

The Accurate Recording *or Otherwise* of
Public Roads and Rights of Way:
The case for a single digital record
accessible to the public online.

Let the public see all the highway records well before 2026.

There are already regulations in place requiring all highways to be shown on Local Street Gazetteers (LSGs) but they are being ignored by many Highway Authorities (HAs) who only show highways on the Definitive Map (DM) and List of Streets (LoS).

Stakeholder Working Group (SWG) recommendation 25 recognises LSGs and provides a simpler method of recording highways but it will need advice and direction from DfT to Geoplace/Ordnance Survey (OS) and HAs to be implemented.

A public footpath terminating on a unrecorded road used by the public and shown on OS maps as a "white" road



This paper records the information discovered by a sub group of Herefordshire Local Access Forum (HLAF) set up to consider how best to deal with "Lost Ways".

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Contents

1 Executive Summary.....	Page 4
2 The Duty to Compile a List?	Page 5
3 Why Public Access to Records?	Page 7
4 LSG or SWR and Geoplace	Page 9
5 What Needs to be done now?	Page 11
6 A potential role for LAFs?	Page 11
7 The Scale of the Problem	Page 12
8 Background and History	Page 13
8.1 The List of Streets.....	Page 15
8.2 The Definitive Map.....	Page 17
8.3 The Local Street Gazetteer.....	Page 19
8.4 The Street Works Register	Page 21
8.5 Land and Property Gazetteer (L&PG)	Page 22
8.6 Land Registry	Page 24
8.7 OS Integrated Transport Network (ITN/Master Map).....	Page 26
9. Relationship Between DMS and LoS	Page 28
10 Conclusions	Page 30
11 Definitions	Page 31
12 References	Page 32
13 Appendices	Page 33

1. Executive Summary

The recording of public roads, including rights of way, their status/access rights and their maintenance liability is inaccurate, incomplete and the results are not always readily accessible by the public. It is also an ongoing drain on public resources and it presents an opportunity for substantial savings.

This is an enormous problem and has an effect on all rights from footpaths (many of which currently terminate on white roads) through bridleways, byways to roads themselves.

The fear of additional maintenance liability within many Highway Authorities (HAs) causes them to hide the truth from the public. (See appendix 6 for an example). It results in some Councils employing separate IT teams, at additional cost, on the various records required by law (as set out in this paper) in order to avoid recognising, in particular, privately maintained roads with public rights of access.

In some cases it is virtually impossible for users or landowners to make changes to the records, where it seems that the system is contrived to be overly bureaucratic and expensive. Many HAs have developed a culture that is very resistant to making changes even though they have a duty to do so.

"The incompleteness of the legal record of public rights of way has been a contentious subject for many years. The Countryside and Rights of Way Act 2000 sought to address this. It provided for a 'cut off date' in 2026, so that unrecorded pre 1949 public rights of way would cease to exist if not specifically preserved by regulations." Ray Anderson, Chairman Stakeholder Working Group (SWG)

The DfT Mapping Project (appendix 2) announced on 25th Feb 15 to "transform road improvements and maintenance" can be seen as a once in a lifetime opportunity. This opportunity would be cost saving. We also note that to an extent (that varies by County) a single digital record already exists as the LSG/SWR (see Definitions 11.4/11.5) but some HAs are claiming incorrectly that the LSG is not viewable by the public.

It is therefore proposed that:

PHASE 1: DEFRA should join with DfT to ensure all existing highway mapping systems become layers on the same OS: ITN/MasterMap (See 8.7) base maps and be available to the public online as a first step towards future rationalisation of highways records. Note: The simplest way to add unrecorded rights to the records is for HAs to add them to the Local Street Gazetteers or Street Works Registers. Regulations already exist requiring them to do so but they tend to hide behind the words "Private" and "Aware" and refuse to recognise the existence of highways privately maintained but with public access.

HAs claim they cannot record highways if they do not know what rights exist but if a highway exists it should be recorded. Common law has established that a highway is a defined route over which "the public at large" can pass and repass as frequently as they wish, without hindrance and without charge. The use must be as of right and not on sufferance or by licence. If that circumstance exists, the highway is a known, the rights may be unknown and the **known-unknown** should be recorded.

PHASE 2: Once a single digital record publically accessible is achieved there should be review from the bottom up. Community Volunteer Groups or LAFs

should be encouraged to check the accuracy of records for their area and propose necessary changes, under Government Guidance.

Official Guidance should also be given to the Ordnance Survey, whose recording of highways (and therefore where public rights exist) has relied far too often on unverified and subjective assessments, without an opportunity for such records to be properly examined or corrected.

Note: Parliament has provided two main methods for recording our highways :-

(A) For HAs to assert their authority and secure registration on the LSG of all that they are aware of, which would mainly be our roads, whether or not maintained at public expense, and our man-made paths, and

(B) For public rights of way which would mainly comprise paths over private land, a costly and long-winded DMMO (Definition 11.6) process.

Maximum use should be made by our HAs of (A) above, otherwise with the clock ticking to 2026 cut-off, there will be tens of thousands of DMMO claims submitted to HAs, each of which is estimated to cost up to £10,000 to process. Successful DMMO claims may create additional maintenance liabilities for HAs, whereas registering unadopted 'white' roads as 'private streets carrying public rights' they can record the highways properly without the maintenance liability. Working as team rather than individual Highways and PRow departments and IT teams, by maximising use of their existing duties, Highway Authorities will achieve substantial staff cost reductions.

2. The Duty to Compile a List

HA's have a duty to compile a list of 'Every street, of which the local highway authority are aware, which is a highway but for which they are not the street authority' and secure its registration in the LSG, reference section 4(5) of the 'The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007' copied below :-

The HA would be expected to assert its authority in conformance with its duty under s.130 (1) of the 1980 Highway Act, also copied below, in compiling this list.

This list could be expected to include amongst others, depending upon procedures followed when raising the highway records :-

- a) all roads linking our public paths with our maintained roads and mentioned on path written statements as being a road to which a path connects, and
- b) all roads submitted by parishes in 1950s but not shown, as believed to be outside scope of DM, and
- c) all roads submitted by parishes but shown on DM as winter paths, and
- d) all roads on the OS ITN, that being a professional survey.

In addition the HA could also consult with parishes, users groups and the public, seeking information, and may raise a protocol for that purpose.

The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 Section 4(5)

(5) The information with respect to other descriptions of works and other matters to be shown on the register and, in each case, the person responsible for securing its registration are specified in columns (1) and (2) respectively of the following Table.

Table

<i>(1)</i> <i>Information</i>	<i>(2)</i> <i>Person responsible for securing its registration</i>
1. Every street for which the local highway authority are the street authority.	The local highway authority.
2. Every street which is a prospectively maintainable highway.	The local highway authority.
3. Every street, of which the local highway authority are aware, which is a highway but for which they are not the street authority.	The local highway authority.

Highways Act 1980

130 Protection of public rights.

(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

3. Why should the Public have Access to Records?

The Local Street Gazetteer which comprises a single digital highway record; called the Street Works Register in the legislation; is raised in conformance with s.53 of the 1991 New Roads and Street Works Act, with subsection 3 saying the authority shall make the register available for inspection by any person, at all reasonable hours and free of charge. The Regulations specify that the local highway authority shall be responsible for securing the registration of:

- 1) every street, for which the local highway authority are the street authority
- 2) every street, which is a prospectively maintainable highway, and
- 3) every street, of which the local highway authority are aware, which is a highway but for which they are not the street authority, i.e., our unadopted 'white' roads termed 'Private Streets carrying public rights'.

The LSG software provides for the input of code 1, Publicly maintainable, code 2, Prospectively maintainable, and code 3, Neither 1 or 2. The defined scope of the LSG has been extended since 1991 by BS7666 and other guidance and now includes Private Roads, they falling within code 3. The software is presently being updated, which was subject of consultation, with a representation and response being :-

Distinction needs to be made between private streets with public access and private streets with no public access as these are core requirements of New Roads and Street Works Act 1991 (NRSWA), with response being that a combination of codes in the maintenance responsibility and the dedication rights indicate private streets that are public accessible or have no public access.

The published schedule for introduction of the new software is :-

The date of implementation is from: Wednesday 1st April 2015 for software testing against NSG DTF8.1 v2 compliance checks. From 1st June 2015 GeoPlace will accept data in DTF8.1 v2.09 from all Highways Authorities. The compliant data will be published on the NSG website from July 2015. All Highway Authorities must have moved over to the use DTF8.1 v2.09 by Wednesday 30th March 2016. From this date DTF7.1 data will no longer be accepted and published on the NSG website. Only DTF8.1 v2.09 data will be published from May 2016 onwards.

It is noted that the date by which all Highway Authorities must have moved over to the use of the new software corresponds with the date by which the Deregulation Bill Regulations and Guidance are scheduled to be released, i.e., April 2016.

A recent government publication advises that a £3 million grant has been made to Ordnance Survey to combine the OS ITN with the HA LSG's. OS have good coverage, surveyed to professional standard, and this is seen as being a major step forward leading to a good quality single digital highway record, they having surveyed our unadopted 'white' roads and also urban paths, i.e., have included man-made paths that are not on the Definitive Map. Indeed the OS ITN information says "Some highway authorities have used the ITN Layer to create a baseline LSG."

However the OS ITN information also says :-

The definition of public and private roads on Ordnance Survey products has traditionally been based upon an assessment of the accessibility and nature of the road by the data collector. Normally no formal enquiries surrounding

ownership and/or responsibility for maintenance were made. In recent years Ordnance Survey has received feedback from local authorities, via the Department for Transport (DfT), indicating if any roads need to be reclassified from public to private or vice versa. Where these do not clash with Ordnance Survey specification such changes are incorporated into Ordnance Survey vector roads products, such as OS MasterMap Integrated Transport Network Layer (ITN).

