

The Motoring Organisations' Land Access & Recreation Association

Surface Standards for Unsealed Public Roads





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Foreword

For nearly 500 years (the first Highways Act was in 1555) there has been an assumption that highways would be maintained and progressively improved. In the earliest days the main concerns were drainage and over-hanging vegetation then, from the early 1800s onwards as new materials were developed, a made-up surface became equally important. These hard materials were first used for the turnpikes, and similar roads linking major towns and cities, but gradually their use spread to the towns and cities themselves and to more minor roads in the countryside.

Up to about fifty years ago there was an expectation that highway authorities would progressively improve unsealed roads by sealing the surface, thereby making them more usable for everyday motor traffic. Even during the 1960s significant through-roads in rural areas were being sealed for the first time, and many more were being blacktopped 'as far as the farm, but no further'.

Significant changes started in the early 1970s. By this time most of the public road network in rural areas had been sealed, and those roads that remained unsealed were used predominately for agricultural purposes or recreation. This led almost inevitably to a reduced interest in such roads by the local authorities, who had higher priorities for their limited budgets.

The recent, and even more stringent, funding constraints imposed on local authorities mean that, for the foreseeable future, unsealed public roads are not going to be high up their spending list. There has to be a balance between the statutory duties of highway authorities, fair management of traffic, and the expectations of the public. That is no easy thing to achieve.

There are two primary issues concerning surface standards for unsealed public roads:

How good does the surface have to be?

How to achieve and maintain this quality?

The first question is largely a matter of law and practice and is addressed in this LARA report. For the second question there is no great body of guidance available, although we include a short list of relevant publications under the Reference Documents section at the end of this report.

The Countryside Act 1968 introduced the road classification 'byway open to all traffic' (BOAT) and, for the purposes of this report, 'road' means both unsealed roads on the councils' 'list of streets' and byways open to all traffic.

Andrew Knightly Brown
Honorary Chairman of LARA
March 2019

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Abbreviations & Glossary: <https://laragborg.wordpress.com/glossary/>

I. Terminology

I.1. Highways

- *““Carriageway” means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles.’ S.329(1) Highways Act 1980).*
- *““Byway open to all traffic” (BOAT) means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.’ (S.66(1) Wildlife and Countryside Act 1981).*
- *‘Unclassified road’ is a type of highway not statutorily defined, but for the purposes of this paper means a minor sealed public vehicular road recorded on the highway authority’s ‘list of streets’ as kept under the provisions of s.36(6) of the Highways Act 1980.*
- *‘Unsealed unclassified road’ is a type of highway not statutorily defined, but for this paper means a minor unsealed public vehicular road recorded on the highway authority’s ‘list of streets’ as kept under the provisions of s.36(6) of the Highways Act 1980, and which also falls within the definition in S.22BB(1)(ii) of the Road Traffic Regulation Act 1984 (as amended by s.72 of the Natural Environment and Rural Communities Act 2006): ‘a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material.’*

I.2. Vehicles

- *Cart: A strong open vehicle with two or four wheels, typically used for carrying loads and pulled by a horse. Carts as a class of traffic encompassed small horse-drawn, two-wheel vehicles. One-horse carts were common, as were light traps and gigs. The difference is that carts were mainly load carriers, and traps and gigs were people (and luggage) carriers.*
- *Wagon: A four-wheeled, usually horse-drawn vehicle with a large rectangular body, used for transporting loads.*
- *Wain: a usually large and heavy vehicle for farm use (a hay wain). Wagon and wain come from the same root. Both were heavy road vehicles, and required a strong team of horses or oxen to pull them. Wains, in the sense of ‘the common carrier’, used principal carriage roads, and often made a thorough mess of them.*

