

Guidance Notes

Deposits under section 31(6) of the Highways Act 1980 and deposits under section 15A(1) of the Commons Act 2006

Section 31(6) of the Highways Act 1980 – Highways Statements and Declarations

Under Common Law and the Highways Act 1980 it is possible for members of the public to claim that a track has been dedicated as a public right of way by the landowner by their failure to interrupt the use of it; this is called 'implied dedication'. If a route has been used, 'as of right' (meaning without force, without secrecy and without permission) for more than 20 years it may be deemed to have been dedicated as a public right of way. If routes have been used for less than 20 years a public right of way may still have come into existence under Common Law.

Whilst the landowner may be able to produce evidence that they have not dedicated the track by taking steps to prevent the general public from using it (by, for example, challenging users, erecting signs or only allowing use by specifically authorised people), it is often difficult to prove this at a later stage.

Section 31(6) of the Highways Act 1980 ("the 1980 Act") prescribes a mechanism by which a landowner may provide (by way of depositing statements, maps and declarations with the appropriate Authority – in this case Northamptonshire County Council ("the Authority")) sufficient evidence to negate an intention to dedicate ways over the landowner's land as highway for the purpose of defeating deemed dedication of such ways as highways. The procedure is not available to tenants, who should make any representation through their landlords.

The effect of submitting a deposit statement, if followed by further declarations within 20 years¹, is to negate any presumed intention to dedicate public rights of way (termed highway statements and declarations respectively). DEFRA are of the opinion that it is the declaration which provides sufficient evidence to negate the landowner's intention to dedicate public rights of way across their land. However it is the view of DEFRA that for a declaration to be effective as evidence the lodging must be a separate event after the deposit of the statement (i.e. not at the same time), but no more than 20 years later. We advise applicants to submit their declaration shortly after submitting their statement i.e. a few days apart, to ensure that their interests are adequately covered. It is the landowner's responsibility to ensure continued protection by submitting further declarations before the deposit's twentieth anniversary. The Authority does not remind applicants when deposits are due for renewal.

If any additional rights of way have been dedicated since the original deposit statement, map and/or declaration, a new declaration and map may be submitted detailing these. Section 31(6) allows successors in title to make declarations updating a statement and map or a declaration. However, if only part of the landholding subject to a deposit is sold, both landowners would need to lodge a new statement, map and declaration as there is no provision enabling the extent of land shown on the map to be amended by the declaration.

The lodging of a deposit will not affect the legal status of either the location, or the widths of the rights of way already recorded on the Definitive Map and Statement maintained by the Surveying Authority under the Wildlife and Countryside Act 1981. If a route is shown on the deposit map which is not formally recorded as a public right of way, then it may be used as evidence that it has been dedicated as a public right of way. Completing a section 31(6) deposit will not prevent the recognition of public rights of way which have arisen following 20 years (or lesser period under Common Law) usage prior to the date of the deposit, or of public rights of way that are proven to exist from historical documentary evidence.

¹ Please note the amendment to a 20 year renewal interval only applies to applications submitted after 1st October 2013, deposits/declarations submitted prior to 1st October 2013 remain subject to a 10 year renewal period.

Section 15A(1) of the Commons Act 2006 – Landowner Statements

In order to register land as a town or village green under Section 15(1) of the Commons Act 2006 (“the 2006 Act”) the applicant must be able to satisfy a number of tests. One key component of the criteria is that the land has been used ‘as of right’ for at least 20 years. Evidence must be produced from the applicant that the tests have been met; if there are any objections from landowners they too must submit evidence of the contrary, although this can be difficult to do at a later stage.

Section 15A of the Commons Act 2006 prescribes a mechanism by which a landowner may deposit a statement accompanied by a map with the Commons Registration Authority – in this case Northamptonshire County Council, to bring to an end any period of recreational use ‘as of right’ over land shown in the map and described in the statement. The effect of depositing a landowner statement is to interrupt any such period of use of the land.

Section 15A(2) of the 2006 Act provides that the deposit of a landowner statement does not prevent a new period of use commencing. Therefore if recreational use ‘as of right’ of the land were to continue then a new 20 year period of requisite user could begin to accrue. However, if a landowner statement is deposited within 20 years of the previous deposit, then it will again prevent any recreational users of the land reaching the 20 years’ use required by the greens registration criteria (i.e. because the clock is stopped once more before it reaches 20 years).

For land which has been subject to recreational use as of right for 20 years or more before a landowner statement is deposited, the deposit of such a statement would trigger the one year period of grace allowed for greens applications which rely on the qualifying criteria provided by section 15(3) of the Commons Act 2006 i.e. where use of the land as of right has ceased.

What type of Statement should I submit?

