North Yorkshire Local Access Forum

23 November 2016

Forward Plan

Report of the Secretary

1.0 Purpose of the Report

1.1 To invite members of the Local Access Forum to consider items of business for future meetings.

2.0 Background

2.1 The 'Guidance on Local Access Forums in England' published by the Department for Environment, Food and Rural Affairs (Defra) strongly recommends that forums prepare a forward work programme which sets out the forum's priorities and special areas of interest.

2.2 This can play an important role in helping the forum to:

- Ensure a focus on issues which are the most relevant for the area
- Clarify the issues on which the County Council or other section 94(4) bodies would benefit from receiving advice
- Timetable when specific matters are likely to be considered
- Inform the public about the forum's work
- Identify training needs
- Review effectiveness and prepare an annual report.

3.0 Forward Plan

3.1 Future meeting dates are:

- 11 January 2017
- 6 April 2017
- 12 July 2017
- 11 October 2017
- 17 January 2018
- 11 April 2018

Meetings are scheduled to start at 10.00am.

3.2 The Forum will need to consider items of business for future meetings. The attached draft forward plan presents the business currently identified.

3.3 The British Horse Society has circulated the attached document – Auditing the list of streets: a role for local access forums. Members are asked to consider whether they wish to seek a response to the questions raised from the Highway Authority, for reporting back to the next meeting.

3.4 Following recent announcements regarding future plans for the Catterick Garrison area, the Chair has suggested that she seeks a meeting with the appropriate representative to discuss access issues, and reports back to the next meeting. Members are asked to agree this proposal.

4.0 Recommendation

4.1 That the Local Access Forum considers items of business for future meetings.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)
County Hall
NORTHALLERTON

Report author: Kate Arscott, Secretary to North Yorkshire Local Access Forum

Background Documents: None

NORTH YORKSHIRE
LOCAL ACCESS FORUM

Forward Plan 2017/18

Date of Meeting	
Standing items	• Minutes • Matters Arising • Public Questions and Statements • Consultations • Secretary's Update Report • District Council Updates • Forward Plan
11 January 2017	• Update report on use of volunteers (requested July 2016) • Cycling • Ryedale Local Plan consultation (provisional) • Selby Local Plan consultation (provisional)
6 April 2017	• • •
12 July 2017	• 2017 LAF annual report
11 October 2017	• • •
17 January 2018	• • •
11 April 2018	• • •
Unscheduled	• Draft terms of reference • Health and Wellbeing Strategy (suggested at February 2016 meeting) • Rights of Way Improvement Plan

Auditing the list of streets: a role for local access forums

1. The stakeholder working group on rights of way recommended that: "Routes identified on the list of streets/local street gazetteer as publicly maintainable, or as private streets carrying public rights, should be exempted from the cut off.[1]" The British Horse Society expects this recommendation to be given effect in regulations made under section 54(1)(d) of the Countryside and Rights of Way Act 2000, exempting routes from the cut-off provisions in Part 2 of the 2000 Act.

2. The 'list of streets' is maintained by every highway authority under section 36(6) of the Highways Act 1980: "The council of every county, metropolitan district and London borough and the Common Council[2] shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense." The list should contain every way which is maintainable at the public expense, regardless of whether the way is, in fact, currently maintained. Most public rights of way are maintainable at public expense[3], and 'street' being defined so as to include paths[4], ought to appear on the list; however, very few highway authorities are believed to have included all publicly maintainable public rights of way on their list. But it is not unusual to find urban alleyways and some byways open to all traffic on the list of streets.

3. An exemption for routes on the list of streets may be valuable in preserving routes not on the definitive map and statement which would otherwise be extinguished by the cut-off in 2026, primarily:

- unsealed routes (often referred to as unclassified county roads, UCRs, and frequently marked on Ordnance Survey maps as 'other route with public access', ORPA[5]) which, on evaluation, are found to be public footpaths or public bridleways[6];
- urban footpaths, alleyways, ginnels *etc*.

4. Surveying authorities and rights of way researchers may wish to rely on the exemption (if granted) for routes on the list of streets so that scarce resources may be focused on applying to record other routes which will not be exempted. However, an exemption is dependable only if:

- the terms of the exemption apply to a particular route,
- a route is currently shown on the list of streets[7], and the route will continue to be shown on the list of streets at a date (expected to be close to 2026) specified in regulations.

