

Appendix X

Guidance on widths in Orders

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Guidance

Rights of Way Advice Note No 16 - Widths on Orders

Updated 14 October 2021

Applies to England

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1. Introduction

1.1. 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.

1.2. This note is publicly available, but has no legal force. It is not an authoritative interpretation of the law.

2. Consideration

2.1. DEFRA Circular 1/09, paragraphs 4.16 relating to definitive map modification orders 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 order (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)). 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.

3. Public Path and Rail Crossing Orders

3.1. 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 modification (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.) to add one. If this is not appropriate, the Inspector may refuse to confirm the order.

3.2. 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 1980 (as inserted by the Rights of Way Act 1990), 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.

3.3. 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.

3.4. 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).

4. Definitive Map Modification Orders

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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)).

5. Extinguishments and Deletions

5.1. 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.

6. Reclassification Orders – Wales only

6.1. 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.

7. Conclusion

7.1. All public path orders, definitive map modification orders, definitive map reclassification orders and rail crossing orders should include a width.

7.2. 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.

7.3. Although rarely necessary, an Inspector may add an additional plan to an order where they consider it necessary to ensure the width(s) of the path(s) can be properly reflected (and it is not possible to add this clarity to the order map as drafted).

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Sent by E-mail

12 February 2007

To all Order Making Authorities in England

Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders

Order making authorities (OMAs) will be aware of recent debate about the recording of widths of ways on public path, rail crossing and definitive map modification orders. This was prompted by a revision to the Planning Inspectorate's Advice Note on the topic – "AN16: Widths on Orders" resulting from a significant number of objections to orders on the grounds that the orders were of questionable validity in relation to the description of width. AN16 has been further revised following detailed consideration of the issues raised. The purpose of this Guidance is to provide further information and advice on best-practice to OMAs so as to minimise the scope for orders being contested on these grounds in the future.

Types of Orders

This guidance is aimed at OMAs making public path orders under the Highways Act 1980 or Town and Country Planning Act 1990, rail crossing orders made under the Highways Act 1980 and definitive map modification orders made under the Wildlife and Countryside Act 1981.

Legal Requirements

The form of all the relevant orders is set out in the following regulations –

- a. Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (SI 1993 No. 9);
- b. Town and Country Planning (Public Path Orders) Regulations 1993 (SI 1993 No.10);
- c. Public Path Orders Regulations 1993 (SI 1993 No.11);
- d. Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No. 12);

All these regulations require that orders shall be in the form set out in the regulations "*or in a form substantially to the like effect.*" Note that the Wildlife

and Countryside Regulations continues so: “with such insertions or omissions as are necessary in any particular case.”

They also require that a description of the width to be extinguished or deleted and created or added is given in the appropriate schedules that form part of the order.

It is considered essential that widths are recorded as accurately as possible in orders. This increases certainty amongst both users and land managers as to the extent of public rights. It also aids local authorities in fulfilling their functions with regards to maintenance of public rights of way and, particularly, enforcement work to resolve problems arising from encroachment and other obstructions.

Whilst the basic requirements of the legislation are the same regardless of the type of order, definitive map modification orders differ fundamentally from other orders and these differences are reflected in the guidance that follows.

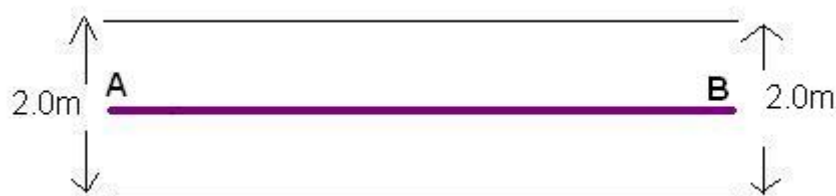
Description

General Comments

The regulations require that ways affected by orders are shown by specified line styles on the order plan according to both the type of order and the effect on the way. It is normally assumed that the line marks the centre-line of the way only; the width of the line does not represent the width of the way. Care should therefore be taken to ensure, as far as possible, that the line drafted on the order does represent the centre-line of the way, accepting the limitations imposed by the scale of the plan. An exception to this would be where a graphical approach is adopted to indicate the extent of the width of the path, for instance where the width varies frequently and unevenly along the length of the path as shown in Illustration 3 below.

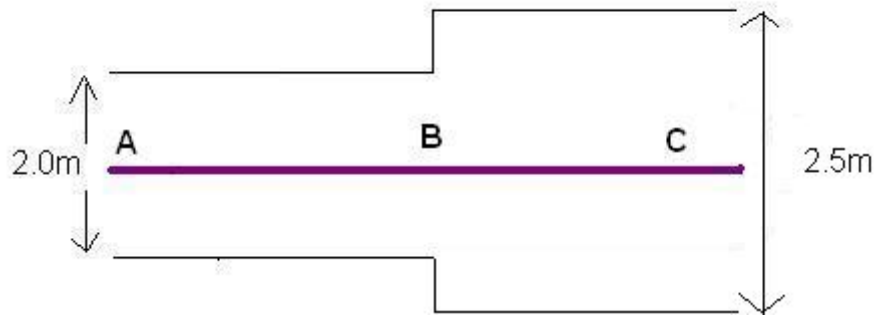
There are three commonly occurring situations which are illustrated in the diagrams below and a suggestion given as to how it might be described.

