

Footpaths    Bridleways

&

# **CARRIAGEWAYS**

Proposals for Modifications to the Laws

Relating to Vehicular Rights of Way

(a consultation document)

MOTORING ORGANISATIONS'

# **LARA**

LAND ACCESS & RIGHTS ASSOCIATION



## FOOTPATHS, BRIDLEWAYS, & CARRIAGEWAYS.

Proposals for Modifications to the Laws  
relating to Vehicular Rights of Way.

Tim Stevens, Access Officer,  
British Motorcyclists Federation.

### Introduction:

For some time vehicle user groups have felt growing concern that their legitimate access to the countryside seems to be jeopardised by various aspects of the legal system. Until recently however it has been thought that any attempt to change the system from outside would be unlikely to succeed.

It is now apparent that misgivings over the workings of the system have also been growing within Highway Authorities. This document has been prepared on the premise that minor changes to the system could resolve many of the difficulties experienced by user and Council alike, and in the hope that cooperation will replace confrontation in the countryside.

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## FOOTPATHS, BRIDLEWAYS & CARRIAGEWAYS.

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Tim Stevens, Access Officer, B.M.F.

This consultation document has been prepared by the British Motorcyclists Federation and accordingly refers to the needs and aspirations of motorcyclists. It has also been adopted by MOLARA [20] on behalf of all member associations; accordingly wherever the context permits readers are asked to extend the term Motorcycle to include all vehicles.

Motorcyclists recognise the following difficulties with the current legal framework:

### 1. Knowing where the vehicular routes are:

It can be difficult and sometimes impossible to identify with certainty the routes we can use. Every county has some public carriageways which are not provided with a sealed tarmac or concrete surface. Some are maintainable at public expense, some are not. Some are recorded at County Hall, some are not [1]. Finding out where they are is only the beginning of our problem. Many are obstructed and impassable, many are wrongly recorded as footpaths or bridleways. And yet their existence is the basis for the pastime of Trail Riding, and is an equally vital resource for many other users of our countryside.

1.1 Motorcyclists need to know where the roads are, as trespass away from the road with a motor vehicle may be a criminal offence [2], and we wish to ensure that our activities are always within the law.

1.2 There are many offences which can only be committed on a public road, from lighting a firework, through ploughing or obstructing the highway, to causing death by dangerous driving [3]. Despite the legal stricture that ignorance offers no excuse the current law does not make it possible for users to find out where all the roads are.

1.2.1 We have complaints from members who have gone to considerable trouble and expense to find out that they have a legal right to use a given route. When exercising their rights they are obstructed by others, and upon the police being called, the officer attending is unable to establish the facts of the case. As a result the offenders get away with it, and all three parties are left in a state of frustration and animosity.

1.3 Motorcyclists all pay a special tax to use the public roads, (a tax which originally was set aside for the maintenance of the roads, but which now provides much more than that expenditure requires) [4]. However we are unable to find out what exactly we have been paying for, and where exactly we are entitled to go.

1.4 We are anxious to avoid any concentration of vehicular use which might result in the erosion problems exemplified by overused sections of some Long Distance Paths. Accordingly we try to encourage members to seek out less used routes, but not all enthusiasts have the skills, and especially not the time off work, needed for frequent visits to the Highway Dept or Record Office.

## 2. Conflict with others:

It is only to be expected that some country dwellers should object to any claim that a public highway exists on or near their land. It was to create a way out of this difficulty that the legal concepts of the King's Highway, and of Rights of Way, have existed in English Law since time immemorial. For this reason, too, Highway Authorities were given the (often neglected) duty to "assert and protect the rights of the public to

the use and enjoyment" of highways [5]. An example of the conflict which can be caused is given above (Section 1.2.1). However, in addition to this, conflict is stirred up by current legislation in the following ways:

2.1 Confusing information on signposts, waymarks, maps, and tourist publications.

Many of our lesser-used roads have Dual Status - that is, in addition to their existence as carriageways, usually Unclassified County Roads or Ratione Tenurae Roads, they are recorded on the Definitive Maps, Ordnance Survey Maps, and other official publications as Footpaths or Bridleways [6]. Sometimes they are also provided with official signposts and waymarks indicating the lower status. This may comply with the requirements of the various access Acts [7], but it is a very potent source of conflict. Many walkers prefer to seek out footpaths and bridleways because they will not meet vehicles; when they unwittingly use a route with vehicular status their indignation has to be experienced to be believed. It can also be very difficult for a legitimate user to explain to a farmer that the route marked by the council as a footpath, and shown on the map as a footpath, is also a legal route for vehicles, and that he therefore should take the padlock off his gate, or call off his dogs, or put away his plough.

Imagine, too, the effect on the naive young motorcyclist, who sees respected members of reputable clubs using a lane marked as a footpath. Might he not think that he too can ride on footpaths...any footpaths?

2.2 Conflict due to confusing information in the official paperwork when a claim is made for vehicular rights to be noted on the definitive map (i.e. a Byway claim).

The notification states that the road is to be upgraded to a Byway open to all traffic. In fact, all that is happening is that vehicular rights which already exist are to be made clearer to those members of the public who bother to find out. The true status of the road will not change, the surface and character of the road will not change, and the type of traffic entitled to use it will not change. But the little old lady who discovers that they are going to open up her lane to all traffic does not know this, and no-one is given the chance to tell her. She is offered the chance to object, so she certainly objects; she joins in the parish response to their elected representatives, and goes to the public enquiry certain that the weight of local opinion will carry the day. No-one explains that although she may object, the only objections which can carry any weight are those with real evidence that the road is not open to vehicles, that it was extinguished or stopped up by Magistrates or Parliament. She imagines the threat of articulated lorries passing her back door day and night (...open to all traffic) and offered a spurious chance of doing something about it (...objections and representations may be made) only to find that all was in vain, the forces of darkness ("young vandals on motorcycles") have prevailed. So she naturally exaggerates any disruption caused the first time another vehicle passes her doors, and urges her councillors to apply a Traffic Regulation Order at once.