2. What is Maintenance and Repair?

- 2.1. S.329(1) of the Highways Act 1980 provides: *““maintenance” includes repair, and “maintain” and “maintainable” are to be construed accordingly;*
- 2.2. *‘Maintain’ (v): To keep up, preserve, cause to continue in being (a state of things, a condition, an activity, etc.); to keep vigorous, effective, or unimpaired; to guard from loss or deterioration (from the OED).*
- 2.3. *‘Repair’ (v): To restore (a damaged, worn, or faulty object or structure) to good or proper condition by replacing or fixing parts; to mend, fix; to bring or restore (an immaterial thing) to normal or proper condition, compensating for some form of deterioration or downturn (from the OED).*

- 2.4. Put simply:
- *Maintenance* stops problems arising.
 - *Repair* fixes problems when they do arise.
 - *Improvement* makes roads generally better and more durable than the law demands they must be, thereby embracing maintenance. Improvement is discretionary: a power of the highway authority.
- 2.5. People tend to use the terms maintenance and repair synonymously, but the distinction is important, and reflects society's shift in attitude towards public roads starting around the time of the 'General Highway Act' of 1835, and continuing with the advent of the pedal cycle, and particularly the spread of commercial and private motor vehicles in the first half of the 20th Century. Simply, when the burden for highway repair fell on the inhabitants of the parish (where the road lay), the best work done by statute labour was grudging repair to the worst defects, and not much of that. From soon after the 1914-18 War until the mid-1960s, most roads that were in use by the public with motors were progressively 'improved' with a sealed surface – a 'blacktop' – and highway authorities shifted from retroactive repair to a proactive maintenance regime. The Highways Act 1959 (the first major Highways Act update since 1835) contained the recognition of the relationship between maintenance and repair that is continued in the Highways Act 1980.
- 2.6. Highway authorities can plan maintenance, but the need for repair can be and often is unexpected: floods and hard winters are the usual culprits. Failure to maintain inevitably increases the need for later repair. This can be an important factor when it comes to highway authority and court attitudes to dealing with problems.
- 2.7. A highway that is in good enough condition for the 'ordinary traffic' that uses it is said to be 'in repair'. Sometimes it is said to be in 'good repair', but good enough condition is more a threshold than a sliding scale. A highway is either 'in repair', or it is not; if it is then the statutory duty is discharged. A member of the public might prefer that the highway should be even better, but if the highway is in repair, then 'even better' is a matter of improvement, and not of maintenance or repair.
- 2.8. 'In good repair' is laudable, but 'in sufficient repair' is good enough. But what amounts to 'in sufficient repair'? This is a question that has been before the courts many times, and examples are given in LARA Reference Document 2019.03.26.

3. Standards of Maintenance and Repair

- 3.1. *Rights of Way Circular (1/09). Guidance for Local Authorities. Version 2 October 2009.*
- "6.5 Maintenance should be such that ways are capable of meeting the use that is made of them by ordinary traffic at all times of the year. Under appropriate circumstances this might require the importation and application of suitable hard materials. Maintenance need not conform to an arbitrary standard of construction or appearance, but it should harmonise with the general appearance and character of the surroundings. Guidance* has been issued on best practice in the maintenance of byways." *This guidance is Making the best of byways. A practical guide for local authorities managing and maintaining byways which carry motor vehicles : defra December 2005).*

- 3.2. In a letter of 21 December 1998 from defra regarding surface standards on rights of way, the informal view in reply cites Circular 2/1993, “*The main consideration in determining the degree of maintenance for individual paths or ways is that they should serve the purpose for which they are primarily used and not that they should conform to an arbitrary standard of construction or maintenance. Generally speaking, they should be capable of meeting the use that is normally made of them throughout the year.*”
- 3.3. Examples from court cases are given in LARA Reference Document 2019.03.26.