Highways statements and declarations under section 31(6) of the Highways Act 1980 and landowner statements under section 15A of the Commons Act 2006 can be made separately or submitted as joint statements/applications. When deciding whether you need to submit a highways statement, a landowner statement or a combined statement it is advisable to consider the usage of the land in question. Are people using the land for recreational activities and therefore you may be at risk of a claim for a village green or are people walking from A-B which may result in a public right of way being claimed.

Please note there are specific requirements in relation to the publication of notices on site for landowner (village greens) statements under section 15A and therefore additional notice fees are payable if submitting either a combined deposit or an individual landowner statement to provide evidence in relation to village greens claims.

The Application Process

Landowners must complete the application form which should be signed by every owner² of land to which the application relates (when an individual) and by the secretary or some other duly authorised officer of every owner of land to which the application relates (when a body corporate or unincorporated association).³

The application must be accompanied by an Ordnance Map at a scale of not less than 1:10,560 (6 inches to the mile) for example 1:10,000, 1:5,000 or 1:2,500, showing the boundary of the land to which the application relates in coloured edging. If making a highways deposit under section 31(6) of the 1980 Act, the map should indicate which routes (if any) over their land they admit to having been dedicated as public rights of way. The application should specify the line colour being used on the map to represent each classification of public right of way (Footpath, Bridleway, Restricted

² “Owner” is defined in section 31(7) of the 1980 Act as “a person who is for the time being entitled to dispose of the fee simple in the land.”

³ If the application form is required to be signed by a person who is unable to read or sign the document, it must be supported by a certificate made by an authorised person who must certify that the application has been read to the person signing it; that they appeared to understand it and approved its content as accurate; that the statement of truth in Part F of the application had been read to them; that they appeared to understand the statement and consequences of making false statement and that they signed or made their mark in the presence of the authorised person.

Byway, Byway Open to All Traffic ('Byway')). The Authority uses purple for Footpath, green for Bridleway, broken green for Restricted Byway and brown for Byway, it is therefore preferable for applicants to stick to this colour coding if possible.

Alternatively, if a previous deposit has been made under Section 31(6) of the 1980 Act (which is still valid), the application can refer to a map previously deposited. Extracts from the Definitive Map or the working copy of the Definitive Map are both suitable for use as deposit maps; these can be purchased from the Definitive Map Team. To avoid infringing Ordnance Survey Copyright, additional prints can also be purchased if necessary. If you wish to view the Definitive Map or Statement copies of the whole county are kept by the Northamptonshire Highways Definitive Map Team (please contact the team if you would like to arrange an appointment to view them).

The application form requires the applicant to sign a statement of truth which places the burden on the applicant of ensuring that the information in the application is correct. Any incorrect facts could invalidate the effect of the application. The Authority can remove entries from the register of deposits if they contain a material error in the map or statement. The Authority must give the landowner at least 28 days' notice before removing an application from the register of deposits.

The application form and map should be returned to Northamptonshire Highways (acting on behalf of Northamptonshire County Council) with the appropriate fee, as specified at the end of this guidance. An additional notice fee is chargeable when submitting either a combined deposit or individual landowner statement under section 15A of the Commons Act. Once an application is submitted (for either a combined or Commons Act deposit) it will be forwarded to the Commons Registration team who will contact the applicant directly to advise of the required fee, for guidance the standard fee is £150 for the first notice and £40 for each additional notice. The fee will vary dependent upon the number, size and location of the notices required on site and will be requested directly from the applicant once the deposit is submitted.

Once we receive an application:

When the Authority are in receipt of the application and map the details will be checked to see if they appear to comply with legislation and the map will be compared with the rights of way recorded on the Definitive Map (where applicable). If there are any disputes regarding the location of public rights of way as recorded on the deposit map, the responsibility for the validity of the deposit shall rest with the applicant (s31(6) deposits only).

An application shall be treated as having been submitted on the date on which the Authority receives a correctly completed deposit statement, map, declaration (as appropriate) and fee. If the application or map is not completed correctly and amendments are required to meet the legislation, the date of the deposit shall be the date on which the correctly amended application and map are received by the Authority (whether by post or delivered in person).

As soon as possible after the Authority receives a valid application we will:

- Send an acknowledgement of receipt to the applicant (allotting the application a unique Northamptonshire County Council reference number). This will also include the date of the deposit (the date NCC received the valid application)
- Enter the application onto the register of deposits
- Publicise notice of receipt of the application on the Council's website
- Serve notice of the application by email on any person who has asked to be informed of all applications
- For Landowner (Village Greens) Statements only - Post notice (consisting of a notice describing the deposit and an accompanying notice map) of the application⁴ (for not less than 60 days) at or near at least one obvious place of entry to the land (or if no such place, at or near at least one conspicuous place on the boundary).⁵ If the deposit covers multiple parcels of land, additional notices may be required to bring the deposit to the attention of any users of the land.