2.3 Conflict caused by the persistent failure of those who should know better to employ correct terminology relating to right of way status.

Publications such as the Countryside Commission's "Paths, Routes and Trails" in some ways serve to increase misunderstanding, confusion and conflict rather than dispel them. In particular

motoring bodies among many others objected to the introduction of the term "National Trails" for routes which were not intended for vehicles, despite the fact that for 20 years the Trail Riders Fellowship has existed to preserve legal motorcycle access on what remains of our heritage of green lanes [8].

#### 2.4 Conflict created by the legal process itself.

Vehicle users in many counties are now completely disillusioned with the Byway procedure, as it takes months of research, and piles of paperwork, only to result in stirring up the whole of the local population, and increasing the possibility that a TRO will be applied. Better by far to suffer the indignation of pedestrians on a vehicular way signposted as a path, and offer a name and address when challenged, with the invitation to put the matter before the courts. But surely a better way can be found!

**3. Proposals:** We wish to propose the following changes aimed at resolving the difficulties our experience has identified. They are framed on the basis of the existing Rights of Way Law in England and Wales, making the minimum of changes, and aimed at preserving the rights of the users, owners and inhabitants of our countryside. They will also reduce the growing workload and expenses of Highway Authorities so that their attention and their funds can be devoted to asserting and protecting needed rights rather than alleviating needless problems.

3.1 County Councils should be instructed to create and make available to the public a map showing all vehicular routes. This may best be on the existing Definitive Map, or as a complement to it, but must be in the same format. It must show all routes which are available legally to vehicles; it could also usefully indicate the classification into M, A, B, C, and U roads, and indicate which are unsurfaced with tarmac or concrete, and which are maintainable by others (Ratione Tenurae Roads).

~~3.1.1~~ This would give vehicle users for the first time since 1949 the same access to rights of way information as is enjoyed by walkers and horse riders.

3.1.2 It would enable user groups to encourage motorists to avoid over-use, confident that they would not be faced with the challenge "Where else can we go?"

~~3.1.3~~ Many councils already have such maps, some dating back to before the 1949 Act calling the Definitive Map into being [9]. (But not all councils make such information available to users.)

~~3.1.4~~ A standard format would ease the problems of the Ordnance Survey in showing such information on their maps, and make them more user friendly. (The author is a member of the Ordnance Survey User Liaison Committee.)



3.1.5 As with the Definitive Maps, Councils may be encouraged to publish copies, should they wish, but the information must be available to callers. This allows councils who do not wish to advertise the benefits offered by their Rights of Way network to avoid doing so, but it protects the public right to know where we may go, what we are paying for.

3.2 It is our recommendation that the Definitive Map should cover all rights, and it should record only the highest status for each route (That is, no more Dual Status "footpaths" or "bridleways" which are really quite legal for vehicles).

However should it be decided instead to create an extra "Vehicular Map" then all reference to carriageways (i.e. RUPPS and Byways) should be transferred to this map from the "Paths Map" already in existence (the Definitive Map). At the same time, definitive bridleways and footpaths which are also carriageways should be deleted from the Definitive Paths map.

3.3 The existing processes of registering vehicular rights on RUPPS where they are shown to exist should continue as should the processes of upgrading and addition when evidence is newly discovered, and using the existing test for status, but with changes as proposed below (3.4, 3.5, 3.6).

3.4 A Public Enquiry should only be held after legally relevant objections are submitted (i.e. with good evidence). ~~When advertising and~~ ~~arranging details of modification orders~~ it should be made quite clear to all on what grounds objections can be considered, and what is the true legal position, ~~before and after modification~~ is completed [10].

3.5 Abandon both the term Byway Open to All Traffic and the concept of "vehicular routes used mainly as footpaths or bridleways." [11]

3.5.1 This description applies equally well to many tarmac roads, especially in town centres and popular tourist spots such as Grasmere and Stratford upon Avon. Reference to current use makes assumptions and subjective judgements which are inappropriate, confusing, and even if valid today make no allowance for future changes.

3.5.2 There is currently no way in which RUPPs which have vehicle rights but which are not mainly used by pedestrians or horse riders (but e.g. by agricultural vehicles) can be recorded properly on the Definitive Map. Neither can they be removed from it...

3.5.3 There is no way at the moment for a Byway the use of which changes from "mainly as footpath or bridleway" to be removed from the Definitive Map, even though the route may become part of a housing estate or a bypass.

3.6 The term Byway Open to All Traffic should be replaced on Signposts, on Maps, and in official documents, by the term Carriageway. This is still the proper legal term for all roads carrying public vehicular rights. It is suggested that this change could at a stroke help solve many problems, indeed, that this change alone could save many hundreds of hours of work in homes, parish meetings, council offices and public enquiries, up and down the land, not to mention thousands of pounds.

3.6.1 It will ease the trauma of the grey haired pensioner who anticipates pantechinons down leafy lanes, and should reduce the volume of inadmissible objections to a manageable level.

3.6.2 It will enable us to return to the simple situation of only 3 classes of right of way, footpath, bridleway, and carriageway.

3.6.3 It will eliminate the confusion caused by the signpost abbreviation BW - does it mean byway or bridleway? The letters FP, BW, and CW would be clear to all, even F, B, and C would be unmistakable.