4. Maintenance and Repair Fundamentals

- 4.1. The three principal Highways Acts (back as far as 1555) of the pre-motor era each set out similarly two powers and requirements, which are fundamental to keeping unsealed roads in adequate condition. These are continued in the Highways Act 1980:
- **Sun and wind.** Trees and hedges in the road, and alongside the road, must be cut back so as to allow ‘sun and wind’ to dry the road. This is maintenance because a dry road is more resilient to traffic. It is also repair, because a road open to sun and wind dries more quickly so that the passage of traffic tends to crumble the ruts.
 - **Drainage.** The highway authority has powers to drain a highway, and streetward occupiers must prevent water discharging from their land on to a highway.
- 4.2. Road engineers, from John McAdam onwards into the motor era, stress two other key matters:
- **Camber.** A road where the centre is higher than the sides will shed water. A concave road – a hollow way – will trap water and soon deteriorate.
 - **Only patch when wet, and repair when dry.** Repairs should be carried out when the ground is dry. In wet conditions, if necessary patch for the time being with coarser stone than would be used for a proper repair.
- 4.3. Highways Act 1767, continuing the requirements of the Highways Act 1555.
- x. And be it further enacted , that where the ditches, gutters, or watercourses, which have been usually made, or which are herein directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways;*
- iv. And be it further enacted, that the possessors of the land next adjoining to any highway shall, from time to time, and at all times, keep their hedges plashed, cut, or pruned, right up from the roots, so as no tree, bush, or shrub belonging to such hedge shall stand or grow in, nor any bough or branch of any such tree ... be suffered to hang over any highway, not being thirty feet broad; and that ditches, drains, or watercourses, of a sufficient depth and breadth, for the keeping all highways dry, and conveying the water from the same, shall be made, scoured, cleaned, and kept open ...*
- 4.4. Highways Act 1835.
- LXV. And be it further enacted, that if the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees ... growing in or near such hedges or other fences, and that sun and wind are excluded from such highway, to the damage thereof ...*

4.5. Highways Act 1980.

S.100 Drainage of highways.

(1) The highway authority for a highway may, for the purpose of draining it or of otherwise preventing surface water from flowing on to it, do all or any of the following:—

- (a) construct or lay, in the highway or in land adjoining or lying near to the highway, such drains as they consider necessary;*
- (b) erect barriers in the highway or in such land as aforesaid to divert surface water into or through any existing drain;*
- (c) scour, cleanse and keep open all drains situated in the highway or in such land as aforesaid.*

S.136 Damage to highway consequent on exclusion of sun and wind.

(1) If a highway which consists of or comprises a carriageway is being damaged in consequence of the exclusion from it of the sun and wind by a hedge or tree (other than a tree planted for ornament or for shelter to a building, courtyard or hop ground), a magistrates' court may by order require the owner or occupier of the land on which the hedge or tree is growing, so to cut, prune or plash the hedge or prune or lop the tree as to remove the cause of damage.

5. Cart Roads and Carriage Roads

5.1. The distinction between 'cart roads' and 'carriage roads' matters as regards maintenance standards. Both are public vehicular highways, but the distinction was a recognition of the general traffic on each type, and the expectations of travellers.

5.2. The root of the three classes of highway at common law lies in the writings of Henry De Bracton (d. 1268) as followed by Lord Coke CJ (d. 1634) in Co Litt 56a:

There be three kinde of wayes, whereof you shall (Fleta, lib. 4. cap. 27. Bracton, lib. 4. fol. 232. (1 Ro. Abr. 390.)) reade in our ancient books. First a footway, which is called iter, quod est jus vel ambulandi hominis; and this way the first way.

The second is a foot way and horse way, which is called actus ab agendo; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

The third is via or aditus, which contains the other two, and also a cart way, &c. for this is jus eundi, vehundi, et vehiculum et jumentum ducendi.

5.3. Highways historians (such as Beatrice and Stanley Webb in *The Story of the King's Highway*) say that carriages in the sense of 'coaches' – horse-drawn vehicles by which people made journeys – hardly existed in the time of Queen Elizabeth I, and that public 'stage' coaches only became practicable in the early 18th Century, as the turnpiking movement gained a hold. In the 'General Highway Act' of 1767, in s.7, reference is made to 'Waggon, Cart, or Carriage ...' and in s.11 only to 'Cartway', rather than 'carriageway'.