⁴ If there is no suitable place to post the notices e.g. gate, fence, lamppost, or the notices are too large (due to the size of the map required to cover the landholding) the landowner will need to provide a suitable structure to post the notices on e.g. notice board and stake secured in the ground in an agreed location.

⁵ By submitting an application for a deposit you are agreeing as landowner/on behalf of the landowner that appropriate officers of the Authority may enter the land in question if necessary for the purposes of posting notices on site and that these officers may erect notices in connection with the deposit on your/the landowners property.

Once lodged with Northamptonshire County Council the application, map, statement and declaration (as appropriate) become public documents and are available for public inspection.

General Data Protection Regulations (GDPR)

The GDPR impacts on how we manage and control the way we process personal data. The data we collect is governed by legislation. All personal data will be held and used by Northamptonshire County Council (NCC), KierWSP and LGSS Law their agents and successor authorities or organisations only in so far as is necessary in order to process the application for a highway or landowner statement or declaration under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006.

More specifically, the data may be:

- a) Stored electronically on a computer system operated by or on behalf of NCC.
- b) A copy of the application (or details contained therein) will appear on the register of deposits required to be kept under Section 31A of the Highways Act 1980). The register is displayed on our website at <http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/rights-of-way/Pages/landowner-deposits.aspx>
- c) Members of the public can request to view the hard copy of the application for a deposit and statement and they are deemed public documents.
- d) If an application for a Definitive Map Modification Order (DMMO) (under section 53 of the Wildlife and Countryside Act 1981) is received across the land in question the application for a deposit may be used as evidence and may be included in the DMMO application determination report. If a DMMO is made and objections are received it may subsequently be shared with the Planning Inspectorate as forming part of NCC's submission (and will be available for inspection by members of the public) and may be presented at a Public Hearing or Public Inquiry.
- e) The data will be retained indefinitely in accordance with NCC's formal data retention schedule as applicable at the time.

The registers which are required to be kept will include names and addresses which may be considered to be personal information. This requirement overrides any entitlement the applicant may otherwise have under the Data Protection Act 1998 or General Data Protection Regulation to prevent publication of such information. If you are concerned about this information being made publically available you may wish to seek independent legal advice relating to other methods which may be used to demonstrate your intention in relation to the land in question.

Submitting an application

The completed application (including statement or declaration and map as appropriate) along with the required fee (cheques made payable to '*Northamptonshire County Council*' please include the landowners name on the reverse) should be returned to:

Definitive Map Team
Northamptonshire Highways
One Angel Square
Angel Street
Northampton
NN1 1ED
defmap@kierwsp.co.uk

Charges

	Fee	
Deposit of a Statement and Map under section 31(6) of the Highways Act	£160-00	
Deposit of a Statement and Map under section 31(6) of the Highways Act AND/OR section 15A(1) of the Commons Act 2006.* Legislation requires notices to be displayed on site for landowner statements, an additional fee for which is payable. Once an application is submitted the Commons Registration Team will contact the applicant directly to advise them of the required fee. The standard notice fee is £150 for the first notice and £40 for each additional notice, this fee will be requested once the application is submitted.	£160-00 + notice fee*	
Deposit or renewal of Declaration of an existing deposit under section 31(6) of the Highways Act 1980	£65-00	
Deposit or renewal of Declaration of an existing deposit under section 31(6) of the Highways Act 1980 AND/OR Section 15A(1) of the Commons Act 2006	£65-00 + notice fee*	
	Size	
	Fee	
Extract of the public rights of way map for the relevant land (1:10000)	A4	£60-00
	A3	£78-00
	A2	£90-00
	A1	£96-00
	A0	£102-00
Additional copies of the Public Rights of Way Map (reduced rate only available at the time of ordering the original extract)	A4	£6-00
	A3	£12-00
	A2	£18-00
	A1	£24-00
	A0	£30-00

If you have any queries regarding making a deposit do not hesitate to contact the Definitive Map Team.

Assistant Definitive Map Officer: Mr George Massingham

Telephone: 01604 364351

Email: GMassingham@kierwsp.co.uk

Definitive Map Officer: Mr Martyn Brawn

Telephone: 01604 364349

Email: mbrawn@kierwsp.co.uk

Assistant Definitive Map Officer: Miss Francine Rainbow

Telephone: 01604 364348

Email: frainbow@kierwsp.co.uk

Commons Registration Authority - Town and Village Greens Queries:

If you have any specific queries relating to claims for Town and Village Greens please contact the Development Control Team who deal with Village Greens claims at developmentcontrol@northamptonshire.gov.uk

Development Control Manager Phil Watson – 01604 366638

Please note this guidance is not an authoritative statement of the law, which is ultimately a matter for the courts. It is an interpretation of the legislation by the Authority to assist landowners in completing the deposit application process.