3.6.4 The term Carriageway is legally defined as "A way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles". (Highways Act 1980, s 329 (1) )

3.6.5 Very few counties have recorded a significant number of Byways and of these even fewer have signposted many of them. (It is reported that in Berkshire many green lanes are signposted as Cart Road to general approval [12].) We recognise that it would be unfair to penalise those counties who have actually done what the Law requires, and some way should be found to replace these signposts at no extra cost to the county. Perhaps if central funding could be found for new signpost arms, vehicle user groups would be prepared to volunteer to erect them. Such an arrangement is already applied successfully in some areas [13].

#### 3.6.6 Voluntary maintenance:

This paper is concerned with legal change; however it is thoroughly in keeping with the intention of this document that additional solutions should be proposed here. Given the encouragement of acknowledged vehicular status and a reduction in confrontation, user groups can confidently promise an increase in offers of voluntary maintenance activities. Many of our members already have a fine record of such service to the community.

3.6.7 Should it be felt that the change to "Carriageway" will raise impossible administrative or legal complications we would consider as a second rate alternative that the term "Byway" on its own could be retained. However to be effective this would have to be done in conjunction with the changes proposed in 3.4, and would not lead to the advantages which may accrue from 3.6.2 and 3.6.3. This change would have to be managed carefully - we feel that the phrase "open to all traffic" is already too firmly attached to the term "Byway" in the public mind.

3.7 Official bodies charged with managing the public use of the countryside (such as the Countryside Commission and the National Parks Authorities) should be legally bound to extend their educational and advisory roles to embrace motorised use of the countryside, thus giving recognition to the legitimacy of motoring leisure as an acceptable pastime in the countryside.

4. Appendix A:

Our answers to other points raised recently by those for whom motorcycle and problem are synonymous.

4.1 "These old routes were not intended for motor vehicles".

4.1.1 None of them were, not even trunk roads like the A5 or the A6. Only the modern bypasses and motorways were built for motors. When mechanical propulsion first started to become popular, Parliament considered how vehicles could be adapted to suit the roads, and, much later how the roads could be adapted to suit the vehicles. The decision was made that motorists could continue to use carriageways on certain conditions, one of the first of which, introduced in 1865, became notorious as the Red Flag Act. In 1903 the Motor Car Act insisted on driving licenses, vehicle registration and number plates, in 1909 they imposed a special license duty on motor vehicles, eventually called the Road Fund by all except those who collected it. And in 1909 there was still rather less than 2000 miles of English road with a tarred waterproof surface [14]. All country roads then were what we would now call dirt roads, and the great majority of them were green lanes.

4.2 "If we open up these old lanes we will be overwhelmed by hordes of motorcyclists".

4.2.1 The only group within the BMF which is seriously interested in the use of motorcycles on green lanes is the Trail Riders Fellowship, with around 1500 members throughout the U.K. To put this in perspective, the Ramblers Association is only one of many groups of walkers using rights of way, and they have around 50,000 members. Even the British Driving Society whose members use horse drawn vehicles on our carriageway network has 7,000 members [15].

4.3 "What about those who aren't in the clubs, the under-age riders, and those on illegal or stolen machines?"

4.3.1 The BMF is powerless to control these riders because we have no rights even to stop them to explain that they are doing wrong. When we report riders to the police we find that they will not prosecute. Ending our legal rights to use an old road will not stop the hooligans, any more than closing a pedestrian crossing will prevent jaywalking. For another comparison, ask the Ramblers what they can do about the hordes of football hooligans who walk through our towns.

4.4 "Wouldn't it be more reasonable to share out these old highways, so that all users could be catered for?"

4.4.1 Yes, and the sharing out has already been done. Of the 120,000 mile network of footpaths, bridleways and other tracks in England and Wales only about 5,000 miles of green lane are available for motorcycling. The sharing out has been done indeed, and we got less than 5%, all of which, we are happy to acknowledge, is also available for walkers and riders. New footpaths and bridleways are being created all the time (and we welcome this as it provides more alternatives for others so they can more easily avoid our 5% should they wish) but there is no active mechanism to create new green lanes with vehicular rights. They are part of our dwindling heritage, the ancient carriageway network of England, a threadbare heritage but one which we rightly defend.

4.5 "But you only use the old roads for recreation; that's not what the highway system was created for".

4.5.1 Yes, we enjoy using ancient highways in exactly the same way that walkers, horse riders and carriage drivers do. Even

back in the seventeenth century it was recognised that roads were there for "Profit, Conveniency, and Pleasure to the Whole Nation" [16]. But the law has never concerned itself with the reason that people used the highway except in so far as they were bona fide travellers, going as they say from A to B. The reason for the going may have been to mourn a death or celebrate a birth, to elope with the Duke's daughter or to establish an alibi after robbing him of his purse, in law it is only the journey itself that is important. Perhaps this is what Parliament had in mind when seeking to remind Highway Authorities of their duty to assert and protect our use and enjoyment of highways.

4.5.2 If you really think that our highway system should not be used for recreation, perhaps you should try and get the Sports Council to endorse your views. Or try the Central Council for Physical Recreation.[17]

4.6 "What about the damage being caused by vehicles in the countryside? There has been a surge in the use of 4 x 4 vehicles in particular".

4.6.1 Undoubtedly registrations of four wheel drive vehicles have increased significantly. Remember though, that the description also covers the saloon cars now bought by farmers, country vets and doctors, as well as by the many other country dwellers they serve. Cars like the 4x4 Ford Sierra and Subaru Justy, as well as the occasional Range Rover.