5.4. In the 'General Highway Act' of 1835, 'Highway' is defined (in s.5) to encompass '... Carriageways, Cartways, Horseways, Bridleways, Footways, Causeways ...' In ss. 64 & 65 (and in other sections), the reference is to 'Carriageway or Cartway', suggesting a distinction between the two, although this is not defined.

- 5.5. The use of the term 'public carriage road' is ubiquitous in parliamentary inclosure awards. The setting out of a public carriage road in an inclosure award does not, of itself, indicate that the road was or is to be surfaced to a 'carriage-worthy' standard, although many were so made. Some awarded public carriage roads are named, e.g., 'The Drift Road' (Northumberland) and 'Bolter's Drove' (Dorset) and were not required by the inclosure process to be made up, nor were they made up, reflecting their utility as droving routes. Such routes would have been generally passable with pony traps and carts, but it is unlikely that they would have been in general use by a 'gentleman's carriage', or a stage coach.
- 5.6. The term 'cart road' is not much in general use after the late 18th century and before the 20th century, other than occasionally as a descriptive and somewhat derogatory term for a very minor and neglected public road.
- 5.7. 'Cart road' seems to have come back into use widely when roads were being metalled and tarred for motor use in the period after the 1914-18 War. A cart road was a road that had been left behind by progress – left for farm carts – by people in cars and trucks, to whom the longer distance around, by the sealed road, was of no consequence. When roads were increasingly being blacktopped, even a good metalled carriage road of the pre-motor era could have looked crude in comparison, but it is important to appreciate (from half a century later) that even in the early 1960s many motor roads in everyday use still had only a stoned surface. The cars then were able to handle the potholes and ruts, and the drivers acquired the necessary skills.
- 5.8. This origin and usage became reflected in statutory practice by the National Parks and Access to the Countryside Act of 1949, and the guidance regarding the recording of roads used as public paths (RUPPs) as 'cart road footpaths' and 'cart road bridleways'. Lord Denning in Haydon v. Kent County Council [1975] 1 QB 343 grasps the distinction in form and function between a cart road and a carriage road. As a term, 'cart road' needs little if any further description.
- 5.9. Cart roads, in both the old and modern sense, are not always unmetalled. Many are stone surfaced, either with rough stone to fill holes, or originally well metalled, and repaired afterwards by the highway authority. Once their utility for farm and local motor traffic diminished, the level of repair fell accordingly, or it stopped altogether.
- 5.10. On a stone-surfaced road, in reasonable condition (which means sufficient drainage, no big potholes or washouts) then a 1960s car such as a Ford Anglia will get along it slowly but safely, and a mountain bike rider will have little problem. If the stone is blinded with smaller stones – 'fines' – then a horse and trap will get along safely, as will a roadster bicycle (i.e. a 'hybrid' in current terminology). If a pony and trap can get along safely, then so can a saddle horse. Most stone roads have grassy margins and a saddle horse can generally pick a way along these, although drainage ditches are a very real danger here. Throughout time, where roads and ways are really bad, riders have walked their horses and led their carts and traps.
- 5.11. On a grass drove or track – a cart road that has never had any stone surface – so long as it is sufficiently well drained, not affected by recent extreme weather, and not chewed up (e.g. by heavy agricultural or forestry machinery), a car with suitable tyres (tall, narrow, decent tread) and good ground clearance will get along slowly, as will mountain bikes and horse traps. Residual wetness is more of a problem to traffic and is why such roads were stoned, and later sealed.

