
WIDTHS ON ORDERS

Introduction

1. The purpose of this advice note is to clarify the Planning Inspectorate's position on the need for widths to be shown on all public path, definitive map and rail crossing orders.
2. This note is publicly available, but has no legal force. It is not an authoritative interpretation of the law.

Consideration

3. DEFRA Circular 1/09, paragraphs 4.16 and 5.13, Welsh Office Circular 5/93, Annex B, paragraph 18, relating to definitive map modification orders and Annex C, paragraph 9, relating to public path and rail crossing orders, state that the width of a path should be included in the order schedule. The legal authority for this advice can be found in the regulations for the relevant types of order¹. Effective future management of the rights of way network and of the land over which the rights of way pass requires that widths of routes are recorded as accurately as possible. The extent to which this is feasible may vary depending upon the type of order. Consequently, in applying this advice Inspectors will need to take into account the nature of the order under consideration and the specific circumstances of the case. Accordingly, this advice note deals separately with public path and rail crossing orders and with definitive map modification orders. More detailed guidance on expressing widths in orders is set out in Defra's non-statutory guidance to order making authorities on widths in orders, dated February 2007.

Public Path and Rail Crossing Orders

4. Both public path orders and rail crossing orders involve the express creation of new rights of way. As such, the width of the new way should be determined as part of the order making process. Where an order is received without a specified width, the Inspector may, where appropriate, use his power of modification² to add one. If this is not appropriate, the Inspector may refuse to confirm the order.
5. The relevant regulations do not prescribe the manner in which the width of the way to be created is described. Apart from specific instances such as the reinstatement of a right of way after ploughing under Schedule 12A to the Highways Act 1980³, there are no statutory widths for rights of way. Inspectors may exercise their discretion in determining whether the description is reasonable in all the

circumstances of the case. Nonetheless, a minimum or approximate width should not be used in an order. Including a minimum or approximate width in an order can lead to uncertainty regarding the position, area, maintenance and obstruction of a right of way. If Inspectors come across orders where a minimum or approximate width is shown then the Inspector should modify the order and put in an actual width.

6. In some cases, the width of the new way may vary frequently along its length making a simple written description difficult. In such cases a suitable form of wording might say 'varying between X metres and Y metres as shown on the order plan'. Whether this is feasible or not depends upon the scale, detail and quality of the order plan. Reference to fixed physical boundaries can sometimes be acceptable but walls, fences, hedges and buildings may be removed or re-positioned in future and are therefore not always reliable as a permanent marker.
7. A proposal to modify a public path or rail crossing order to include a width may need to be advertised by virtue of paragraph 2(3)(a) of Schedule 6 to the Highways Act 1980 (the 1980 Act) or paragraph 3(6)(a) of Schedule 14 to the Town and Country Planning Act 1990 (the 1990 Act).

Definitive Map Modification Orders

8. Definitive map modification orders do not extinguish or create ways; they merely record them. As such, they are based on evidence and any width recorded in such an order should also be based on evidence. It is recognised that there are significant differences between modification orders based on documentary evidence and those based on evidence of use. These differences may impact on the ability of the order making authority and the Inspector to determine the width of the route. Nonetheless, the principle that widths should be recorded as accurately as possible in all the circumstances still applies to both types of modification order.
9. Accordingly, where an order is received without a specified width, the Inspector should use his power of modification² to add one. Determination of the width will, if not defined by any inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or, where there is no such clear evidence, the type of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features, may dictate what may be considered reasonable. In the absence of evidence to the contrary, Inspectors should ensure that the width recorded is sufficient to enable two users to pass comfortably, occasional pinch points excepted. This width may well be greater than the width of the "trodden path". Apart from specific instances such as the reinstatement of a right of way after ploughing under Schedule 12A to the Highways Act 1980³, there are no statutory widths for rights of way.

10. A minimum or approximate width may be used in an order where the evidence indicates a minimum or approximate width. Historic documents tendered in evidence may use terms such as “at the least” or “thereabouts” to qualify the stated width and thus it may be appropriate for the order to be drafted in similar terms. Care should be taken in such cases to distinguish between the legal width of the highway and specific “making up” requirements.
11. In some cases, the width of the way to be recorded may vary frequently along its length making a simple written description difficult. In such cases a suitable form of wording might say ‘varying between X metres and Y metres as shown on the order plan’. Whether this is feasible or not depends upon the scale, detail and quality of the order plan. Reference to fixed physical boundaries can sometimes be acceptable but walls, fences, hedges and buildings may be removed or re-positioned in future and are therefore not always reliable as a permanent marker. Alternatively, reference may be made to other reliable sources of mapping that may be available, for instance the Ordnance Survey 25” County Series maps. Although it may not be possible to scale off precise measurements from such maps, they may indicate where significant variations of width occur between the minimum and maximum figures.
12. It is likely that, in modifying a definitive map modification or reclassification order to specify a width, notice of the proposed modification will be required by virtue of the provisions of paragraph 8(1)(a) of Schedule 15 to the Wildlife and Countryside Act 1981 (the 1981 Act). This is because public rights of passage will extend across the full breadth of the stated width, which means a modification stating a width could be said to ‘affect land not affected by the order’ (paragraph 8(1)(a)).

Extinguishments and Deletions

13. The requirement in the regulations to specify a width for ways being created or added to the definitive map is replicated in the requirements relating to extinguishments and deletions from the definitive map. It is considered acceptable to use a phrase such as “the whole width” where the intention is to extinguish or delete all of the affected section of the way. Clearly where the intention is to retain some part of the width of the way as a public right of way then the width to be extinguished or deleted needs to be more precisely described.

Reclassification Orders – Wales only

14. Where a council in Wales submits a reclassification order which does not contain a width, it is usually supported by an “historic document” which sets out the width of the path when it was first added to the definitive map and statement or later at review. If there is a copy of this “historic document” on file, this can be taken as evidence of the

width of the path. In such cases the width stated on the document can be added to the reclassification order by the Inspector as a modification, but there will be no need to advertise it. However, if there is no such document on file, Inspectors should follow the advice set out in paragraphs 4 & 5 above.

Conclusion

15. All public path orders, definitive map modification orders, definitive map reclassification orders and rail crossing orders should include a width.
16. Where Inspectors use their power of modification to include or vary a width, notice of modification may be required (except where the circumstances of paragraph 14 above apply) specifying the time and manner in which objections or representations can be made. If any objections or representations are duly made and not withdrawn, then a public inquiry must be held or an opportunity of being heard given to the person making the objection or representation pursuant to paragraph 8(2) of Schedule 15 to the 1981 Act, Paragraph 2(3) of Schedule 6 to the 1980 Act and paragraph 3(6) of Schedule 14 to the 1990 Act.

- 1 Town and Country Planning (Public Path Orders) Regulations 1993 (SI 1993 No.10); Public Path Orders Regulations 1993 (SI 1993 No.11); Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No. 12); The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (SI 1993 No. 9).
- 2 Paragraph 2(2) of Schedule 6 to the Highways Act 1980, paragraph 7(3) of Schedule 15 to the Wildlife and Countryside Act 1981 and paragraph 3(4) of Schedule 14 to the Town and Country Planning Act 1990.
- 3 As inserted by the Rights of Way Act 1990.