4.6.2 Motorcycle registrations have not risen significantly over the last few years, and the BMF claims that any reported increase in use in the countryside has been stirred up at least in part by the recent adverse publicity given to damage blamed on recreational users, combined with an increase in the numbers of the other country users who do the complaining.

4.6.3 Motorcyclists have been using the green lanes of this country ever since motorcycles have existed; they have been paying extra taxes for road maintenance for eighty years. In that time, many lanes have been covered with tar or concrete, but many of those our members find most interesting have not been maintained from 1909 to the present day. When roads have been neglected for so long it is not surprising that one or two of them become rutted by wheels. We are not asking for tarmac or concrete to be used on green lanes, all we ask is not to be blamed for damage caused, not by our use, but by the lack of the maintenance we have been paying for. We hear of millions of pounds being spent on maintaining footpaths, and yet even our members' offers to do maintenance work ourselves in some counties are turned down [18].

4.6.4 Even the damage which does exist is rarely caused by motorcycle use. Tests have shown that the ground pressure from an ordinary trail motorcycle is the same as that from a walker's boot, and much less than the hoof of a horse [19]. Claims that a surface is unsuitable for motorcycle traffic whilst being suitable for traffic on horseback or on foot will be strenuously resisted and we have the evidence to back this up. Exaggerated claims of recreational damage simply do not stand up to rigorous analysis [19]. Show us a patch where a motorcycle will leave a deep rut and we will show you a walker up to his ankles in it. Show us a patch where there are ruts more than eight inches deep and we will show you the agricultural vehicles which caused them.

4.6.5 Where recreational damage is proved to cause a problem, we ask that before the expense and hassle of a TRO is contemplated, consideration should be given to asking vehicle users for voluntary restraint at problem times, and for assistance to help rectify the problem. MOLARA would be pleased to coordinate any such requests [20]. We would all much rather



spend our time and money helping to reduce our impact than fighting County Hall for the rights we pay for.

4.7 "Why don't you ride in quarries or on old slag heaps, instead of in the countryside?"

4.7.1 Old quarries and slag heaps are no more attractive to trail riders than they are to ramblers. Like ramblers, we seek to preserve our rights of access in interesting places and on interesting roads. We also seek to preserve the character of those roads for all users, and we believe that roads, like woodlands, are best preserved by regular use.

4.8 "Even when all is said and done, motorcycles are still noisy vehicles, and their riders have no thought for other highway users".

4.8.1 Perhaps this is best answered by a single quotation from a horse rider on a recent ride down the Pennines [21]:

"I honestly don't think we could have done it without your lads on motor bikes - they opened all the gates, and guided us wherever we could have gone astray, and they were just so quiet. It was wonderful; we must do it again".

We would like to, but only if our rights on ancient carriageways are preserved.

APPENDIX B:

Codes of Conduct:

TOYOTA  
4WD  
COUNTRY  
CODE.

3 Travel at a quiet and unobtrusive pace and when travelling in groups keep to a small number.

4 Ensure your vehicle and yourself are fully road-legal. Green lanes are subject to the same laws as surfaced roads. There is no public right to drive on common land, moorland, sand dunes, or beach.

5 Pay attention to "the four ws"

**Weather:** Do not travel on green roads when they risk being damaged beyond a point of natural recovery when the weather improves.

**Weight:** Do not use lanes which may be seriously damaged by the wheel pressure applied by your vehicle.

**Width:** Do not use lanes which are too narrow for your vehicle. Avoid damage to trees, hedgerows and boundaries.

**Winches:** Use only when unavoidable - your priority should be to avoid damage to trees, walls or the surface while recovering.

6 Respect the life of the countryside. Be courteous to other road users, including walkers and take great care when passing horses. Be prepared to stop your engine if necessary. Always fasten gates and take care near livestock.

7 Remember that wildlife faces many threats and green lanes can be valuable habitats. Take special care in spring and early summer. For information contact LARA '37.

Now that you are the owner of a Toyota 4WD vehicle you will be able to experience an entirely new and exciting form of driving, getting off the "beaten track" and reaching those places in the country that, without a 4WD vehicle, would have been inaccessible.

However, if you have not owned a 4WD vehicle before you may be unaware of the guidelines that exist for the use of 4WD vehicles when off the surfaced roads. The Land Access and Rights Association has produced a Code of Conduct for those occasions and is reproduced below to help you to enjoy your 4WD driving to the full.

A DRIVERS COUNTRYSIDE CODE OF CONDUCT

Using vehicles on unsurfaced roads (Green Lanes) is an emotive subject. There are many organisations which would like to see recreational motor vehicles confined to major surfaced roads. MOLARA believes that all users of the countryside can enjoy their pastime without upsetting others so long as we all exercise a little care and consideration. This Code of Conduct is intended to help you gain the most from your recreation and to protect our future access to the countryside.

1 Use only vehicular rights of way, not all green lanes have vehicular rights.

2 Keep to the defined track. Detour only to pass immovable obstructions. Report any obstructions (including low branches) to the highway authority, if the route is not obvious on the ground, ask locally, or check on the maps held at the highway authority offices.

3 Travel at a quiet and unobtrusive pace and when travelling in groups, keep to a small number.

4 Ensure your vehicle and yourself are fully road-legal. Green lanes are subject to the same laws as surfaced roads. There is no public right to drive on common land, moorland, sand dunes, or beach.

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A Message from the Royal Society for Nature Conservation:

Wildlife faces many threats in the countryside. Please protect our animals and plants by taking care on green lanes and avoiding vulnerable habitats such as sand dunes, heath lands and wetlands. For information on important wildlife areas, contact your local Nature Conservation Trust. Details available from RSNC.

