits under Highways Act 1980 and Commons Act 2006. These contain a map of the land owned by individuals wishing to prevent public rights being recorded on their land arising from use (the 20 year rule). Not all the deposit forms are available online but they are listed and so can be requested from the council and are to be found here: <https://www.hants.gov.uk/landplanningandenvironment/rightsofway/definitivemap/landownerdeposits>

Talking to locals can sometimes identify landowners.

15 Notice of Application (Yellow form) & Notice to Landowners & Occupants (Peach form).

Use the templates listed in the Appendix. The “from” and “to” parts of the forms should include the points shown on the application map, their grid references and preferably a description.

The Yellow form for the County Countryside Team has a list of the documents used in your evidence. The Peach form for the Land Owners and Occupants should include a clear map (the one used in your DMMO application) of the application route.

16 Notice For the Attention of Landowners.

If a landowner cannot be traced notices will have to be put up and permission to do this obtained from the Countryside Service at Hampshire County Council (see contacts below).

17 Accompanying memo

A memo should accompany the application to the County Council (see Appendix) identifying your claim reference, requesting the council DMMO number to ensure that it has been received and logged, a request for the application to be placed on the C list (see above) and a request for confirmation that the application conforms to the legal requirements and in particular to the paragraph 1 to Schedule 14 of the 1981 act which relates to the route map and scale (see above).

18 Checking and sending off documents

Take care to check your documents before sending them off. In particular ensure all the documents are referenced, pictures included, all the sections completed and that all the forms have been signed and dated. A spreadsheet or paper based check-list is a good idea.

A completed Peach Form should be sent directly to all the Owners and Occupiers across whose land the application route passes. (Note: Once the Deregulation Act comes into force this will no longer be necessary – see below).

A completed Application, Yellow and Pink forms together with the accompanying memo should then be sent to: Countryside Service. Hampshire County Council, Castle Avenue, Winchester. SO23 8UL (see contacts below)

It is quite expensive printing off a large application and sending it off by post. Recent communications with Hampshire County Council (Harry Goodchild, Email communication 17th July 2017 to P Howland) confirmed that it is acceptable to send the applications and associated documents by email so long as they are signed and in pdf format. However it is advisable to confirm with Liz Giles (see below) that this is still the case. You will need to make sure all your pictures are compressed to 90 dpi to prevent the files being too big for the email system! Information on how to do this can be found here: <https://support.office.com/en-us/article/Reduce-your-file-size-631D1D48-A56B-4FD4-AD66-091DD201DB10>

Email communication with the countryside Service on DMMO matters should be addressed in the first instance to Liz Giles (Map Review Assistant) at liz.giles@hants.gov.uk

Technical questions about the applications should be addressed to Harry Goodchild (Map Review Officer) at Harry.Goodchild@hants.gov.uk

Liz and Harry are both very helpful but also very busy as witnessed by the by the several years backlog of DMMO applications, so it is advisable to use internal Ramblers expertise if at all possible.

19 Deregulation Act

In 2015 the Deregulation Act was passed but has so far not been brought into force. At the time of writing (Aug 2017) no date had been set for it to come into force. This Act was designed to simplify and streamline the DMMO process and includes the following important clauses:

- Local authorities, not applicants to approach landowners about applications in the first instance.
- Local authorities able to negotiate with landowners for of the re-alignment of claimed paths where they are incompatible with present-day land use (so making them less contentious).
- A light touch procedure for correcting factual errors on maps.
- Enabling volunteers to transfer applications, so that work does not have to start over again where an applicant can no longer pursue it.

20 Other Participants and their roles

Other than gathering evidence there is no major participant other than HCC. They both receive and process the applications.

REFERENCES AND CONTACTS

Please note that copyright law permits any documents to be copied for statutory purposes (such as DMMO applications). You are therefore free to copy any documents and use them in your application for this purpose.