The OS ITN is viewable by Parish Councillors under PSMA licence (Ref 12.6) , and LAF members under the terms of the HA's PSMA licence, but expensive software is required. OS define 'Private road – restricted access' as a privately maintained road or a road within a property boundary where access by the public is restricted by physical (for example, gate) or administrative (for example, sign) means or is not considered usual. For example, roads within a military base, an oil refinery, within a private residential garden or leading to two private properties. Examination of a few extracts that have been obtained, with questions asked of OS, has identified that OS have designated 8,000 roads in Herefordshire as 'Private Road – Restricted Access', contrary to the definition in the published OS ITN Technical Specification due to OS concern about use by vehicles, and not usage by any other mode of transport such as pedestrian, cycling or horse riding !

This has not till now given our HA's any problem, and with the OS ITN not being readily viewable by public or user group resulted in OS not getting any complaints.

But our HA's now have to differentiate between private streets carrying public rights and private roads which causes us to be concerned that our HAs may register our unadopted 'white' roads as 'Private Road – Restricted Access' in line with the OS ITN, seeing that as being a professional survey and the most convenient source of information.

So the question is, what steps ought we take, seeking :-

1. All roads identified by OS ITN to be on the LSG, and
2. Only those that are private, i.e., satisfy the OS ITN published definition, are shown as private, and
3. That the LSG be published online by April 2016 when Dereg Bill procedures are due to come into effect.

4. LSG or SWR and Geoplace

Geoplace LLP is company set up by Local Gov Association/OS to manage the transition to a single digital highway record. It has the following aims and objectives:

Aims and Objectives

GeoPlace brings together local government's address and streets gazetteers; the National Land and Property Gazetteer (NLPG) and the National Street Gazetteer (NSG), with all of Ordnance Survey's addressing products; ADDRESS-POINT® and OS MasterMap® Address Layer and Address Layer 2.

The National Address Gazetteer will contain the existing unique identifiers for the definitive street name and number, generated by local authorities with the postcode from the Royal Mail and a link to the map base from Ordnance Survey, through the OS TOID® and grid reference. The data will use the unique property reference number (UPRN) and unique street reference number (USRN) in the NLPG as the primary keys.

This will allow local government and central government users to pass better quality definitive address details between themselves and to other organisations in an efficient and cost effective manner. It will also enable the many hundreds of organisations throughout government who use addresses on a daily basis to make savings by eliminating the losses they sustain as a result of addresses in existing datasets being inconsistent, incomplete, duplicated or the simple fact that the address no longer exists and has therefore become an historical address. The links between existing unique identifiers and the UPRN will enable many existing and legacy systems to be linked and receive a single definitive address feed - the National Address Gazetteer.

They have also stated the intention to include the addition of public rights of way to the records.

Now the LSG is the local version of the NSG, the data prepared by your local HA to feed into the national version, the NSG

(<http://data.gov.uk/dataset/national-street-gazetteer>) The UK Gov Data web site states:

The NSG is the definitive reference dataset of streets within England and Wales used for street works, highways maintenance and traffic management. In line with British Standard 7666(2006) the NSG is regularly updated by all 174 highway authorities with Additional Street Data (ASD) such as road centre lines, ownership details, level of reinstatement required, height weight and width restrictions and direction of travel.

So our conclusion is that Government deems the LSG /NSG and SWR as one and the same document, the data based on BS7666, collated locally into national data. However there is a practical problem: The SWR is viewable by the public, but many HAs claim the LSG is not, how can that be when Nationally they are one and the same?

The Act (New Roads and Street Works Act (1991)) requires HAs to include;

- motorways
- classified principal streets including trunk roads and other classified numbered streets
- other publicly maintained unclassified numbered streets
- prospective publicly maintained streets
- private streets known to the highway or roads authority
- cycleways
- remote footpaths
- subways that are publicly maintained
- maintained or metalled footpaths.

Note: **private streets known to the highway or roads authority.** (The regulations make it clear that these are highways they saying 'Every street, of which the local

highway authority are aware, which is a highway but for which they are not the street authority.)

HAs do not want the public to see this information. (Reference 12.8)

As a result the Authors County has produced two digital records and tried to keep them separate as, in their view: **LSG not viewable by the public** and **SWR which is**. LSG includes private streets, SWR does not! The SWR is in effect only the LoS.

Confused? We are!

The existing data guidance for Geoplace has three designations:

1. Public maintainable
2. Prospectively Public maintainable
3. Neither of the above

Geoplace has recognised that code 3 needs to be divided into;

3A Private and Privately Maintained

3B Privately maintained carrying public rights (term used by SWG in proposal 25) (Actual terms yet to be announced)

However we remain concerned that most HAs **will not** recognise this distinction without Government instruction from a combination of DEFRA and DfT, and thinking LSG is not viewable by the public may designate as 'private and private maintained', that being OS professional finding and recorded on the ITN as 'private road - restricted access'.

5. What Needs to be done now?

DEFRA and DfT accept the need for action and produce the necessary guidance to HAs and Volunteer Groups

LAFs and other User organisations should consider setting up a local group to research Parish by Parish. Look at a few white roads local to you and see how, if at all they are recorded

6. A potential role for LAFs?

With these matters of fact established we considered just who was the advisory body, and concluded that Local Access Forums (LAF's) have been given that role.

So we propose that :

HAs ought make all highway records viewable online, viewable together, whether that be the SWR, or a combination of DM/LoS/SWR/LSG layers, depending upon what is available, enabling gaps, anomalies, etc., that require attention to be viewed, and this requirement ought be included by Defra and DfT in Guidance to HAs.

Our LAF's ought to inspect our highway records, checking that they show roads, public rights of way, cycleways, etc., and that they are viewable by the public, raising any appropriate advice should that not be the case.

The National software for the LSG's should be reviewed to provide for differentiating between highways (ie public) not being maintained at public expense and roads that are not highways (ie private). We are however pleased to be informed that this has been undertaken and is included in LSG update reference <http://www.geoplace.co.uk/geoplace/document.htm?targ=1330> with HA's to implement this between June this year and April 2016. Publication of updated DEC (Ref 12.7) with further information regarding this is scheduled for end April.

LAF's ought to inspect the OS ITN checking on use of the term 'Private road – Restricted Access' and advise the Minister should inappropriate use be identified, advising the Minister of the importance of this, its present use contrary to the Technical Specification being totally unacceptable, requesting that it be reviewed and HA's advised that registering roads on SWR/LSG as private roads due to use of this term by OS is not acceptable.

OS have raised an ITN Urban Path layer, this layer showing man made paths, cycleways, and the like, which are often not shown on the Definitive Map. LAF's could usefully advise our HA's that they ought be shown on the SWR's, that being a low cost procedure, and also to advise the Minister that it would be beneficial if OS could extend this layer to cover our rural areas also, or failing that that our HA's could save costs be registering similar rural area paths on the SWR in place of use of the Definitive Map costly procedures. Our LAF's, aided by our user groups, the public and parishes, should review progress in completing and correcting the SWR, with target completion date of April 2016 being scheduled date improved procedures for registration of unrecorded public rights of way come into effect, advising the HA's of any issues they ought be aware of, and advising the Minister of any failings or HA excuses.

User groups should raise guidance for our LAF's, equivalent to the Ramblers Blue Book, going into further detail as found to be required.

7. The Scale of the Problem

For those localities where the highway records are of good standard and viewable online by the public the task of identifying and recording unrecorded paths in conformance with the SWG proposals and Dereg Bill is reasonable and can be expected to be achievable, but in other localities where the highway records are of poor quality, not viewable online by public, that task is seen as being unrealistic and unachievable, the task of bringing the highway records up to a good standard dominating and detracting from the task of identifying and recording unrecorded paths.

For example we have House of Commons Library Report SN/BT/ 402 dated October 2010 advising that there are 40,000 unadopted roads in UK, and with the LSG software not yet able to designate these as 'Private Streets carrying public rights', the rights over these have yet to be determined. Many of these exist in Herefordshire, the survey being advised by the Council Clerk (appendix 5) that roads should not be registered on the Definitive Map.

In Herefordshire we are advised by Ordnance Survey that they have designated 8,000 roads as 'Private Road – Restricted Access' and when questioned further we are advised that this is contrary to the published OS ITN Technical Specification definition due to OS concern about use by vehicles, and not usage by any other mode of transport such as pedestrian, cycling or horse riding, yet this even includes sealed surface roads maintained at public expense, with this yet to be sorted out.

Herefordshire also have a 47 page list of several hundred anomalies, with these yet to be sorted out.

Herefordshire is also a county that in preparing the Definitive Map showed its CRFs (defined in guidance as 'Highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths') as footpaths, and their CRBs as bridleways, rather than as 'Roads used as public paths'. Not being recorded as RUPPs they have not been 'Reclassified', and remain as 'Footpaths' and 'Bridleways', (both without prejudice to higher rights over them) , to the detriment of users of higher rights, with this is likely to be a major cause of lack of equestrian routes in the county, as many green lanes submitted as CRF were then recorded as footpath, with this yet to be sorted out.

The now defunct DEFRA Lost Ways Project has been replaced by the SWG proposals. This project estimated there were 20, 000 "lost ways" in England and Wales.

There is no doubt there are many tens of thousands of unrecorded highways and with addition of the errors, omissions and anomalies, **the number of problems must run into six figures.**

8. Background and History

The history of public roads and rights of way has resulted in a highly complex and unsatisfactory legal situation.

There is a series of overlapping legal documents and maps, but also gaps between them, leaving tens of thousands of ostensible public rights of way not properly recorded or in many cases incorrectly recorded. Some of the information is available to the public but not all, and what is too complicated to correct. Consequently the errors and omissions persist. Furthermore the situation is counter-intuitive with public rights, private rights, ownership, maintenance liability, maintenance rights being almost independent of each other but few among the public understand it (not unreasonably) . All this is aggravated by a culture of secrecy in many HAs, under fear of additional burdens.