1. Uniform width path:



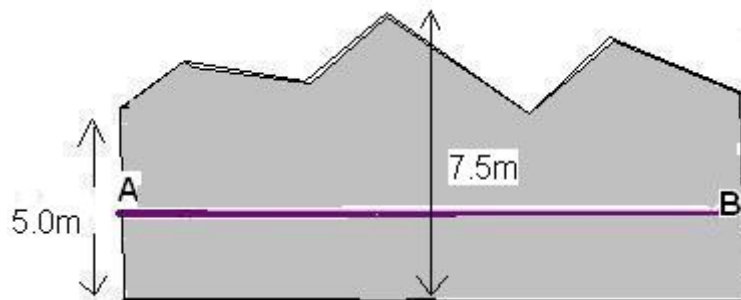
Suggested description – “a path from point A to point B with a width of 2.0m throughout.”

2. Path with discrete sections of uniform width:



Suggested description – “a path from point A to point B with a width of 2.0m, continuing from point B to point C with a width of 2.5m.”

3. Path with variable width:



Suggested description – “a path from point A to point B with a width varying from 5.0m to 7.5m as shown (shaded grey) on the (Order) plan.”

When these routes are recorded on the definitive map and statement by means of a legal event order, the definitive statement will need to include reference to the appropriate plan.

In some circumstances it may be possible to describe width by relation to the physical features that define the boundaries of the route, for instance a hedge, wall or ditch. However, such features may alter over time or, indeed, disappear altogether and care should be taken in doing this. Authorities may wish to consider carrying out a survey of a path, perhaps using photographic or other means. Whilst not forming part of the order, such a survey could be a source of reliable evidence should disputes about the width of the path occur subsequently.

Public Path and Rail Crossing Orders

Both these types of orders normally involve the extinguishment of some existing right of way and the creation of a new right of way. Insofar as the intention of the order is to extinguish the entire width of an existing right of way, then the description should make this clear by using terms such as “the entire width” or “the whole width”. To refer to a specific width, e.g. “to

extinguish the footpath, 2.0m wide” runs the risk that there are currently unrecorded rights over a greater width than 2m. If this is the case, then those unrecorded rights will remain in existence, potentially leading to problems in the future.

Clearly, if there is an intention to retain part of the width of a route, then the width of the path to be extinguished must be precisely specified. This may be achieved by wording such as “1.7m to be extinguished from the northern edge” or “0.5m to be taken off both sides, equally spaced from the notional centreline of the route”. Similarly, unless the reduction in width is intended to apply equally to the whole length of the route, then the section which is affected needs to be equally carefully identified. Use of the order plan to indicate the length affected and a large scale insert plan to show the precise area to be extinguished may be appropriate.

The creation of new rights as part of this process normally involves determining the dimensions of the new route with the landowner (the person with the power to dedicate the right of way). As such it is both possible and desirable for the width of the route to be determined with some accuracy and the description on the order should reflect this. Consequently, it is not normally acceptable to qualify statements of width with terms such as “minimum”, “not less than”, “approximate”, “average” or other similarly imprecise terms.

Definitive Map Modification Orders

Unlike public path orders and rail crossing orders, DMMOs do not extinguish or create rights; instead they merely record them. DMMOs are determined according to the evidence available. Widths should be included in all DMMOs and these widths should also be based on the available evidence. For this reason, where the evidential source is vague or approximate then it may be appropriate for the recorded width to reflect that fact. For instance, an historic document may refer to a width of “20 feet or thereabouts” or “30 feet at the least”. In such cases it may be appropriate for OMAs to draft the order in similar terms. Care should be taken to distinguish between the legal width of the highway and specific “making up” requirements.

In some cases the width of a route to be recorded may be based on the depiction of the route on an historic plan or map. For instance, the way may be shown as excluded from taxable heraditament on a Finance Act 1910 map. The approach suggested in Illustration 3 above, of shading the relevant area on the order plan, could be used or, alternatively, the schedule could refer to the width of the way as being “that shown excluded from the heraditament on the Finance Act 1910 map”. In some circumstances it may be appropriate to refer similarly to specific Ordnance Survey plans or maps based on them. OMAs will be aware that that it may not be appropriate to scale off precise measurements from such maps. However they will provide valuable indications of where the width varies significantly.

There will be a small number of cases where there is little if any evidence, either documentary or user, as to the width of the route. In such cases the OMA should include a width that appears appropriate having regard to all relevant factors which may include, for instance, the type of user, location and the nature of the surface and other physical features. OMAs should bear in mind that such a width should be the minimum necessary for the reasonable exercise of the public right in these circumstances, enough for two users to pass in comfort, occasional pinch points excepted.

Precision

The regulations do not prescribe the degree of precision to which widths should be stated in orders and thus it is open to the OMA to use their discretion in this area.

Nonetheless, it seems desirable to establish a consistent standard of precision to be used. It is thus recommended that widths are normally quoted rounded up or down to the nearest 0.1m. Measurement to such a degree of precision is easily achievable in most circumstances using a standard tape measure.

Units of Measurement

Measurements should normally be given using metric units. However, it may be appropriate in some circumstances, for instance where a DMMO is based on an historic document which refers to other units of measurement, to reflect those in the drafting of the order.

Role of the OMA

It is the role of the OMA to ensure that orders are drafted as accurately and completely as possible. Where orders are submitted to the Secretary of State for determination, OMAs should not rely on Inspectors' powers of modification to correct deficiencies in the recording of width. It is not the role of Inspectors to manually measure and record the width of an order route where these have been omitted and Inspectors may, where appropriate, refuse to confirm an order on such grounds.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Dave Waterman', with a stylized flourish at the end.

Dave Waterman
Head of Rights of Way Branch