21 Online Guides

Useful guides are:

- **Ramblers:** <http://www.ramblers.org.uk/get-involved/campaign-with-us/dont-lose-your-way/historic-paths-and-definitive-maps-timeline.aspx>
- **British Horse Society:** <http://www.bhs.org.uk/~media/bhs/files/pdf-documents/access-leaflets/researching-moa.ashx?la=en>
- **Hampshire County Council** have produced two very useful guides that can be downloaded here: <http://documents.hants.gov.uk/rightsofway/documentarysources.pdf>
<http://documents.hants.gov.uk/rightsofway/maintainingthemap.pdf>

- The **Planning Inspectorate** has issued guidelines to the inspectors evaluating DMMO applications and these provide a comprehensive discussion about the different types of evidence. Known as Consistency Guidelines, they can be downloaded here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631784/Full_version_February_2016_consistency_guides.pdf

22 Online Maps

- The **Hampshire Definitive map** is available online at: <http://localviewmaps.hants.gov.uk/LocalViewmaps/Sites/ROWOnline/#>
- **The National Library of Scotland (NLS)** is an excellent resource for OS maps including some 1st Edition 25" maps and Bartholomew maps at: <http://maps.nls.uk>
- **Old Hampshire Mapped** has a comprehensive collection of early Hampshire maps: <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/index/hmapndxf.htm>
- Tithe Records can be obtained from **thegenealogist** online here (subscription): <https://www.thegenealogist.co.uk/featuredarticles/2015/the-tithe-maps-project-317/>
- **Digimap** supplies OS maps for those with a university (including OU) or school library account, including OS 1st Edition 25" to the mile maps and can be found here: <http://digimap.edina.ac.uk/historic>

old-maps.co.uk have a comprehensive collection of OS maps including the first edition 25" maps. The maps can be found here <https://www.old-maps.co.uk/#/> and copied by using print screen on your computer and the

23 Libraries and Archives

- A good collection of Hampshire early OS maps including first edition 25" OS, Tithe maps, Enclosure maps and other documents such as sales documents are available at the **Hampshire County Record Office** in Winchester. Their records can be searched here: <http://calm.hants.gov.uk/Overview.aspx?src=CalmView.Catalog> Details about opening times and how to find the Office are here: <http://www3.hants.gov.uk/archives>
- **The National Archive, Kew** holds many useful records including OS maps, Inland Revenue maps, Ministry of Agriculture survey maps and OS Boundary remark books. Their website tells you how to find them, register etc. and records can be searched here: <http://www.nationalarchives.gov.uk>
- **The British Library, St Pancras** holds copies of the OS area books and many other useful documents and books. Their collection can be searched here: <https://www.bl.uk>

24 Books

- The primary reference for this work is a book called ***Rights of Way: Restoring the***
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Record by Sarah Bucks and Phil Wadey which can be ordered from here: <http://www.restoringtherecord.org.uk> and might be available from your local library.

- A good guide about the enclosures in Hampshire with handy maps at the back to enable you to determine if your route is in an enclosure is: **A Guide to Enclosure in Hampshire 1700-1900**, by John Chapman and Sylvia Seeliger and can be obtained here at a cost of £5.00: <https://www.hants.gov.uk/shop/product.php?productid=17124>
- The so-called blue book, **Rights of Way: A Guide to Law and Practice** by Riddell and Trevelyan is available to Ramblers members from The Ramblers Association and is the definitive book on RoW law. More information can be found here: <http://www.ramblers.org.uk/advice/rights-of-way-law-in-england-and-wales/the-blue-book.aspx>

The book was last republished in 2007 but is updated with supplements known as the Blue Book Extra that can be found here: <http://www.ramblers.org.uk/advice/rights-of-way-law-in-england-and-wales/the-blue-book/the-blue-book-extra.aspx>

25 Contacts

- Email communication with the countryside Service on DMMO matters should be addressed in the first instance to Liz Giles (Map Review Assistant) at liz.giles@hants.gov.uk
- Technical questions about the applications should be addressed to Harry Goodchild (Map Review Officer) at Harry.Goodchild@hants.gov.uk
- Paul Howland – Andover Ramblers. (who has experience of claiming lost RoW). Telephone: 07714122936, email: phowland@gmail.com

CONCLUSION

- 26 Restoring unrecorded RoW is an important activity that meets one of the Ramblers' charitable objectives:

to promote, encourage or assist in the protection and enhancement for the benefit of the public of the beauty of the countryside and other areas by such lawful means as the trustees think fit, including by encouraging the provision, preservation and extension of public access to land on foot.

It is therefore a vital activity that Groups should seriously consider undertaking.

An APPENDIX to this guide is available separately and contains templates for all the required forms and also a DMMO application example. This can be accessed at <https://drive.google.com/open?id=0B1brgDSnwW8gTDBMchZoMktDU0E>

Paul Howland

Approved by FPAWE 16 October 2017