At present, the key documents are:

- 1. The List of Streets (LoS)**
- 2. The Definitive Map and Statement (DMS)**
- 3. The Local Street Gazetteer (LSG) and National (NSG)**
- 4. The Street Works Register (SWR)**
- 5. Land and Property Register (L&PR)**
- 6. OS Maps an OS Integrated Transport Network (ITN/Master Map)**
- 7. Land Registry**

Public roads have for centuries been maintainable by the community and for 280 years after the Highways Act of 1555, it was a requirement for every parishioner to provide four (later six) days labour per annum but as trade and travel developed the system became unfair with certain Parishes having busy roads through their community. In 1654 parishes were empowered to levy a rate for road maintenance to supplement the statute labour provisions. Despite this, road standards and conditions were variable and usually poor and there was no coherent network of main roads, as the parish efforts were geared to addressing local problems. The solution initially was Turnpike Roads, toll roads where the traffic paid for the upkeep and by the peak there were 32,000 kms of road but this system too was unable to cope with the growing demands of the industrial revolution when income reduced due to canals and railways.

The Highways Act 1835 placed a duty on parish surveyors to maintain roads in the parish, funded from a rate levied on local landowners. It also introduced rules of conduct, including keeping to the left of approaching traffic.

As a result of the 1835 Highways Act all roads became public maintainable, except those that were by law privately maintainable, and with safeguard requiring all roads constructed after 1835 to be brought up to adoption standard.

Turnpike roads gradually disappeared, some turning into Main Roads by the 1880s. The last turnpike was 1890s. In the 1870s and 1880s some attempts were made to improve the administration of roads with the rating responsibility switched from parishes to districts in 1878. Highway Boards formed in consequence of 1864

Highways Act. Central Government provided no aid until development and road improvements funds act 1909 – introduction of road tax, levied on motorists to construct and improve roads for motorists. Consequently by the 1880s, after fifty or so years of neglect, the condition of the national road system had deteriorated to the point where Parliament recognised that it had to take steps to provide some sort of remedy by passing the 1888 Local Government Act which transferred the responsibility for main roads to the newly created County Councils. Main roads (which became known as county roads) passed to County Councils in 1888 but not minor roads (district roads) and public paths.

Rural roads were handed over in 1929 and in many areas the 1929 "Handover Maps" may still exist in the local records office.

Note it is a fundamental legal principle "once a highway always a highway". Closure requires a legal event, normally a Magistrates Order.

8.1.The List Of Streets

The Highways Act 1980 36(6) consolidated the requirement for every highway authority to make and keep up to date , a 'List of Streets (LoS) maintainable at public expense' and make it available to the public. This requirement is a duty, they must do it, they have no alternative. But, the records are often kept by maintenance staff who have no idea of the legal aspects, amended with no process, no provenance, no audit trail, no accountability.

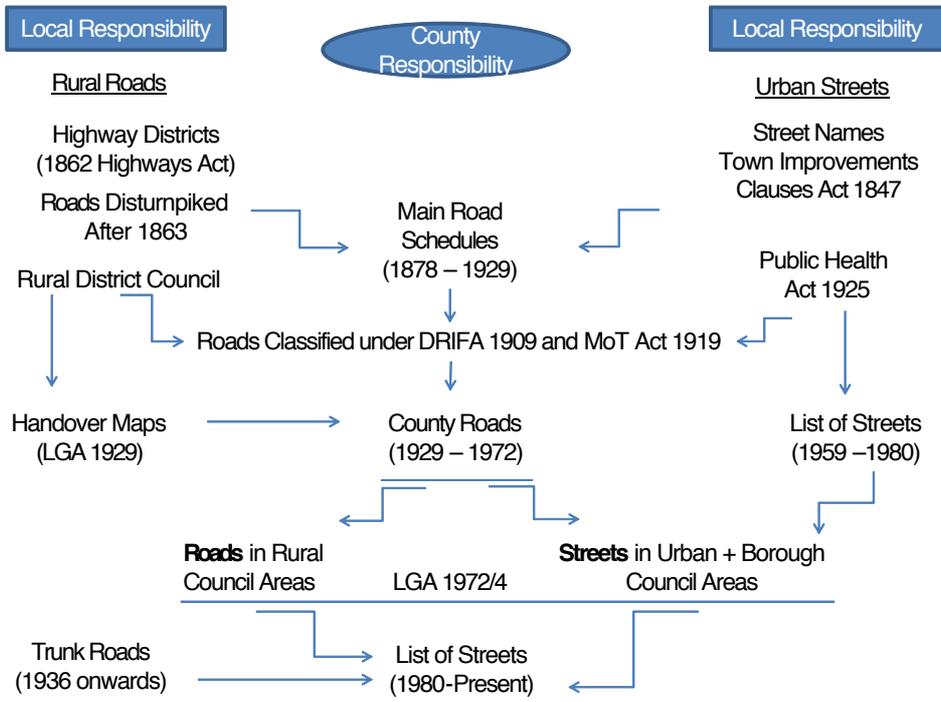
There is a reasonable assumption that routes on the LoS are highways, but there is no requirement to keep the 'list' in a particular format, and there is a range of diverse approaches to this duty. The 'official' record may be a list, in road name order, with minimal detail (which is no help for those many highways which have no name), or it may be a map, drawn on an elderly OS base, with additions and deletions in pencil, only a few of which are dated. There may be several conflicting versions within an authority, or there may be none. Some have been digitised.

The list does not (usually) include highways which are not maintainable by that HA, for example motorways and trunk roads (Highways Agency maintenance), highways privately maintainable, and highways not maintainable (ie, those which there is no liability on anyone to maintain). Note Motorways are "special roads" with no requirement to show them on the LoS.

Street is defined in Section 329 Highways Act 1980 as including "any highway and any road, lane footpath, square, court, alley or passage" so the list must therefore contain all footpaths, bridleways and carriageways which are maintainable at public expense. However the majority of HAs DO NOT INCLUDE ways already included on the DM, although there can be some overlap, mainly due to the history of RUPPs. (see dual status below).

The LoS only defines ways that are "maintainable at public expense", it does not confer rights that may or may not exist. Historically, it was the "list of carriageways" which by definition would now be vehicular routes, however as some HAs have subsequently added "footpath, square, court, alley or passage", it is no longer the case that 100% of ways on the LoS are vehicular, which creates doubt on all routes that are not obviously tarmac roads. The origins of the content of the LoS, especially with respect to rural roads, is very complex. It essentially dates back to the Parish Surveyor of Highways records and returns to Quarter Sessions, this is then followed/ overlapped with turnpike records, Highway District Surveyor, and then the Highways Board records of the 1860s. From 1878 we have Main Road schedules and Ordinary Highways – the first major classification of the network.

The Government Department which oversees the roads and the List of Streets comes under DfT.



8.2.The Definitive Map

The rise in leisure time and disposal income through the 20th century led to a demand for public access to the countryside characterised by the mass trespass on Kinder Scout which led to the formation of the Ramblers Association. The paths and bridleways once used to get to work and church were being used for recreational purposes too.

Government recognised the need to legislate to clarify where public access did exist and the result was The National Parks and Access to the Countryside Act 1949.

Along with later amendments and additions this requires Surveying Authorities (county and metropolitan councils, except in London) to set up and make available a Map showing some rights of way. The routes shown on what became known as 'The Definitive Map' covered footpaths and bridleways, and some minor roads. Local sections of this Map are required to be available in local council offices. The vehicular ways are now recorded on the DM as Byways Open to all Traffic (BOATs), with a presumption that they do not have a sealed surface. However some have been surfaced, in many cases they are indistinguishable from unclassified roads, with a conventional sealed tarred surface, and used by delivery vehicles etc. Yet one is DEFRA the other DfT!

The DM submissions were produced initially by Parish Councils around 1950, marking up maps showing what they believed to be footpaths and bridleways for submission to the HA, many of which terminated on unsurfaced roads that at the time were accepted as public roads, but were not always on the List Of Streets but they could not be added to the DM due to the guidance issued at the time (see Appendix 5), no roads could be included. In a few cases they reused the maps produced in the 1930s following the Rights of Way Act.

Often the mapping was hand-drawn on base-map derived from 1930s or earlier using drafting lines which scale to 30ft width so very poor precision. The lines also obliterate base-map features. The Map and Statement may conflict over position, junctions, even status.

At that time there was no requirement to have a LoS for rural roads. Also bear in mind that many of the roads were privately maintainable even though they were public carriageways. Repairable - Ratione Clausurae, Ratione Tenurae or by prescription.

With the degree of deference (among other factors) that existed at the time is not surprising that many large landholdings are devoid of recorded public rights of way.

The routes marked by the Parishes were often incomplete or inconsistent with claims in adjoining Parishes'

It was supposed to be a record of public rights which existed even where they had fallen out of use or no trace was left, but the parish surveyors tended to concentrate too much on what was currently in use, or what they felt would be useful and omitted historical but no longer used ways out of ignorance, carelessness or wilfulness

Then OS convention may have recorded a path as a straight line between the identified end points. In some editions of guidance that where a path was not made-

up it should be drawn straight between the stiles or gates. When the mapping was created, this line was used as the official route, even though the 'straight line' meant that users were expected to cope with bogs, limestone pavement, cliffs and ravines. There are also examples where the surveyor or the map drafter has joined the dots incorrectly across a field with multiple paths crossing it.

The HA has a duty to keep the DM under review.....but they don't! Many Surveying Authorities appear to have an undeclared policy to respond only to formal DMMO claims by the public (and even then to push Byway claims to the bottom of the pile).

The Government Control over roads and the List of Streets comes under DfT but the control over rights of way and the Definitive Map and Statement comes under DEFRA.

8.3.The Local Street Gazetteer

Extract from www.thensg.org.uk:

About the National Street Gazetteer

The NSG is a centralised unique referencing system, designed to improve the relationship between local authorities and utilities. Its fundamental aim is to make the street works process more convenient to the citizens who use them.