- 5.12. Sixty-plus years ago, motor manufacturers made vehicles specifically for use on cart roads, even though most roads were by then blacktopped. The Series I Landrover is the definitive example of this, and in the motorcycle world it is the 'colonial' versions of the British 'big singles': Royal Enfield, BSA, AJS, etc.
- 5.13. If a cart road, whether stoned, or grass, is free from deep ruts and big potholes; is properly drained (which is key to road maintenance, whether sealed-surface, or not) and has the inevitable sloughs filled with an '*occasional spadeful of gravel*', then the road is generally passable, with necessary skill and care on the part of the driver, by appropriate vehicles.
- 5.14. What is an appropriate vehicle for use on a cart road in 2018? What sort of vehicle would be 'ordinary traffic'?
 - A cart, obviously; and single-horse traps and gigs, which are the people-carrier equivalents of carts.
 - A pedal cycle designed and equipped for that sort of surface: a mountain bike or a 'hybrid', with low gearing and good mud clearances; and the road cannot be so wet or rough that only an athlete has the strength to pedal along.
 - A motor car or motor cycle of the type that can reasonably get along when the road is in sufficient repair for a pony and trap, or a pedal cycle.
- 5.15. This motor traffic is 'taking the cart road as they find it', always supposing that they find it in sufficient repair for carts. As Lord Denning MR said, the public would expect to find ruts on cart roads, but not ruts so deep as to prevent passage.
- 5.16. Very wet ground conditions change the situation somewhat. Once motor vehicles became relatively numerous and of general public utility (as distinct from the pioneer motors and motorists) then there was an expectation that roads would be made 'all-weather'. This was improvement, rather than repair or maintenance, and generally involved applying a sealed surface, even if the stone sub-layers remained no better than the former cart road condition.
- 5.17. Thus where an unsealed road is periodically saturated, even inundated, due to the forces of nature rather than, say, neglected ditches, balancing the traffic to the temporary condition is more a traffic management issue than a maintenance issue.
- 5.18. Simply, on many unsealed roads, maintenance and traffic management must be employed in concert to achieve a sustainable balance of traffic.

6. BOATs: 'In Sufficient Repair'

- 6.1. Byways open to all traffic (BOAT) are a particular type of minor vehicular public highway (mainly 'cart roads' in origin) and which have statutory characteristics which might (but not necessarily do) influence the baseline condition of sufficient repair.
- 6.2. S.66(1) of the Wildlife and Countryside Act 1981 defines a BOAT: "*Byway open to all traffic*" (BOAT) means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.'
- 6.3. S.54(7) of the Wildlife and Countryside Act 1981 provides that nothing in s.54, or s.53, obliges a highway authority to provide on a BOAT a metalled carriageway or a carriageway which is by any other means provided with a surface suitable for the passage of vehicles.

Neither s.53 nor s.54 displaces the maintenance liability of a highway authority for any BOAT.

- 6.4. What of the 'mainly used ...' clause in the definition? Why is that present? It is to limit the types of public vehicular roads that can be recorded in the definitive map and statement to those with a similar 'use character' to footpaths and bridleways. A BOAT is 'conclusively vehicular' by its statutory definition. The level of maintenance that a BOAT needs depends upon its physical character, weighed together with the ordinary traffic of the neighbourhood, which uses the BOAT. There has to be a baseline below which even BOATs with little public vehicular use are out of repair. Since the origin of most BOATs (but not all: some originate from modern-era motor traffic user) is as horse-era cart or carriage roads, that is a reasonable baseline: passable with care for a horse and cart, or the motor-era equivalents.

7. Ordinary and Extraordinary Traffic

- 7.1. 'Ordinary traffic' only became an issue with the advent of 'extraordinary traffic' and the ability for highway authorities to recover the excess cost of highway repair under the provisions in the Highways and Locomotives Amendment Act 1878. 'Locomotives' were what are generally now called 'traction engines', and their increasing use and statutory regulation goes back to the middle of the 19th Century. By 1878 the use of steam locomotives to pull, e.g., heavy trailer-loads of timber was causing considerable adverse impact to macadamised road surfaces. There was a tension between the needs of commerce (good road communications for manufacture and distribution) and the burden on parish and county highway authorities. Horse-drawn traffic could also be 'extraordinary' in some circumstances.
- 7.2. Where allegations of damage by extraordinary traffic went to the courts, the court had to determine what was the character of the ordinary traffic of that neighbourhood, because ordinary traffic can change over time. In the modern context, the building of a trading estate adjacent to a residential area would change the 'baseline' for the ordinary traffic of the whole neighbourhood.
- 7.3. So, for traffic to be extraordinary it must be something 'worse' than the ordinary traffic of the neighbourhood, essentially in terms of weight and frequency. Traffic might be extraordinary on some roads in a neighbourhood, but not on others, because of the respective character of those roads, and also because potentially extraordinary traffic using certain roads can become ordinary as respects those roads over the passage of time.
- 7.4. In the Highways Act 1980, 's.59 Recovery of expenses due to extraordinary traffic' provides a mechanism for highway authorities to recover additional maintenance costs arising from the passage of, e.g., traffic excessively heavy for a particular road.
- 7.5. S.59 Recovery of expenses due to extraordinary traffic.