RIGHTS OF WAY

You have a legal right to use BYWAYS OPEN TO ALL TRAFFIC (BOAT) and UNCLASSIFIED COUNTY ROADS (UCR). In some areas there are still rights of way known as ROADS USED AS PUBLIC PATHS (RUPP). Some of these have vehicular rights, some do not. If in doubt, check with the local highway authority or a member organisation of MOLARA. Some vehicular rights of way have been closed by TRAFFIC REGULATION ORDERS (TRO). You must obey the signs at the end of these roads.

Do not assume that ORDANCE SURVEY maps give correct information on rights of way. Many maps contain out-of-date information, especially as regards RUPPs. OS Maps do not indicate which roads are UNCLASSIFIED COUNTY ROADS. Do not assume any minor road is open to the public. Some highways shown as bridleways and footpaths are actually vehicular rights of way. Unless you have proof of this you must not drive on a footpath or bridleway without the landowner's permission.

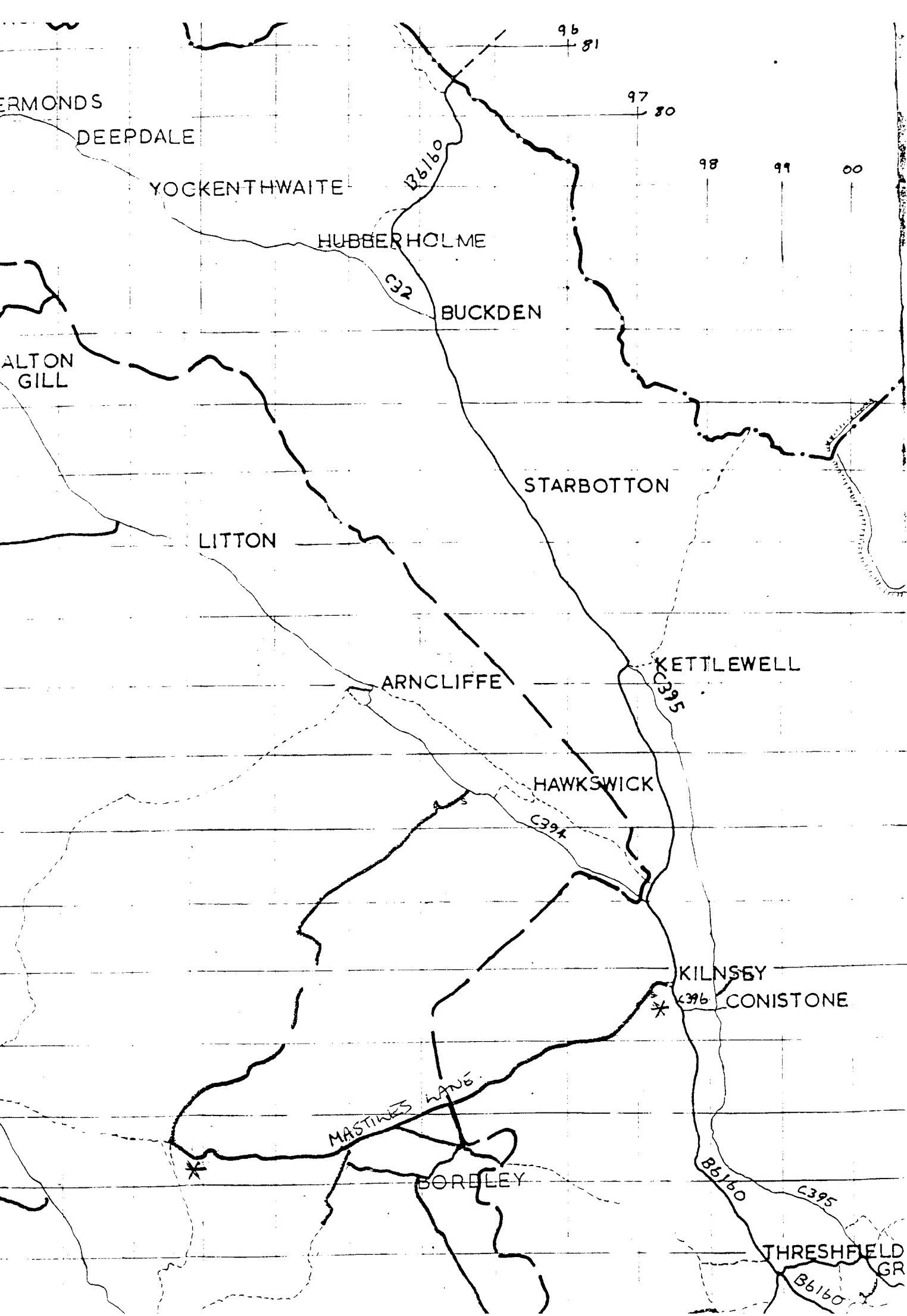


APPENDIX C:  
REFERENCES:

1. See attached letter from North Yorkshire CC. (p.19)
2. Road Traffic Act 1972 s.36.
3. Town Police Clauses Act 1848 s.28; Highways Act 1980 s.131; Highways Act 1835 s.78; Road Traffic Act 1972 s.1.
4. Finance Act 1909; Road Vehicle (Registration & Licensing) Regs 1971-1978.
5. Highways Act 1980 (reduplicating legislation back to 1835).
6. For an example: Mastiles Lane in the Yorkshire Dales is an Unclassified Road which narrowly escaped being surfaced with tarmac in the nineteen fifties and yet now about two miles of the total length of five miles is also recorded as Definitive Bridleway. (Map: p.20).
7. National Parks & Access to the Countryside Act 1949; Countryside Act 1968; Wildlife & Countryside Act 1981.
8. Paths, Routes & Trails, CCP253 states for example:  
Para 23: Once the county council definitive footpaths maps had been published... {the definitive map shows Bridleways, RUPPs and BOATs too}.  
Para 29: It is time... to examine the whole rights of way network... {the document is not concerned with carriageways at all and mentions Byways only once}.  
Para 64: ...national trails, which can be defined in terms of...footpath surface...{many national trails comprise long sections of Bridleway and of Carriageway}.
9. See attached example of 1:63360 scale overlay produced by North Yorkshire CC. Mastiles Lane is highlighted thus \* \*. (p.20).
10. See attached articles from Byway & Bridleway. (pp.21 & 22).
11. "Byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used. WCA81 s.66. ( A similar legal definition of RUPP has been described in the High Court as a definition of "outstanding obscurity". (Sir John Pennycuick, reported in Byway & Bridleway No.5 1988.))
12. Personal Communication; A Kind Esq, Principal Officer, MOLARA.
13. Such an arrangement already exists in Kent. Personal Communication; M J Ducker Esq, Kent CC.  
MOLARA has a growing file of similar instances from around the country.
14. Gregory J W The Story of the Road p 242.
15. Trail Riders Fellowship c/o MOLARA, Miller House, Corporation Street, Rugby. CV21 2DN.  
Ramblers Association, 1-5 Wandsworth Road, London SW8 2LJ.  
British Driving Society, 27 Dugard Place, Barford, Warwick. CV35 8DX.

16. Title to a discourse on road maintenance, 1675; used as frontispiece in The Road by Hilaire Belloc, 1923.
  17. Sports Council, 16 Upper Woburn Place, London. WC1H 0QP.  
Central Council for Physical Recreation, Francis House, Francis Street, London SW1.
  18. See attached letter from Cumbria CC. (p.23)
  19. Unpublished research by T Stevens:  
Pressure on the Countryside 1989  
The Mastiles Lane Report 1988  
Copies from: MOLARA.
  20. MOLARA: The Motoring Organisations Land Access and Rights Association, Miller House, Corporation Street, Rugby. CV21 2DN.
- Member Associations:
- British Motorcyclists Federation.
  - Amateur Motor Cycle Association.
  - Auto-Cycle Union.
  - Association of Rover Clubs.
  - All Wheel Drive Club.
  - Civil Service Motoring Association.
  - Motor Cycle Industry Association.
  - Royal Automobile Club Motor Sports Association.
  - Trail Riders Fellowship.

21. After preparing this document a letter was received from Mrs Mary Townley, organiser of the Pennine Pony Express 1989 in which she states: "I don't think that any event involving horses on the high fell should be run without the safeguard of Trail Rider Stewards such as yourselves".



ERMONDS

DEEPDALE

YOCKENTHWAITE

HUBBER HOLME

BUCKDEN

ALTON GILL

STARBOTTON

LITTON

ARNCLIFFE

KETTLEWELL

HAWKSWICK

KILNSBY

CONISTONE

BORELEY

THRESHFIELD GR

96 81

97 80

98

99

00

B6160

C32

C395

C394

C396

MASTING LANE

B6160

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## Not such an ass

We have recently been told, on high authority, that some "fine tuning" of rights of way legislation is needed in order to make current procedures for effecting changes in the network less time-consuming and cumbersome. But is it always the procedures that are at fault, or could it rather be the way that they are being applied?

Anyone who has studied reports of public inquiries into the reclassification of R.U.P.P.s will be very familiar with one recurring theme. Time and time again, when re-classification as a B.O.A.T. or bridleway (and particularly the former) is at issue, the inspector sets forth the objections which have been made, only to explain in his conclusion that he has to rule them out of consideration because they are made on grounds of amenity or suitability — grounds which, as the statement by Hampshire County Council published in B & B 1988/5 emphasises, have no relevance. Why, then, have they been put to the inspector? Why indeed, if they are the only objections, has there been any inquiry at all?

The enterprising Hampshire County Council has now obtained a ruling from the Department of Environment which makes it clear that this particular form of time-wasting bureaucratic embroidery is quite unnecessary. "We take the view", this says, "that for an objection to be duly made it must be (a) within time (after making reasonable allowances for postal delays where the objection is a few days late in arriving), (b) relevant to the fundamental purpose of the order and (c) with respect to the proposal the subject of the order. Given that the fundamental purpose of orders for the reclassification of R.U.P.P.s is the establishment of the rights that exist over such highways, factors such as need and 'amenity' are not relevant to the consideration and determination of that issue. Consequently, objections based solely on such grounds would not, in our view, be duly made, notwithstanding that they may be otherwise in order."

The D.o.E letter goes on to indicate that "natural justice" would suggest that authorities should give objectors a chance to modify their grounds for objection before refusing to entertain their objections; and it is of course always open to 'rejected' objectors to seek redress in the High Court.

B.B.T. welcomes this statement of view, and has suggested to D.o.E. that it be sent to all highway authorities for their guidance. The Law Report on p. 4 discusses another instance of the D.o.E's sensible approach which should bypass endless controversy between applicants for modification orders and the more pedantic authorities. Could it be that similar applications of commonsense might help to cure some of the other 'law's delays' in the rights of way field?

### Gwynedd road closures

Alan Kind, acting on behalf of the Central Rights of Way Committee (which he serves as Honorary Secretary) recently opposed a further series of closures of unclassified county roads (U.C.R.s) in Gwynedd. Gwynedd's County Council is intent on 'regularising' the network of minor highways in the County, seeking closure of any which, in its opinion, are not sufficiently used to warrant their remaining open. Notwithstanding that the Council has told the British Horse Society that "unclassified county roads in Gwynedd are, largely, the bridleway network", this block of closures was brought to court with some roads to be totally stopped-up and others to retain footpath rights only.