Streets are part of the country's infrastructure through which many citizen centred services are provided. Consequently there are a range of street related issues such as congestion, capacity planning, street works, accidents, incidents and maintenance which affect them. A core dataset which records all of these issues, and their attributes is essential.

The National Street Gazetteer (NSG) is the definitive reference system used in the notification process and the coordination of street works. Under legislation, each local highway authority in England and Wales is required to create and maintain its own Local Street Gazetteer (LSG) and Associated Street Data (ASD). These are then compiled into the only master index built to the national standard BS 7666, for access by a number of other organisations via the NSG online hub and managed by GeoPlace.

Required under the New Roads and Street Works Act (1991), the NSG contains more than 1 million streets. It is an unambiguous referencing system, using Unique Street Reference Numbers (USRNs) to identify any length of highway or road in England and Wales. Set up initially to improve highway maintenance, the NSG enables local authorities to coordinate activities and the utilities to know where and when to dig holes.

On a monthly basis, all 174 highway authorities across England and Wales upload their LSGs, along with ASD, to the NSG hub. This enables third party organisations such as public utilities to meet their highway statutory requirements to provide the appropriate street works notifications. Local authorities are required to provide monthly updates.

The legislation requires that all publicly maintained highways, prospective publicly maintained roads, as well as private roads are recorded in the National Street Gazetteer.

The following types of streets are included in the NSG:

- motorways
- classified principal streets including trunk roads and other classified numbered streets
- other publicly maintained unclassified numbered streets
- prospective publicly maintained streets
- private streets known to the highway or roads authority
- cycleways
- remote footpaths
- subways that are publicly maintained

- maintained or metalled footpaths.

Extract from Government data web site:

<http://data.gov.uk/dataset/national-street-gazetteer>

National Street Gazetteer

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Openness rating: _

Provider: GeoPlace LLP

Responsible Party: GeoPlace LLP (owner)

Mapping



The NSG is the definitive reference dataset of streets within England and Wales used for street works, highways maintenance and traffic management. In line with British Standard 7666(2006) the NSG is regularly updated by all 174 highway authorities with Additional Street Data (ASD) such as road centre lines, ownership details, level of reinstatement required, height weight and width restrictions and direction of travel.

National Street Gazetteer(NSG) is required under the New Roads and Street Works Act. There are over 300 organisations, utilities such as gas, water and electricity, BT, plus cable and communications companies, named as 'Statutory Undertakers' approved by the Department of Transport to download this data, which conforms to the BS7666:1-2000 Standard.

The issue here is that BS7666 requires streets that are not highways be included, presumably for addressing purposes and emergency vehicle info, so not all recorded streets may be used by public. To add to this is a national software program that does not enable differentiation between 'private streets carrying public rights' and 'private use roads', i.e., proposal 25 of NE SWG cannot be complied with.

(This anomaly is being addressed, we understand, with new software to come into use June 2015.) To add to this, it is not viewable by the public.

We think LSGs and the consolidation into the NSG is the same basic mapping information used for the SWR. In addition the same data goes into the Land and Property Gazetteer (L&PG).

However there is a subtle difference in their objectives and content.

BS7666 requires all roads to be included serving more than two houses as it is the basis for the UK Post Code Address system and therefore the same data is fed into the L&PG. Now many such roads are totally private and their inclusion is a problem for the HA as it has caused confusion regarding maintenance liability and public access, and created massive duplication of resources in Councils as Highway Departments try to avoid including private roads in their data used for the SWR.

8.4.The Street Works Register

The New Roads & Street Works Act 1991 requires every Street Authority to keep a 'Street Works Register' – available to the public in redacted form. The Act was supplemented by Regulations in 2007 requiring the register to be digitised by 2009. The information is available nationally here: www.roadworks.org
There is a Code of Practice here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43578/street-works-code-of-practice.pdf

The Code and the Regulations make it clear that the HA should include all roads, including those for which they are not the HA and are not publically maintainable: It could not be clearer: ... of which the local highway authority is aware, which is a highway, but for which it is not the street authority;
However most HAs have avoided registering such roads on the basis "they are not aware of them", even though they are shown on the base maps they are digitising onto.

Extracts from the Code of Practice:

3.1 Introduction The Register provides a single source of information on on-going, or planned works by undertakers and highway authorities, alongside a list of all streets in an authority's area, whether or not it is the street authority, and associated data for each street, where relevant, that may include whether it has been designated (see chapter 5) or is subject to a restriction on works (see chapter 6). Notice management systems receive street works notices electronically and allow an authority to manage them together with other relevant information. It often happens that one computer system doubles-up as the register and the notice management system in a street authority. This is acceptable provided that the system fully meets the requirements for both Registers and Notice Management Systems.

3.2 Register keepers Under section 53 of NRSWA each street authority is required to maintain a register for every street for which they are responsible. The register should contain information about street works and other prescribed types of works. For maintainable highways, the street authority is the highway authority. For streets which are not maintainable highways (non-publicly maintainable or private streets) the street authority is the street managers. This might impose unreasonable burdens on street managers, who are often just the householders fronting the street, so the regulations exempt street managers from the requirement to keep registers. Instead, the local highway authority is required to keep the register in respect of non-maintainable highways.

3.3 Local and central registers A local register is a register that is maintained by a single street authority for its own geographic area. It will include information on all streets other than those that are the responsibility of another street authority. A central register is a register covering two or more street authority areas that is maintained by one single authority, the 'register authority'. A central register could, for example, include all authorities in a metropolitan area. 25 The Register

3.4 Form of registers The register shall be kept on an electronic system. The Regulations require that all registers shall be based on GIS by 1 April 2009. Each register must be maintained against the same digital map base to ensure consistency between all holdings of street-related data. This common geographical dataset should be vector-based, nationally consistent, maintained, and seamless with changes published on a regular update cycle.

The register should include:

- details of every street for which the local highway authority is the street authority
- details of every street which is a prospectively maintainable highway;
- details of every street, of which the local highway authority is aware, which is a highway, but for which it is not the street authority;
- details of every street, or part of a street, which is: a) a protected street; b) a street with special engineering difficulties, or, c) a traffic-sensitive street and proposed designations;

8.5.Land and Property Gazetteer (L&PG)

This is here: <http://www.nlpg.org.uk/>

About the National Land and Property Gazetteer

This is an authoritative national address list providing unique identification of land and property and conforms to BS7666:2006. The NLPG is updated on a continual basis by every local authority in England and Wales - the bodies with statutory responsibility for street naming and numbering, with updates available every working day.

It is useful for any organisation needing to identify or deliver services to a location.

See here for more information

Local authorities Addressing Datasets

The NLPG is the brand name for the compilation of local authority Addressing Datasets.

Local authorities in England and Wales have a statutory responsibility for street naming and numbering. They update the NLPG and the national Address Gazetteer Database on a continual basis, enabling daily updates to be available to users.

The NLPG was initiated in 1999 to become the master address dataset for England and Wales. It is the central hub for the 348 address creating local authorities' Local Land and Property Gazetteers (LLPGs), which are also known as Authority Addressing Datasets.

All local authorities create their LLPGs using common data entry conventions, based upon the national standard BS7666:2006, and submit their LLPGs to the national hub, managed by GeoPlace. The creation and maintenance processes are well-tested, combining local knowledge with central validation.

The data is created and maintained at local level to an agreed methodology under the LLPG data entry conventions document (DEC-NLPG), and passed to the hub which tests its structural conformance to the agreed implementation of BS7666 (2006) Parts 1 & 2. The hub also checks the quality through a regular data audit against third party national address datasets such as the Valuation Office Agency's Council Tax and Non Domestic Rates lists of addresses.

Each record has a Unique Property Reference Number (UPRN) which provides a reference key to join related address records across different datasets. Even if a property is demolished, the UPRN can never be reused and retains its historical information.

Required under the New Roads and Street Works Act, the National Street Gazetteer (NSG) is a comprehensive list of over 1 million named and un-named streets, footpaths and thoroughfares, the definitive source for anyone with an interest in streets and their usage. There are over 300 organisations, utilities such as gas, water and electricity, BT, plus cable and communications companies, named as 'Statutory Undertakers' approved by the Department of Transport to download this data, which conforms to the BS7666:1-2000 Standard. The NSG is a government initiative to create an unambiguous referencing system, using Unique Street Reference Numbers (USRNs) with which to identify any length of highway or road in England and Wales. Set up initially to improve highway maintenance, by the New Roads and Street Works Act, the NSG enables Utility companies and local councils to coordinate and know where and when to dig their holes. Under legislation each highway authority is required to create and maintain its own local street gazetteer (LSG) and additional street data (ASD), which is then compiled into one master index, the NSG, for access by others via the NSG online hub, managed by Intelligent Addressing.www.thensg.org.uk

So the L&PG is about managing street names, addresses, and of course post codes and is based on the same data from the LSG, under BS7666 structure.

8.6. Land Registry

When you investigate the Land Registry of many Highways you find they are long strips of unregistered land. Why are they not registered in public ownership (or at least public vestment)? The HA authority does not need to own the freehold and therefore does not need to register the land because the Highways Act vests the surface in its control (Sec263). This is not a problem when the status is clear and the Highway is on the DM or LoS. However there are vast number of strips of unregistered land that HAs deny are public highways, when their history is obvious, they are unregistered because they were highways in the past but the HA does not wish to recognise them anymore!

This provides a major problem for purchasers of houses and land as what they can acquire is the registered areas but their access may be over a strip that cannot be registered but the HA refuses to do so. The only way round this is for purchasers to take out an insurance policy against the possibility of somebody other than the HA claiming ownership of the access.

A very profitable sideline for insurance companies and effectively a tax on property purchase due to inadequate highway records as those obvious and accepted access routes should be designated "private roads with public access".