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1 *Stepping Forward — The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England* (NECR035): proposal 25.

2 *i.e*. of the City of London.

3 Some public rights of way, particularly many ways presumed to have been dedicated since 1949 through long use, are not publicly maintainable.

4 Section 329(1) provides that, "except where the context otherwise requires—…street has the same meaning as in Part III of the New Roads and Street Works Act 1991". Section 48(1) of the 1991 Act provides that: "a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare—(a) any highway, road, lane, footway, alley or passage, (b) any square or court, and (c) any land laid out as a way whether it is for the time being formed as a way or not."

5 For a fuller explanation of ORsPA, see pannageman.craddocks.co.uk/#post32.

6 There is no provision to extinguish any type of roads (i.e. carriage roads of whatever character) in 2026, except roads which are shown in the definitive map and statement as a public footpath or public bridleway and which are not otherwise excluded from extinguishment.

5. Rights of way user groups and researchers believe that some highway authorities amend their list of streets without any external oversight or engagement: it is alleged that, in those authorities' areas, numerous minor or unsealed routes have been deleted without due process or accountability. Of course, it is a requirement that the authority "shall keep [the list] corrected up to date" to reflect, for example, new roads which are adopted by the authority, publicly maintainable streets which are stopped up under a legal instrument, and publicly maintainable streets which cease to be maintainable on the order of a magistrates' court[8]. But a highway authority should not remove a street from the list simply because it no longer wishes to maintain it, or because it sees no value in maintaining it, without following a statutory procedure to relieve it of the obligation of maintenance, or to extinguish it. Even if the highway authority believes an entry in the list to be mistaken, the Society believes that the authority should follow a transparent, accountable process to corroborate its belief. Given that reliance may now be placed on entries in the list being retained up to and beyond 2026, the Society asks local access forums to address highway authorities' present practice, and where that is found to be deficient, to press for a transparent, accountable process and public engagement where appropriate.

6. The Society recommends that the following questions could be addressed by the forum to highway authorities in the area covered by the forum:

- *What unsealed highways have been removed from the list of streets since 1998 (the year in which the Ordnance Survey collected such data for the purposes of showing ORPAS on leisure mapping)?*

If the forum is concerned that routes have been removed from the list of streets prior to 1998, an earlier date might be substituted and appropriate evidence presented.

7. If the response to this first question is 'we don't know', then clearly, the highway authority has no easily accessible record of changes made.

- *What procedures apply to any proposal to remove a highway from the list of streets, other than in response to a legal event (such as a magistrates' court stopping up order, or a Town and Country Planning Act diversion order)?*

8. If the response suggests that changes, including removals, may be made by officers without any reference to a council committee, and without any external consultation, it is not safe to rely on a route being exempted owing to its inclusion on the list of streets, because that route is vulnerable to removal at any time.

9. Assuming that the response to these questions is insufficient, the forum may propose that—

- *No highway (or part highway) should be removed from the list of streets, other than pursuant to a legal event, unless to correct a mistake where there has been consultation with local interests (such as the local access forum and parish council), the correction is fully documented for archiving and indexation, and the decision is taken transparently within the authority on the basis of a report by officers (e.g. by a committee or by the executive).*

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7 The exception from extinguishment may apply to routes added to the list of streets in the future, but before the date specified in regulations. However, until such routes are added, they are not obvious candidates for protection from extinguishment.

8 Sometimes referred to as a 'cessor order': see section 47 of the 1980 Act.

10. Highway authorities may be reluctant to engage in time-consuming, costly processes to amend the list of streets. But the question remains: what power does the authority have to amend the list other than consequential to a legal event? And if the intention is to correct what is perceived to be an 'error', then the evidence for such a correction should be presented in a report after engagement with local interests, the decision taken by local authority members, and details of the correction should be made available to the public. Removing a route from the list of streets, where that route is not recorded in the definitive map and statement, has the same impact as removing a public path from the definitive map. The latter process involves a familiar and fair public process. Why should we accept anything less for deletions from the list of streets?