The Council had consulted with local representatives of walkers (happy to have the better part of these roads made into footpaths) and horseriders, none of whom objected. In the latter case this was because local riders did not know about these unsigned U.C.R.s and so did not use them.

Mr. Kind thought the magistrates were fair and thorough in their hearing of the case although they gave no reasons when confirming the closure orders. It seemed clear that they had every sympathy with the need for horseriders to have somewhere safe and quiet to ride, but at the end of the day and by conventional construction, these ancient roads were deemed "unnecessary". He added "There is a simple lesson from this case. User groups must ride, walk or drive their rights of way regularly and systematically. Going to court without (preferably local) user witnesses is a recipe for closure no matter how sympathetic the magistrates are to our needs."

### South Downs Way T.R.O.

West Sussex County Council has announced that it intends making an order banning private motor vehicles from certain tracks on the South Downs, notably part of the South Downs Way Long Distance Bridleway. The local branch of the Trail Riders' Fellowship recently held a meeting of the various user groups affected at which it was decided to oppose the order vigorously.

The Land Access and Rights Association has circulated horse, carriage, bicycle and disabled users' groups pointing out that the order, if implemented as presently drafted, could constitute either a physical danger or an illegal obstruction to these bodies. L.A.R.A. admits that there is a problem with motor vehicle users driving on the open Downs. However, they suggest that "erecting unsightly signs, expensive and totally ineffective 'motorcycle traps' and side-gates will serve only to deny access to the law-abiding majority while the law-breakers will continue almost without hindrance."

# When is a R.U.P.P. not a R.U.P.P? When it's a B.O.A.T.

The following statement by Hampshire County Council is reprinted by kind permission of the County Secretary

You may be familiar with the definitive map and the "hybrid" public right of way call a R.U.P.P. (Road used as a Public Path). The R.U.P.P. is destined to disappear from the map forever. Why and what will take its place?

The Wildlife and Countryside Act 1981 says that all R.U.P.P.s in England and Wales must be re-classified and recorded as B.O.A.T.s (Byway Open to All Traffic), as bridleways or as footpaths. The purpose of this note is to explain why, what re-classification involves and what things the county council (the surveying authority under the 1981 Act) can and cannot take into account; and what it all means in practical terms.

In Hampshire we have over 500 R.U.P.P.s; the County Council has already decided to make 250 re-classification orders, so in due course nearly all parish councils will be involved.

R.U.P.P.s are defined as highways other than public paths used by the public mainly for the purposes for which bridleways and footpaths are so used. In a recent High Court case, Sir John Pennycuik said this was a definition of "outstanding obscurity". You will notice that the right for the public to use them with vehicles is not mentioned (but implied), so the question as to whether public vehicular rights do exist is, strictly, left in the air; but the definition gives the impression that such rights must exist. The very purpose of the re-classifications and the definitive map is to settle this kind of argument.

Section 54 of the 1981 Act places a *duty* on all county councils in England and Wales to re-classify R.U.P.P.s. Section 54(3) says that if a right of way for vehicular traffic has been shown to exist, a R.U.P.P. must be recorded as a B.O.A.T.: a B.O.A.T. is available for vehicular and all other kinds of traffic. If vehicular rights are *not* shown to exist a R.U.P.P. must be recorded as a bridleway unless it can be shown that bridleway rights do *not* exist; if they do not then a R.U.P.P. must be recorded as a footpath. You will see that the 1981 Act is very restrictive and that the county council cannot take *any* other consideration into account.

The re-classification process is widely misunderstood. One source of confusion and misunderstanding, is a belief that the county council can have regard to whether a R.U.P.P. is suitable for vehicular traffic; its position and width; its state of repair and the nature of the soil, and whether re-classification to a lower status - to bridleway or footpath - would cause undue hardship.

These tests, for what was called a Special Review were set out in the Countryside Act 1968, *but that Act has been repealed*, and moreover the County Council never carried out such a Special Review in Hampshire.

It is often said that the county council should consider amenity factors, such as the effect of motorcycles and cars in sensitive or beautiful stretches of the countryside, or that there would be conflict between vehicles, pedestrians and horses, noise and destruction of the surface. It is also said that by re-classifying R.U.P.P.s to B.O.A.T.s the county council is encouraging vehicles to use our unmetalled byways and green lanes. Those concerns are understandable, but the county council cannot *by law* take these factors into account.

Always remember that the sole test for re-classification is whether vehicular rights exist. The rights may not have been *exercised* for many many years, and the R.U.P.P. may now be no more than what seems to be a bridleway or footpath, but the county council is bound by the legal maxim "once a highway always a highway", so if vehicular rights existed at some time, even in the distant past, they do *now*, unless the rights have been extinguished by due process of law. Most of Hampshire's R.U.P.P.s are ancient in origin and are shown in the Tithe Awards and Maps and Enclosure Awards of the nineteenth century; some are of more recent origin. Most R.U.P.P.s are recorded on the County Surveyor's highways maps as maintainable vehicular highways.

Remember, also, that re-classification cannot change the legal *status* of a right of way. The re-classification process cannot, by law, be used as a device to drive off scramble motorcycles and 4-wheel drive vehicles. Many people object to having them in the countryside but if vehicular rights exist then the R.U.P.P. automatically becomes a B.O.A.T. Only if they do not, the R.U.P.P. is recorded a bridleway, or a footpath if bridleway rights do not exist.