How has this come about? Land Registry Guidance (add ref) states:

Roadways

There are two presumptions relating to the ownership of the soil of a roadway (where a road or path is a highway maintainable at the public expense, the surface vests in the highway authority: s.263 of the Highways Act 1980).

The first is that the owner of land abutting on a road is also the owner of the adjoining section of the road up to the middle line (ad medium filum).

The second is that where a conveyance or transfer of land abutting on a road is made by someone owning land on one side of it only, then if they can be proved or are presumed, to own also the road up to the middle line, this half of the roadway is included in the conveyance or transfer.

Both of these presumptions may readily be rebutted.

So historic English Law states we own up to the centre of the road. However in 1910 there was a Government Plan in the Finance Act to apply rating assessments to all land as well as property and the whole country was surveyed and the plans still exist in records offices, every piece of land was allocated to its owner, in readiness for a tax to be applied. It never came, but landowners in general denied ownership of any "highway" land as they did not want to pay tax on it, so boundaries tended to move from the centre of the road to the edge of the road. So nowadays most boundaries tend to be the edge of the road not the centre, leaving highway land unregistered!

The surface of many highways is only "vested" in the Highway Authority. This means that the ownership is temporary, being held by the HA only for the time that the Highway is a Highway, with the extent of ownership only being to the extent needed to facilitate the use of the land as a highway.

When a highway is stopped up the ownership of the surface of the highway does not remain with the HA – it returns to the landowner.

There are some exceptions. In particular there were many turnpike roads that were created by acts that placed the ownership of the road with the trustees. The trustees often bought the land (to the extent that it went to the depth of the earth's core).

Sometimes there are savings for mineral rights for adjacent owners.

Where such a trust went broke (and most did, thanks to the development of railways) and was bailed out by the highway board, the ownership transferred to the HB (now the HA). If you familiarise yourself with the South Wales Turnpikes Acts (which followed the Rebecca riots) a substantial number were thus transferred into HA ownership. These HA ex-turnpikes are entirely owned by the HA, as landowner, with the top surface 'vested' in the HA as HA..

However, some turnpikes were not bankrupt but simply were not continued as toll roads in the late 1800s. The ownership of these remained with the trustees (usually 30 or so individuals) and when they passed on, who owns the land?

Rights of reversioners are also worth considering. Much land is held in trust and the landowner is in fact a leaseholder with the lord of the manor being the reversioner. Many lords of the manor are the crown – indeed the crown is the final reversioner, the 'default landowner' in legal terms.

8.7 OS Integrated Transport Network (ITN/Master Map)

<http://www.ordnancesurvey.co.uk/business-and-government/help-and-support/products/itn-layer.html> questions 9 and 11, which say:

*The structure of OS MasterMap allows for data association; therefore, other datasets, such as LSG data, can be linked to the Integrated Transport Network (ITN) Layer TOID. **Some highway authorities have used the ITN Layer to create a baseline LSG.***

The definition of public and private roads on Ordnance Survey products has traditionally been based upon an assessment of the accessibility and nature of the road by the data collector. Normally no formal enquiries surrounding ownership and/or responsibility for maintenance were made. In recent years Ordnance Survey has received feedback from local authorities, via the Department for Transport (DfT), indicating if any roads need to be reclassified from public to private or vice versa. Where these do not clash with Ordnance Survey specification such changes are incorporated into Ordnance Survey vector roads products, such as OS MasterMap Integrated Transport Network Layer (ITN).

This is a key part the underlying problem. OS are using local and untested judgement to record officially something that the public are entitled to rely on. To avoid potential conflict they consequently err on the side of "private".

The main information readily available to the public is of course OS maps. Many people interpret coloured roads to be public, and the uncoloured (or "white") roads to be private, but nothing is further from the truth. In reality, the OS have over the years changed the significance of the roads they show uncoloured. Here is a selection of descriptions for uncoloured roads:

1831: One-inch maps were monochrome engravings, all roads shown white.

1906: 'Other Roads' (other than First Class or Second Class roads)

1913: One inch 'Road Map' shows white roads as 'Roads under 14ft wide, not 'main, or other roads', and 'Bad'.

1926: OS 'Road Map' at half-inch scale - 'other motor roads, narrow, bad', or as 'minor roads'.

1928: Quarter-inch maps show MoT classified roads in red, and all other (uncoloured) roads as 'Other metalled Roads'.

1947: Minor roads (bad)

1954 and 1973: 'Under 14ft of metalling, untarred – and – Minor Roads in Towns, Drives and unmetalled roads'.

1998: Other road drive or track.

We note that roads seem to change from yellow to white almost on a whim and when challenged OS say we must consult the HA.

This is important as white roads are deemed by many landowners to be private. Because of this problem the concept of ORPAS (routes shown as Other Routes with Public Access on current OS maps) was developed by OS. In consequence, current

designation is such that if a white road has ORPA dots overlaid this denotes that it is on the LoS and therefore is a highway. However a recent Fol to OS gave the response that not all LoS roads have been shown as it is "up to the Local Surveyor as to whether they are any use". So a 'value judgement' is being applied to what should be a legally conclusive record.

The OS also operates a 'hierarchy of depiction'. DM status usually has precedence over the LoS status. However where for example a Byway is found to have a tarmac surface, the OS chooses to give the tarmac precedence, meaning that the road is shown yellow, and the Byway symbol is not shown. In effect, the OS chooses to show it as a highway (of no particular status) rather than a carriageway – effectively putting public rights into question.

Now we come to an OS record, a dataset referred to as ITN/Mastermap(Integrated Transport Network). This is basically the depiction (using GIS) of the centre line of every road in the country and seems to be accepted as the most accurate information. It includes a table of attributes to each section of road which can include the status "private road with restricted access" OR "private road with public access".

On sampling a few such roads we find the designations incorrect and when challenged OS say it is up to the local Surveyor, so again judgement is being applied. Worse than that, the OS say:

“Additional guidance within our data collectors' instructions includes the situation where signs or barriers do not exist – if the opinion of the data collector is that a vehicle user is likely to be challenged when using the road, then the guidance states that it should be described as 'Private Road - Restricted Access’” The issue here is that this is yet again taking over the responsibility for recording highway rights from the HAs, through the LoS, SWR, and LSG, there is no opportunity for challenge, and the result is not viewable by the public. ‘Private’ or ‘Restricted Access’ refer to Ordnance Survey’s interpretation of vehicular usage, not usage by any other mode of transport such as pedestrian, cycling or horse riding.’ is significant.

Note: LAF members may view the OS ITN under terms of HA's OS licence.

9. Relationship Between the DMS and LoS

Within the organisation of government, the overriding problem we have is that 'highways' (roads for traffic) come under the remit of the DfT and 'rights of way' under DEFRA. The grey area (or black hole) between them continues to exist from ancient history into current legislation.

The Definitive Map comes under DEFRA and is intended to define "rights" rather than maintainability. Generally ways shown on the DM are publicly maintainable but not always.

The LoS defines highways which are publically maintainable but does not define the rights of the public to use them.

First an explanation: Until the recent creation of the anomalous Restricted Byways, there were three types of highway: Footpath, Bridleway and Carriageway, carriageway being the only right of way for all users including vehicles. In addition, whilst there were (arguably) historically only those three recognised types, but there were certainly others before RBs came along, e.g. cycle tracks and motorways.

Some County HAs considered that they had taken over maintenance of footpaths with the "1929 handover" (of roads) on April 1930, but many argued the opposite. Note there was no Statutory requirement to produce the LoS in 1929, that did not come until 1980.

In some areas the 1929 handover maps (of roads) do exist and are a vital record of what should be publically maintainable. Maps were needed by those managing the system because:

- (a) only public (highway rights) roads became publicly maintainable in 1835
- (b) public roads that came into being between 1835 and 1929 without adoption were not maintainable
- (c) because the maps often showed the extent (length and boundaries) of what there was on the ground.

Unfortunately not all HAs have kept their handover maps, and many of those that do exist have often been used as working copies ever since, so the annotations over the years are difficult to distinguish from the original. Also some sheets have been redrawn and there is no audit trail or provenance to the record as a whole.

1949 National Parks and Countryside Act (NPACA) sought to remedy this lack of clarity (at least over FPs) on recommendation from the Hobhouse Committee by confirming the HA's duty of the maintenance of footpaths and bridleways. First they needed to be identified and defined. However, pre-1949 public paths are publicly maintainable even if still not on the Definitive Map & Statement or even if still undiscovered.

Concerns at the time about the possible loss of carriageways in the gap between LoS and DM led to advice being issued that "highways which the public are entitled to use with vehicles but which in practice are mainly used by them as FPs or BWs, should be marked on the map as CRF or CRB" (Carriage road footpath or carriage road bridleway). Government Advice was prepared and issued to HAs with this in mind. However, Parliament decided at the eleventh hour that such ways should be recorded as "RUPPs", roads used as public paths, to record their status as highways usable on

foot or on horseback, but not definitively recording their vehicle rights (whilst clearly they were evidence of such rights existing).

In the processes following the National Parks And Countryside Act, Parish Councils were required to submit maps of FPs and BWs and CRFs and CRBs (following the Government Guidance) to their County Authority. During the provisional stages of the mapping, some authorities showed these latter routes as RUPPs, in accordance with the Act itself, but others showed them as footpaths and bridleways. Confusion ensued, and this led to legislation requiring that RUPPs should all be reclassified.

The 1968 Countryside Act required HAs to re classify RUPPs as BOATS (byways) , BWs or FPs but many failed to carry out their Statutory Duty and a second attempt was made with the 1981 Wildlife & Countryside Act , however many RUPPs continued through to this century and via the 2000 CROW Act became Restricted Byways in 2005, losing their vehicular rights unless an exemption to the Natural Environment and Rural Communities Act (NERC Act) 2007 could be demonstrated.

