

## ***“How paths became public rights of way - the Definitive Map process in Cumberland, Lancashire & Westmorland”***

Legally speaking, a right of way shown on the current definitive map is conclusive evidence of its existence. It is not up to the Highway Authority to prove again what is already conclusive at law. However, many people are a little confused as to how these maps came into existence and this is a brief explanation of the process.

Prior to the Second World War the recording of public access was a purely non-statutory function. For many decades government were urged to introduce legislation that would reduce the confusion over exactly where public rights existed. The enactment of the National Parks and Access to the Countryside Act 1949 set out to achieve this by requiring all County Councils to produce a map showing these rights. Cumberland, Westmorland and Lancashire County Councils (as they then were), together with every other County Council in England & Wales, each began surveys of public rights in 1950.

As a first step, each Parish Council within the counties drew up a draft map showing public rights believed to exist then and submitted it to the County Councils. These drafts were based on the Second Edition 1901-1915 Ordnance Survey maps. The vast majority of rights of way can be seen on these maps as physical features, having developed through long usage by postmen, schoolchildren, or farmers on their way to a smithy or well, etc. It was the job of the Parish to determine which of these ways had public rights and which had merely private rights.

Properly carried out, the survey entailed an immense amount of work. Documentary evidence such as inclosure awards, old Ordnance Survey maps, tithe maps, parish maps, local histories and guidebooks, maps of already admitted rights of way and local authority / parish minutes had to be consulted. Such documentary evidence had to be supplemented by local knowledge and evidence of use by the public as of right.

Each believed public right of way was drawn on to the base map, and generally surveyed by nominated individuals who would note means of crossing any boundaries, etc. The relevant landowners were noted and were generally consulted. This map was then checked at an open parish meeting (ie: all parishioners) and signed by the Chairman of the Parish Council. This process was generally completed in the early 1950's.

The map was then sent to the County Councils, who were then responsible for taking the map through it's progressive statutory stages. This involved advertising the maps by placing notices in the local newspapers and sending copies of the notices to each Parish Clerk. The notices also invited objections or representations to anything shown on, or omitted from the Draft Map. The Map was then deposited with Parish Clerks, at Rural District Offices and Public Libraries.

Any objections (of which there were many) were aired at local hearings, the results of which were incorporated onto a second stage provisional map. The same advertising procedure was adopted, with another opportunity for objection. Finally, the first Definitive Maps were published – 1964 in Westmorland, 1966 in Cumberland and Lancashire. The term 'Definitive' is used to show that the map can be produced in court as conclusive proof. In Cumberland and Lancashire the maps were subject to an immediate review, objections were again invited; Parish and District Councils were consulted and Parish Councils were required to call an open Parish Meeting. These First Review Definitive Maps were published in 1967.

Subsequently, after local government re-organisation, the three maps were brought together and were subject to the Cumbria County Council Special Review of 1976. The process was once more advertised in the local press and on Parish noticeboards, objections were again invited; Parish and District Councils were consulted and Parish Councils were required to call an open Parish Meeting. After a number of Public Inquiries the present Definitive Map was published in November 1989.

The whole process detailed above, was carried out strictly in accordance with the law. During numerous Court cases around the country the validity or correctness of procedure was never questioned.

As can be seen, the job of legalising rights of way was not carried out shoddily. A lot of time, thought, effort and consultation was put in, much of it at the Parish level. It was not the case, as many believe, that someone from the County Council has just sat down and drawn lines onto a map. Paths shown on the definitive map are not new paths being put there now, but are ways that have been in legal existence for over 50 years and in many cases have existed in a *de facto* form for decades or even centuries earlier.

However, undoubtedly mistakes will have been made. If anyone is of the opinion that a path is wrong then they can apply for a Modification Order. The onus is upon them, as the applicant, to prove that the Map is wrong by submitting evidence of substance and cogency which clearly shows that a mistake was made when the right of way was first recorded. Such evidence could perhaps be found in old maps, Tithe maps, Inclosure Awards and in statements from local residents - especially of the older generation. However, the omission of any mention of a public right of way in title deeds or any other document is not proof that no right existed.