The re-classification of a R.U.P.P. to a B.O.A.T. does not require the county council to surface it in any way. Section 54(7) of the 1981 Act says that the recording of B.O.A.T. on the definitive map does not oblige the county council to provide a metalled carriageway or a surface suitable for the passage of vehicles. As you will know the County Council is already having great difficulty in maintaining the surface of the main vehicular highway network. We can assure you that there is no prospect or intention to improve R.U.P.P.s/B.O.A.T.s arising from these reclassifications. Finally, it has been said that by re-classifying R.U.P.P.s that there

must be some ulterior motive at work. We hope what is said here will convince you that there is no such motive in mind. Hampshire is not alone in carrying out re-classifications as all other county councils are, or soon will be, doing the same.

Our recent experience is that when the County Council publishes notice of the making of a re-classification order, some parish councils and many individuals object on the amenity grounds outlined above. They often seek to restrict use of a R.U.P.P. to a footpath or bridleway, because that may have been its main or only use for many years or because, given a choice, that would be the "right thing" to do. However, do bear in mind that the law drives the County Council in another direction; we must have regard only to the existence or otherwise of public vehicular rights. Therefore, any objection to a re-classification order must be directed *solely* to that purpose. An objection on amenity grounds could cloud the issue in a case where vehicular rights can actually be shown not to exist. We suspect that these cases will be comparatively rare but justice will not be done if objections relate to the things the County Council cannot take into account.

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Our reference	C/G60/41/M.CRW/DH
Date	19 May 1988

Dear Sir

#### UNCLASSIFIED ROADS IN EDEN AND SOUTH LAKELAND DISTRICTS

Further to your letters and recent telephone conversation with Mr Wallace I would like to clarify the situation regarding your offers to do limited clearance work on some unclassified unsurfaced roads in Cumbria.

Your original suggestion to use equipment and insurance provided by the County Council was put to our Joint Manual Workers' Consultative Committee but was rejected by the Trades Union, although it was pointed out that the work would not be done otherwise. Therefore, I feel that it is inappropriate to contribute to any clearance work and would have reservations that such clearance could encourage greater use for recreational purposes, not only by your own group but by four wheeled drive vehicles. This could lead to requests for maintenance which could not be met from the existing maintenance budget.

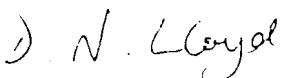
More recently you have suggested that you would undertake some limited clearance using your own resources. You have, of course, right of passage on these unsurfaced unclassified roads and if you have to do some clearance from the highway itself to gain access I am unlikely to be aware of it unless there were complaints from adjoining landowners or other users.

From my previous correspondence (18 January 1988, F5/5B/2/F.KC/NC) you will be aware that the status of some of these unsurfaced roads is uncertain and may have changed from roads to bridleways or footpaths, or the right of way may have been extinguished altogether. To investigate either the status or obstructions is time consuming for my staff who often have to seek advice from the County Secretary and Solicitor. Whilst I will provide what assistance I can to overcome the problems you have mentioned, the roads referred to have low status and little use. In the current competition orientated climate I am afraid they must take low priority.

- 2 -

I hope you will continue to enjoy exploring the green lanes in Cumbria and trust you will proceed with caution.

Yours faithfully

  
D. N. Lloyd  
dlw



# NORTH YORKSHIRE COUNTY COUNCIL



## HIGHWAYS AND TRANSPORTATION DEPARTMENT

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County Engineer and Surveyor

Your Reference

My Reference 70/50/55  
MTW/jlg

13 April 1989

Dear Sir

LONG LANE, HORTON-IN-RIBBLESDALE

I refer to your recent telephone conversation with Mr White concerning the status of unclassified road 112G Long Lane Horton-in-Ribblesdale and obstructions to the passage of vehicles which are located at grid reference SD825709 and 833716.

My County Area Surveyor has confirmed that the length of Long Lane between grid reference SD814695 and SD833716 is Ratione Tenurae and from grid reference SD833716 to SD84714 has Green Lane status. The term Green Lane is largely a physical description of an unsurfaced track and it may not give vehicular rights of access. It therefore may be a footpath, bridleway or carriageway. I am afraid this is the extent of the information which is held on County Council records.

In order to establish whether vehicular rights of way exist on the green lane it would be necessary to consult either the Inclosure Awards which would show whether carriage rights had formerly existed or the Tithe Award Map which would show any areas of road as being exempt from Tithes. This information would have to be supported by confirmation that no subsequent stopping up had been considered by Quarter Sessions.

-2-

I have arranged for my Area Rights of Way Officer to inspect the two obstructions to which you have referred and also the locations of the two 'private road' signs which I understand are located at grid references SD817697 and SD843715 in order that I may consider what action should be taken in the light of any evidence that may be forthcoming on the use of the green lane as a vehicular right of way.

Yours faithfully

COUNTY SURVEYOR

Lord Denning has recently pointed out anomalies in rights of way law which have been known not only to Highway Authorities but also to user groups for some time. The BMF represents non competitive touring motorcyclists and welcomes this opportunity, not only to highlight some of the difficulties we face, but to suggest possible changes which may resolve not only our difficulties, but also some of the problems, real and illusory, caused by present legislation, for local authorities, other users, land owners, and country dwellers.

For some time vehicle user groups have felt growing concern that their legitimate access to the countryside seems to be jeopardised by various aspects of the legal system. Until recently however it has been thought that any attempt to change the system from outside would be unlikely to succeed.

It is now apparent that misgivings over the workings of the system have also been growing within Highway Authorities. This document has been prepared on the premise that minor changes to the system could resolve many of the difficulties experienced by user and Council alike, and in the hope that cooperation will replace confrontation in the countryside.

Proposals prepared by **T R Stevens**  
**Access Officer**  
**British Motorcyclists Federation**

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