Dual Status Routes

This unclear and unsatisfactory situation that has existed since 1949 has meant that some highways have appeared on both the DM and the LoS, and some on neither. So a way may be on the LoS and might be presumed to be vehicular, but also appear on the DM as perhaps a footpath or bridleway, although because of drafting and scaling problems the physical location of the FP is unclear, is it on or over or alongside the road or the other side of the hedge? Many FPs were so called winter paths, they existed because pedestrians had for years avoided the mud of the carriageway. This was not a problem until the NERC Act (2005) gave priority to the DM and removed vehicle rights from dual status routes, giving the nonsense that a short length of FP recorded in the middle of an extensive road may have removed rights.

The Hobhouse report said not to bother about winter paths as they were part of the highway. However in Herefordshire when the parish marked up a lane to be recorded on DM, using the small scale maps that were issued by the authority for this purpose, the route was shown on large scale OS maps as being a lane with a winter path, the HA draughtsman showed the winter path on the DM, leaving the higher rights on the lane unrecorded.

As for NERC 2005, you would think that the exemptions would protect higher public rights, but this may not always do so. Clearly we need government guidance covering such confusions, lest they linger on the cause headaches and expense.

The confusion is made worse by the OS Policies that are not understood by the public: OS always give priority to DM information and not LoS. So if a FP exists over a white road they show the FP, ***implying that higher rights do not exist.***

10. Conclusions

This paper sets out some of the confusions surrounding the current methods by which highways are recorded (or not), and how this creates problems for members of the public who need to know what they can use and where it is, exactly.

Many of the enquiries at the desk of the HA relate to the status of routes near, or to, houses which are on the market. Clearly one reason is to determine whose liability it is to repair the road. Reference to the LoS is relied upon to answer these questions. If a member of the public, seeking to know the highway status (as distinct from the maintenance liability) of a route, enquires to a typical Council if a road is public they will, in consequence, say YES if it is on the LoS, if not they are likely to say NO, it is **private**. They generally refuse to recognise the existence of private roads with public access, ie privately maintainable roads which the public can still enjoy as highways.

Every Council, and every HA has their own "experts" on each of the various five maps and records now required, often in separate teams working to different standards. Recently there has been a dash to digitise but they have digitised the inherent errors and in many cases worked on inaccurate base maps, often using different software.

This has to an extent been recognised by Geoplace who have initiated a project to persuade HAs to all use the same base map OS ITN/Mastermap. This accurately records the centre line of roads (and rights of way) but the designation of the rights on those roads is by no means clear and in many cases subject to the judgement of the local Surveyor.⁴

There are several other ways in which the current records cause confusion, delay, injustice, and loss. Here are two examples:

Law enforcement and compliance: There are many laws which can apply only on a highway, or only away from one, or only on or away from a particular class of highway. This means that currently the police, the landowner, the event organiser, and the public can waste time and money trying (and often failing) to establish the highway status of land. No-one can gain from this.

Navigation aids: Most of us now rely, for our driving and our deliveries, on GPS-based navigation tools. To be reliable, and fit for use by increasing numbers of foreign drivers too, they must distinguish clearly between lawful carriageways and other tracks, but currently, this is not possible.

This paper proposes that all the existing highway records must be digitised onto the same base maps (as separate layers within existing legislation) and be viewable by the public.

11. Definitions :

11.1 Public and private – These words often prefix path and road, to designate either 'who can use' or 'who must maintain', without clear distinction. For example public footpath is used to designate public right of use, whereas private street is used to designate a street not maintained at public expense (*s.232(2) of 1980 Highways Act offers a good example, saying: '... to be a private street, and thereupon the land is to be deemed to have been dedicated to the use of the public as a highway and to be a private street'*), private road to designate private use, and public road to designate both public maintained with public right of use.

11.2 Highway authority – the body responsible for the highway whether or not it is maintained at public expense

11.3 Street authority – the body responsible to maintain the street, often the highway authority but not always. For almost all highways the HA is the County Council or its local equivalent.

11.4 Local Street Gazetteer / National Street Gazetteer – A register of all highways (plus some privately maintained roads in public use) raised under the 1991 New Roads and Street Works Act and associated Regulations dated 1992 and 2007, which legislation uses the term Street Works Register. That part raised by local highway authority is called 'Local', and are collected and combined into a 'National' version.

11.5 Street Works Register – The name used in the 1991 New Roads and Street Works Act for what is now called the Local Street Gazetteer.

11.6 DMMO: Definitive map Modification Order: Anyone may apply for a Definitive Map Modification Order (DMMO) to amend the DM&S if they believe that they are inaccurate or incomplete. Anyone applying must have evidence to support their claim. They can do this under the Wildlife and Countryside Act 1981.

11.7 Highway a defined route over which "the public at large" can pass and re pass as frequently as they wish, without hindrance and without charge. The use must be as of right and not on sufferance or by licence.

11.8 Street: Road in a village or city. In common parlance the word street is equivalent to road OR "a highway with important public realm functions beyond the movement of motor traffic" (DfT Manual for Streets 2007)

11.9 Road Many different definitions: Road Traffic Act 1988: means any highway and any other road to which the public has access.

12. References

- 12.1:** The Street Register is required under the New Roads and Street Works Act (1991) - <http://www.thensg.org.uk/iansg/link.htm?nwid=82>
- 12.2:** 1991 New Roads and Street Works Act, section 53 - <http://www.legislation.gov.uk/ukpga/1991/22/contents>
- 12.3:** The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007, section 4 - <http://www.legislation.gov.uk/uksi/2007/1951/contents/made>
- 12.4:** Geoplace program for updating the LSG - <http://www.thensg.org.uk/iansg/document.htm?targ=1330>
- 12.5:** Response to consultation on proposed changes to LSG software, item 37, viewable at <http://www.iahub.net/docs/1415207549322.pdf>
- 12.6:** PSMA: Public Service mapping Agreement: <https://www.ordnancesurvey.co.uk/business-and-government/public-sector/mapping-agreements/>
- 12.7:** DEC: Date Entry Convention published by Geoplace to guide HAS
- 12.8:** Highways Records Working Group Minutes of a meeting on 05 July 2012; *"the LSG was intended for a different purpose to the List of Streets and release to the public may put a burden on Highways Authorities....."*

Appendix 1

Summary Table

	Name of record	Content	Viewing	Comments
1	The Definitive Map (DM) raised by Highway Authorities in 1950's, and does not marry with any record of roads.	Public footpaths, bridleways and what were then termed 'Roads used as public paths' since reclassified to RB's and BOAT's	Viewable under legislation by the public	Being public rights of way public may use all that are registered. Registrations on DM are legally conclusive, and consequently alterations are subject of costly procedures.
2	The List of Streets (LoS), raised by Highway Authorities, originating for urban areas under 1925 health legislation, and only for all areas under 1980 Highway Act.	Limited to highways maintained at public expense, likely based upon the 1929 Handover Maps raised by District Council's when duty was transferred to County Council's.	Viewable under legislation by the public	Being maintained at public expense public may use all that are registered. See also item 8, Historical Records.
3	The Local Street Gazetteer (LSG) raised by Highway Authorities in conformance with BS7666-1:2006. Feeds in to National Street Gazetteer.	All highways plus private use drives to more than one property without distinguishing whether or not are highways.	No provision for viewing by public	Due to inclusion of private use drives public cannot use all that are registered. Distinguishing whether or not are highways is part of update commencing June this year, ref: http://www.geoplace.co.uk/geoplace/document.htm?target=1330
4	The Street Works Register (SWR) raised by Highway Authorities in 1991 under New Roads and Street Works Act	All highways, i.e., includes our unadopted streets.	Viewable under legislation by the public	Being limited to highways public may use all that are registered. A House of Commons Library report titled 'Roads unadopted', ref. SN/BT/402 of 18 October 2010 estimates that we have 40,000 unadopted roads, though few, if any Highway Authorities would appear to have registered any on their SWR's.
5	The Land and Property Gazetteer (NLPG)	Based on LSG/NSG for addressing purposes		
6	The Integrated Transport Network (ITN) raised by Ordnance Survey without consultation with Highway Authorities	Focuses on where public may go without undue regard to how maintained, and identifies restricted access private roads. (Unjustified use of this term by OS is presently subject of complaint)	Viewable by Local Access Forum members under Highway Authority licence, and in theory may be purchased by public from OS licensed distributors though none found selling it	Urban areas are also covered by an Urban Path layer. Being used for satnav purposes (both vehicular and on foot) has good connectivity, and does not include paths, ways and roads recorded on other highway records but not found by OS data collector survey. Public may use all that are registered except restricted access private roads.

Appendix 2

News story

£3 million mapping project to transform road improvements and maintenance

From:

[Department for Transport](#), [Ordnance Survey](#) and [Robert Goodwill](#)

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[Road network and traffic](#), [Transport](#) and [UK economy](#)

Department for Transport project with Ordnance Survey will deliver the next generation road mapping for England and Wales.



Transport Minister Robert Goodwill has today (25 February 2015) announced that the Department for Transport will contribute £3 million to help create a digital road map that will give the most detailed information yet to councils and emergency services.

The new map, developed by Ordnance Survey, has the potential to transform how all levels of government maintain and improve roads by detailing information such as road widths, traffic calming measures and height and weight restrictions. This dataset could also be linked to other information held by government, including planned road works and cycle paths.

The information may also be used in satellite navigation systems. It will also help emergency services find the quickest routes when responding to 999 calls.

Transport Minister Robert Goodwill said:

This government is backing schemes that will make Britain's transport system world-class. This mapping project has the potential to substantially improve how we look after our roads. It will help make journeys more efficient and ensure traffic keeps moving. This funding demonstrates our commitment to funding the technology of the future, which will drive economic growth and create jobs.

Neil Ackroyd, Ordnance Survey Acting Chief Executive, said:

We're pleased to be working with the Local Government Association, GeoPlace and the Local Highways Authorities to create a single, unified highways product for use across both the public and private sector.