(1) Subject to subsection (3) below, where it appears to the highway authority for a highway maintainable at the public expense, by a certificate of their proper officer, that having regard to the average expense of maintaining the highway or other similar highways in the neighbourhood extraordinary expenses have been or will be incurred by the authority in maintaining the highway by reason of the damage caused by excessive weight passing along the highway, or other extraordinary traffic thereon, the highway authority may recover from any person ("the operator") by or in consequence of whose order the traffic has been conducted the excess expenses.

(2) In subsection (1) above “the excess expenses” means such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been or to be likely to be incurred by the highway authority by reason of the damage arising from the extraordinary traffic; and for the purposes of that subsection the expenses incurred by a highway authority in maintaining a highway are (without prejudice to the application of this section to a by-pass provided under this Act for use in connection with a cattle-grid) to be taken to include expenses incurred by them in maintaining a cattle-grid provided for the highway under this Act.

- 7.6. Could present day ‘recreational traffic’ be held to be extraordinary? This provision might extend to the use of a heavy motor vehicle on an unsealed, or wholly ‘dirt’, road, where the weight and traction of that vehicle is excessive in comparison to ‘ordinary vehicles’, but there is no record of this ever having been tried by a highway authority on a BOAT or unsealed unclassified road as regards ‘recreational traffic.’
- 7.7. Examples from court cases are given in LARA Reference Document 2019.03.26.

8. Disturbance of the Surface of Certain Highways

- 8.1. S.131A of the Highways Act 1980 (inserted by s.1(2) of the Rights of Way Act 1990) provides:

(1) A person who, without lawful authority or excuse, so disturbs the surface of—

(c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,

as to render it inconvenient for the exercise of the public right of way is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(2) Proceedings for an offence under this section shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed; and, without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to ensure that where desirable in the public interest such proceedings are brought.

- 8.2. In 2011 DEFRA was asked:

“What does ‘inconvenient for the exercise of the public right of way’ mean? ‘Inconvenient’ must surely be something short of ‘obstructed’, or ‘out of repair’, or there would be overlap and duplication of provisions. So what is the far limit of ‘inconvenient’? How many prosecutions have there been under s.131A since 1990?”

The reply does not take the understanding of this provision very much further.

“[You ask] for an unofficial view on the interpretation and application of s.131A of the Highways Act 1980, which the marginal heading describes as addressing ‘disturbance of surface of certain highways’. The short answer is that we do not know: s.131A was inserted by s.1(2) of the Rights of Way Act 1990. It may well have a fairly limited application as you imply, the extent of which has yet to be tested in the courts. However, I do not think we can add to your own conjecture on the point.”

- 8.3. There is no record of a prosecution under s.131A as regards traffic on a road.