The new product will consist of the high quality data submitted by local authorities through the National Street Gazetteer (NSG) combined with Ordnance Survey's widely-used authoritative and fully maintained geographic roads data, creating a definitive highways network for England and Wales. Local and national government currently use a variety of maps when planning road projects and maintenance. The new mapping system will bring all existing information together, cutting bureaucracy and saving money spent by councils and government on exchanging and comparing different maps.

The new digital road map will be added to the Public Sector Mapping Agreement allowing all areas of the public sector to access the data. An entry-level open data version of the road map will also be made available with a full commercial product appearing in the future. Ordnance Survey, working with street data experts GeoPlace, plan to deliver the initial products to the Department for Transport and public sector before the end of March 2015.

Roads media enquiries

Press enquiries 020 7944 3066

Out of hours 020 7944 4292

Public enquiries 0300 330 3000

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From:

[Department for Transport](#)
[Ordnance Survey](#)
[Robert Goodwill](#)

LAW REPORT

Ownership of 'awarded' highways

Many roads were laid out under an enclosure award. As every enclosure award differs to some extent, no universal answer can be given to the question of who owns the subsoil. It will depend upon the individual enclosure award and not on the general law governing highways which was discussed in the last issue.

ENCLOSURE

Enclosure applied to two sorts of land: open fields divided between several owners in small strips, but farmed communally, and wastes, which were normally owned by the Lord of the Manor subject to common rights held by others such as grazing or digging.¹

Enclosure had two stages: first, an Act specified the land to be enclosed, appointed the commissioners and determined their powers and duties. Then the resulting award was drawn up by the commissioners, allotting the land. The Acts usually include instructions for the laying out of public and private roads, but both the Acts and awards themselves very rarely mention the ownership of the soil of these roads.

NO PROVISION

The award often allocates land in a notional order, with roads frequently laid out first; a circumstance which must rule out any presumption of them lying over land given up from the adjacent allotments. Sometimes odd roads, usually small private roads, are specifically allotted over specified lands. The ownership of these is clear but the distinction underlines the fact that the other roads do not lie over the neighbouring allotments but sweep them.

The silence of awards on the ownership of soil has caused problems for the courts: if the soil was not expressly allotted to anyone in the award then who owns it?

PRESUMPTIONS

One possibility is that the legal presumption of 'ad medium filium viae' will apply. However, Lord Tenterden explained in *R v Edmonstone* [(1831) 1 Meo & R.24] that this presumption was "founded on the supposition that the roads originally passed over the lands of the owners". He added "I should doubt whether that presumption would hold here, where the roads are made under an enclosure act". This supports the contention that this approach can only be applied where the roads were laid out after the land had been allotted.

Where the road was laid out prior to the allotment of other land, some Courts took the view that it must still be owned by whoever owned it before enclosure [see *R v Hayfield* (1835) 4A & E 156]. But often this owner, the Lord of the Manor, was compensated for all his interest in the lands to be enclosed. This creates an impossible position: the land has been taken away from one owner, it has

not been awarded to anyone else, yet it must belong to someone.

Some Courts resolved this by saying that the land cannot have been taken away from one owner (e.g. the Lord of the Manor) until the moment it was conveyed to the next, and the compensation must only apply to that land taken from the owner, i.e. awarded to someone else. In *Posie v Huskisson* [(1843) 11 M & W 827] Parke B., when considering an 1801 award, which made no express reference to the highway soil, said that ownership of the subsoil of the highway "remains in the Lord of the Manor, for that portion of the soil only is taken from him for which he receives compensation, and which is allotted to others".

THE PARISH

There is another possibility: that the soil vested in the highway surveyors (as agents of the vestry meeting which was acting as trustees for the inhabitants of the parish). If this is accepted the problem is solved with no contradictions other than to ask why the commissioners were not explicit if they intended the parish to be the owner. Perhaps they were unaware of the need; perhaps they considered it automatically followed, unless the award stated otherwise. There is some evidence to support the latter belief. In some awards the soil of the roads is not expressly allotted, but the highway surveyors for the parish are directed to let the grazing of the roads and apply the proceeds to the general repair of the parish roads. The right to let grazing is attached to the soil so this may imply that the vestry was the owner of the soil.

Furthermore, most enclosures took place when the Highways Act 1773 was in force (i.e. prior to 1835). Section 17 of the Act (not repealed in the 1835 Highways Act) required that when a highway was closed, consequent upon the making of a new highway, the surveyor "shall sell and dispose of such old highways ... and purchase the ground and soil for such new highway". However, the purchase of a new highway was stated to be "saving nevertheless to the Owner of such ground all mines ... which can or may be got without breaking the surface of the said highway ...". The latter provision is repeated in 1835 in relation to the acquisition of the new highway subsoil. The 1773 Act seems to assume that the entire ownership of the land under the highway vests in the highway surveyor, save only those things expressly reserved, but by 1835 the assumption seems to be that the highway surveyor acquires limited rights in the land. What appears to have happened somewhere in the interim is that the basic assumptions concerning the ownership of the subsoil have altered, as far as Parliament is concerned. Moreover, there appears to be no reference to the dictum "ad medium filium" earlier than that in *Stevens v Whistler* [(1809) 11 East 51].

There is certainly evidence from Quarter Sessions records that in the late eighteenth and early nineteenth centuries the soil of stopped-up highways was sold by the highway surveyors, the proceeds to be used by them for other highway purposes. In so directing the highway surveyors the Courts were following the 1773 Act. It is likely that enclosure commissions would follow the same presumption. If they did, that is strong evidence in a modern Court when deciding upon the ownership of the soil.

Another possibility is that the parish has subsequently become the owner of the soil. In *Haig v West* [(1893) 2 Q.B. 19] this happened, the Court arguing in the alternative that either there must have been a grant, since lost, by the Lord of the Manor to the trustees for the parish, or that this was a result of over 12 years adverse possession. This may certainly arise where the enclosure award remains silent as to ownership, and the highway surveyors subsequently behave as if the vestry owned the land.

CONCLUSIONS

Certainly, the frequent failure of the commissioners to state expressly the allotment of the subsoil of a right of way would be a strange oversight, unless a presumption was operating, such that the award only needed to specify the allotment of the subsoil when it differed from the presumed position. The difficulty lies in trying to ascertain what this presumption was. There seems ample evidence to say that at least prior to the 1835 Highways Act the presumption was that the land passed to the parish surveyors.

This has practical consequences. Under the 1773 Act, the subsoil vested in the highway surveyor had to be sold at open market price, when the right of way was diverted or closed. Similarly today, if the subsoil vests in the parish, on closure of the right of way the parish continues to own the subsoil, which does not automatically pass to the adjoining owners. The parish council may then decide to sell it to the adjoining landowners. The purchase price will then, presumably, be held in trust for highway use, not being part of the rates. This may make rights of way users more willing to accept the narrowing or diversion of some routes, if the parish council has a duty to use the money raised from such a sale for other rights of way work within its boundaries. At last, it would seem the rights of way network may have a bargaining tool in such situations.

Christopher Padley



Appendix 4



New Roads and Street Works Act 1991

1991 CHAPTER 22

An Act to amend the law relating to roads so as to enable new roads to be provided by new means; to make new provision with respect to street works and, in Scotland, roadworks; and for connected purposes. [27th June 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Section 53:

The street works register.

- 1) A street authority shall keep a register showing with respect to each street for which they are responsible such information as may be prescribed with respect to the street works, and such other descriptions of works as may be prescribed, executed or proposed to be executed in the street.
- 2) The register shall contain such other information, and shall be kept in such form and manner, as may be prescribed.
- 3) The authority shall make the register available for inspection, at all reasonable hours and free of charge—
 - a) so far as it relates to restricted information, by any person having authority to execute works of any description in the street, or otherwise appearing to the authority to have a sufficient interest, and
 - b) so far as it relates to information which is not restricted, by any person.

The Secretary of State may make provision by regulations as to the information which is restricted for the purposes of this subsection.

- 4) The Secretary of State may make arrangements for the duties of street authorities under this section to be discharged by means of one or more central registers kept by a person appointed in pursuance of the arrangements.
- 5) If such arrangements are made the Secretary of State may require street authorities to participate in and make contributions towards the cost of the arrangements.
- 6) The Secretary of State may by regulations make provision with respect to any register kept in pursuance of this section—
 - a) requiring the registration of such information as may be prescribed, and
 - b) requiring the payment of such fee as may be prescribed in respect of the registration of information of any prescribed description;

and the regulations may contain provision as to the person responsible for securing the registration of the information and the person liable to pay the fee.

Appendix 5



All communications to be addressed to THE CLERK OF THE COUNCIL Telephone No. 2285

In reply please quote HCC/HE. P. 5/Gen/33. Your ref. 1

Herefordshire County Council

HEREFORD
18 SEP 1952

Shirchall,
Hereford.

17th September, 1952.

Dear Sir,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

With reference to your conversation with Mr. Cant and in particular to your joint inspection of certain paths at Whitchurch I have considered the position in regard to what I would describe as the "main tracks" on the hill i.e. those similar to the one from the telephone box up to the Chapel which are used by vehicles as well as pedestrians and others. It seems to me to be quite clear that roads or tracks such as these, and incidentally such as Omlin Lane, Colwall, which you mentioned to Mr. Cant, should not be included on the draft map. Section 27 of the Act requires the Authority to prepare a draft map and to show thereon "footpaths" and "bridleways" and all "roads used as a public path." The definitions contained in Section 27(6) are, as follows :

"Footpath means Highway over which the public have a right of way on foot only....."

"Bridleway means a Highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse with or without a right to drive animals of any description along the highway."

"A road used as a public path means a highway other than a public path used by the public mainly for the purposes for which footpaths or bridleways are so used."

It seems to be quite clear that as respects paths of the nature we are considering the public has more than a right of way on foot only and it also has more than the rights mentioned in the definition of a Bridleway. It is, of course, just possible that it might be held that such lanes are within the definition "Road used as a public path" but bearing in mind that this definition was included expressly to cover such matters as Berkshire Ridgeway and other "Green Ways" which are now mainly used as footpaths and bridleways although great public rights of passage over them exist or are alleged to exist, *do not think they are.*

P.S.O.

APPENDIX 2

Letter dated 17 September 1952 from the Clerk of Herefordshire County Council to the County Surveyor.

2.

W. H. Stanley
Under all the circumstances and ~~having regard to~~ Paragraph 5 of Circular 91 of the Ministry of Town and Country Planning in which it is suggested that border-line cases should be decided in favour of inclusion rather than omission, in the draft map, at the first stage, I think that these tracks should not be included in the draft map.

I enclose a circular letter and questionnaire which has, to-day, come in from the Central Rights of Way Committee and if you can conveniently find time to complete the answers thereto, possibly you will do so.

Yours faithfully,

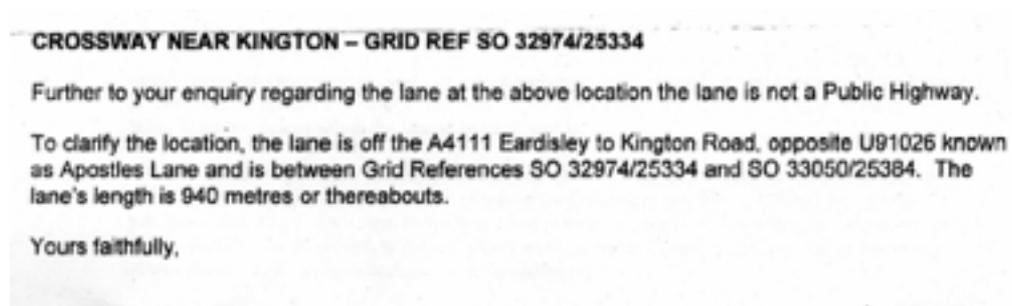
W. H. Stanley
CLERK of the COUNCIL

The County Surveyor,
Portfield House,
WREXFORD.

Appendix 6

Below is an extract from a letter written to a Landowner in 2003. At the time it was written the lane was subject to a DMMO claim as a byway (BOAT) submitted some years before. As a direct result of this letter the landowner proceeded to obstruct the lane.

Subsequently the lane was determined to be a public right of way and is now designated as a Restricted Byway. Hence the authors view is such letters should in future be worded very differently, perhaps: **"The lane is not shown on the List of Streets or Definitive Map as a public highway and is currently under investigation"**



This has now been confirmed as a result of a recent legal case in Henley, Oxfordshire:

The judge held, in line with previous case law, that the Council owed a duty of care to Chesterton when giving the response to the enquiry as to whether the Land was highway maintainable at public expense. Under section 36 Highways Act 1980 a council must make, and keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense. In this case the judge found the failure to disclose the investigation on Chesterton's search result meant that the list of streets was neither correct nor up to date. The judge did not accept the Council's position that it only had to record streets known to be highway maintainable at public expense and did not have a duty to identify roads under investigation.

OCC Found Negligent on Bell Street and Bell Lane Development

Posted Aug 28 2015 by Editor in Home - Top Stories, News with 1 Comment



A judge this week has found that Oxfordshire County Council (OCC) were negligent in providing a local authority search result which failed to reveal that part of the Land was suspected as being a highway maintainable at public expense on a development at 94 and 96 Bell Street and 2A Bell Lane in Henley.

In 2007 Chesterton Commercial (Oxon) Ltd (Chesterton) purchased 94 and 96 Bell Street and 2A Bell Lane in Henley for £1,245,000 and within the boundary of the site bought were 10 car parking spaces. The seller of the site confirmed these were in his control and not used by the public. Chesterton's solicitors also submitted a local authority search in respect of the Land. The search result showed Bell Street to be a highway maintainable at public expense but expressly stated that Bell Lane and an area fronting Bell Street (which included the car parking spaces) was not highway maintainable at public expense.

The development proceeded and Chesterton sold four of the spaces to local residents and marketed the redeveloped properties with the rest of the spaces. Unfortunately, what had not been disclosed by the local authority search was that there was an ongoing debate (indeed some of it going back over 50 years) as to whether the Land did in fact form part of the highway maintainable at public expense.



Historical evidence suggested the Land formed part of a turnpike road in the early 1800s. The common law position is that in the absence of a stopping order, the maxim "once a highway always a highway" applies – a public highway cannot be lost by disused or abandoned.

By September 2006 OCC started investigations into the Land and acknowledged the possibility that it may have been, and therefore may still be, highway maintainable at public expense. In October that year the Council wrote to local occupiers advising them that whilst searches would show this stretch of road was private this may be overturned. However, it was not until August 2007 that the Council decided to

disclose its investigation on search results. It was finally determined in 2009/2010 that the Land was in fact highway maintainable at public expense.

As soon as the local authority searches revealed the existence of the investigation, Chesterton's purchasers began having issues with the parking spaces. This was not part of the case but local residents who bought the spaces are now suing Chesterton. In addition two purchasers of the redeveloped properties proceeded without the car parking spaces with a discount of between £40-45,000 per property. Chesterton claimed against the Council for what it contended was the difference in the value of the development site with and without the parking spaces (some £400,00) plus £15,000 in professional fees which it claimed it had spent attempting to mitigate its loss (including trying and failing to obtain a stopping up order in respect of the Land).

The judge held, in line with previous case law, that the Council owed a duty of care to Chesterton when giving the response to the enquiry as to whether the Land was highway maintainable at public expense. Under section 36



Highways Act 1980 a council must make, and keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense. In this case the judge found the failure to disclose the investigation on Chesterton's search result meant that the list of streets was neither correct nor up to date. The judge did not accept the Council's position that it only had to record streets known to be highway maintainable at public expense and did not have a duty to identify roads under investigation.

The Council's express statement that the Land was not highway without mention of the investigation amounted to negligent misstatement. The judge awarded Chesterton

£240,000 for the difference in the value of the development site with and without the spaces (the Council's Expert's valuation) and its costs for seeking the stopping up order. It was also able to recover its increased costs of funding given it overpaid for the property. Chesterton's increased professional fees for dealing with the purchasers of the spaces after the issues came to light was found to be too remote.

Councillor Ian Reissmann said, "Campaigners and residents fought a long and honourable battle to retain this public amenity as highway to be used for the benefit of the public. Sadly, others come out of this affair with less credit. OCC were careless in not keeping proper records of public highway (which were provided to them in 1974 when Henley Borough Council handed over as Highways Authority to OCC). OCC then attempted to handle this error by working with the developer to give away the public amenity. The developer was happy to make a gain and sell the parking places to make a profit at public expense. The public campaign ensured this would not happen and the amenity was kept for public benefit when the Stopping Up order was refused at the public hearing.

I am surprised at the decision of the court, as it has now ensured that the gains that the developer and original seller of the land wished to make have been funded by the taxpayer, which seems perverse. OCC did communicate to landowners that the status of the land was in question before the sale to the developer. So it would appear that the original vendor has gained an inflated value by failing to disclose properly the status of the land. I hope that this undeserved windfall for the vendor is now available to compensate the public purse. Sadly, I believe this will not happen.

I hope that OCC solicitors who gave the incorrect advice can use their Professional Indemnity Insurance to pay the £240k which was awarded to the developer. Lastly I hope that OCC will restore the area of land to its original condition and undo the damage done to the Georgian pavement and other heritage parts of the site while OCC failed to maintain properly."

David Nimmo Smith, Henley's County Councillor said "When, back in August 2009, we first became aware that there could be problems regarding the status of the road on which the bays stood, I repeatedly proposed that Henley Town Council (HTC) sit down with Chesterton and OCC to explore a possible compromise solution and thereby avert the risk of liability falling on the public purse.

The pleas went unheeded. This was despite the fact that OCC wanted to resolve the problem at the outset by extinguishing any highway rights in the surface of this controversial piece of roadway by a process called "stopping up". This would have restored the road's private status – which is how it had been treated historically up until then – and maintain the status quo, thereby avoiding a risk to the public purse.

But in February 2011 HTC vetoed OCC's plan to stop up the road. To do this the then Henley Residents Group (HRG) mayor used her casting vote. Cllr Ian Reissmann persuaded HTC that there was no risk to the public purse because, in his opinion, the Council could not be held liable.

The next stage in this protracted saga was that Chesterton then made their own attempt to extinguish the highway rights by making their own stopping up application. This was rejected by HTC, who had historic veto rights. This resulted in a 3 day local Public Inquiry to resolve the matter. The outcome was that the surface of this controversial roadway was declared public highway on the balance of probabilities.

As a result Chesterton sued OCC in the High Court for which they have now been awarded damages and costs.

So what has this all achieved in practice? Before the start of this saga, there were 7 parking spaces on the road in question. Once marked out, this will reduce to 5.

As for compensation awarded to Chesterton. Currently they are declining to share any of it with those who purchased car park spaces from them. Is this how respectable companies carry out business? I leave it to readers of this article to judge."

- [1 Comment](#)

1. [Dr Phil Wadey08-29-2015](#)

For far too long county councils have been neglecting their duties to keep proper highway records, so may be this will serve as a wake up call to others. As well as disputes like this one, all over the country there are footpaths, bridleways and byways that just do not appear on the List of Streets, or on the other record Councils have to keep,

the definitive map of rights of way. But in law they are all highways and should be recorded. Anyone can do the research to check the status of paths. 'Rights of Way: Restoring the Record' is a how-to guide to where the old records are kept and what evidence is needed to have highways recognised by the Council. It was written because we only have until January 2026 to record some of these old routes before Parliament said unrecorded ones will cease to exist, but it applies equally to the width of highways as to the existence of them at all.