9. Summary of Key Points

- 9.1. **Maintenance & management.** Maintenance and repair of unsealed roads cannot cope alone in places, particularly where the ground tends to hold water, or is susceptible to flooding. Historically, if such a road was of high general utility, then it would be improved - ultimately to a sealed surface - so as to make it durable and more usable. Much of the attraction and charm of unsealed roads comes from their remaining unsealed. Where the road is vulnerable to traffic impact, then traffic management may be necessary to establish and hold a balance between traffic and maintenance. There is a balance between the character of a road and the character of traffic using it.
- 9.2. **Maintenance & repair.** Maintenance stops problems arising. Repair fixes problems when they do arise. Improvement makes roads generally better and more durable than the law demands they must be, thereby embracing maintenance. Improvement is discretionary: a power of the highway authority. Highway authorities can plan maintenance, but the need for repair can be and often is unexpected: floods and hard winters are the usual culprits. Failure to maintain almost inevitably increases the need for later repair.
- 9.3. **Baseline condition.** A cart road (whether stoned or unmetalled) is in repair when it is free from deep ruts and big potholes, properly drained (which is the key to road maintenance, whether sealed-surface, or not), and has the inevitable sloughs filled with an 'occasional spadeful of gravel'. Roads in this condition are generally passable, with appropriate skill and care on the part of the driver, by appropriate vehicles. If it is good enough for a pony and trap, then it is usually good enough for a saddle horse. Historically, cart roads were never particularly well maintained. Ruts, some sloughs and rills, and broken surfaces, are characteristic of cart roads. That is the baseline for maintenance standards.
- 9.4. **Ordinary & extraordinary traffic.** This provision might extend to the use of a heavy motor vehicle on a metalled-unsealed, or wholly 'dirt', road, where the weight and traction of that vehicle is excessive in comparison to 'ordinary vehicles', but there is no record of this ever having been tried by a highway authority on a BOAT or unsealed unclassified road as regards 'recreational traffic.' It is not a magic bullet due to the complexities of enforcement.
- 9.5. **Link with traffic management.** Some unsealed roads, even where reasonably maintained, are by their nature going to be vulnerable to impact from heavy traffic. Even ridden horses can make some bridleways impassable to walkers. There has to be a balance struck between maintenance and traffic management, and this has to be weather-event-responsive, rather than just impact-responsive.
- 9.6. **Drainage is key to the maintenance of unsealed roads.** Without good drainage wet roads will remain vulnerable to erosion and disturbance.
- 9.7. **The beaten track.** Without traffic doing some beating, there is no 'beaten track'. Ancient hollow ways exist and have survived because ongoing traffic eroded the ground, made the hollows and keeps them clear. A sustainable level of vehicular traffic is maintenance in itself, over years.
- 9.8. **Volunteer involvement.** Highway authorities need to engage user groups more in voluntary work repairing and maintaining unsealed roads, even if just simple removal of encroaching vegetation. Basic hand-tool maintenance and repair can stop or alleviate water damage before it really gets a hold. In this age of local authority spending cuts, the voluntary sector will have

to step up and take on planned and occasional repair and maintenance, whether this is part of a formal scheme, or immediate direct action on a problem.

Reference Documents

The Reference Documents listed below are all available from the LARA website. The web links are to the version of each Reference Document current in March 2019. If the web link generates an error message, the most likely reason is that the Reference Document has been updated. Go to <http://laragb.org> select 'Reference Documents', and follow the links or use the *Search* facility.

LARA Reference Document 2019.03.26 Surface Standards for Unsealed Public Roads The View of the Courts.

http://laragb.org/pdf/LARA_20190326_SurfaceStandardsCourtsView.pdf

Gravel Roads Construction & Maintenance Guide. US Department of Transportation. Federal Highway Administration

http://laragb.org/pdf/USDoTFHA_20150800_GravelRoadsGuide.pdf

A Ditch in Time: An owner's manual for those who live and travel on dirt and gravel roads. Russ Lanoie, 2014. This includes a set of guidance notes on maintenance and repair of gravel roads from a small business in New Hampshire, USA. Although 'proper' gravel roads are uncommon in England, the advice on drainage, ruts, and water damage, is useful.

http://laragb.org/pdf/LANOIE_20140000_ADitchInTime.pdf

Making the best of byways. A practical guide for local authorities managing and maintaining byways which carry motor vehicles. December 2005. This government guidance contains what is still the best available advice on method and approach, with examples.

http://laragb.org/pdf/DEFRA_200512_MakingTheBestOfByways.pdf

Ancient Road Conservation Volunteers. Pockstones Moor Project 2000 & Scar House Project 2000. Daletrax. Practical how-it-was-done examples of voluntary group-led repair initiatives.

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