

North Yorks Local Access Forum – Proposed Recommendation on Zonal TRO on Blubberhouses Moor

1. Statutory Duties

- 1.1 The statutory function of the LAF is to improve public access to land. But the Act qualifies this duty by requiring LAFs to have regard to the ‘desirability of conserving the natural beauty of the area for which it is established, including the flora, fauna and geological and physiographical features of the area.’ (CROW Act 2000, section 94.) Using the analogy of the Sandford Principle, which was formulated for the guidance of national park authorities, and which has now been incorporated into the Environment Act, it is reasonable to assume - although of course Blubberhouses is not in a national park - that if these two duties come into conflict, the conservation of natural beauty and of wildlife should take precedence. This is particularly important when the conflict occurs in a Site of Special Scientific Interest, (SSSI), or an Area of Outstanding Natural Beauty. Blubberhouses Moor is wholly within the Nidderdale AONB, and large portions of it are SSSI.
- 1.2 The LAF’s appointing body (NYCC) ‘shall have regard to any relevant advice given to them by the local access forum’ (CROW, 94 (5)).
- 1.3 Accordingly, at its meeting on 25 July 2018, the LAF resolved to advise NYCC that the zonal TRO, originally imposed in 2004/5, should be re-imposed, but made permanent, as soon as possible, on the network of approximately 27km of unsealed unclassified roads that criss-cross Blubberhouses Moor and adjacent land. The moor extends southwards from the A59, between Blubberhouses and Beamsley. It is co-extensive with the open access area.

2. Background.

- 2.1 From around the 1990s the moor became popular with drivers of recreational motor vehicles (motorcycles and 4x4s). The rights on the UURs that they used are uncertain, but presumably these users believed – although they never presented proof - that the UURs carry public rights for motor vehicles. Whether the routes do, or do not, carry such rights; whether the routes were correctly entered on the List of Streets; and whether the routes are accurately depicted on OS maps, are matters that will take much research to establish. But for our purposes, what is important is that motorbikes and 4x4s were driven onto the moor, causing extensive, and in a few places, according to Natural England, irreparable damage.
- 2.2 One of the problems with the network of UURs is that they are unmarked on the ground. There is no sign of them, apart from a few sections that can be distinguished from the adjacent moor. Overwhelmingly, the lines on the map are completely indistinguishable from the heather moorland and blanket bog that the routes traverse. In one case, leading south west from the entry to the moor near Blubberhouses church, the line on the map goes diagonally across two intake fields before emerging on to the moor. Along the way, it crosses three old stone walls, none of which shows evidence of there once having been gateways. In another location, Back Allotments,

the line on the map passes through woodland: mature trees grow directly on top of the supposed line. Out on the moor itself, the lines of the UURs meander about, occasionally, but not invariably, coinciding with stoned tracks built by the owners of the moor for their own purposes - not in order to delineate a public right of way. The result of this confusion is that the motorised recreational users of the UURs had no practical way of knowing when they were on, and when they were straying from the legal route – assuming, that is, that the UURs bear legal public rights for motors, which is by no means certain. Consequently, damage to the moor was inevitable and has been well-documented.

- 2.3 In 2004, and under the chairmanship of Bill Isherwood, a highways officer, now retired, but then based in Skipton, a working group composed of representatives of all those with an interest in the moor was convened. The group included gamekeepers, landowners, Natural England, walkers and – most importantly – representatives of the motoring organisations, the TRF and LARA. Under Mr Isherwood's skilful chairmanship, the group unanimously recommended the imposition of a zonal TRO that would exclude non-essential motors from the network of UURs. This recommendation was supported by both the motorcycle and the 4x4 representatives, as well as the Police and Natural England. It was agreed that the zonal TRO should run for 5 years, and then be renewed, or made permanent, if the conditions that prompted the imposition of the TRO were unchanged.
- 2.4 The group ruled out a possible alternative – ie that NYCC should build, from scratch, 27 kms of tracks capable of sustaining motor vehicles, along the mapped lines of the UURs. This was ruled out on three grounds: first, that it would be prohibitively expensive; second, that both the rights and the precise direction of the UURs remain unclear; and third, and more important, that the building of vehicle-bearing tracks would change the character of the SSSI and damage the fabric of the ground across which the tracks would have to run.
- 2.5 NYCC accepted the group's recommendation. A zonal TRO was imposed in 2005. Permanent signs were erected at all the entry points of the UURs onto the moor. The TRO was widely respected by motor vehicle users, and steadily the moor started to recover. It is now in generally good condition, although here and there, there is evidence of the rutting and the stripping-away of vegetation that vehicles caused back at the turn of the century.
- 2.6 Unfortunately, when the TRO lapsed, after its five-year term, the condition of the moor, and the impact on it of recreational motors, were not reviewed. The intention of the original working group was that it should have been reviewed, and if the conclusion of the review was that the order was having the desired effect, it would be renewed. A succession of two *temporary* TROs, each running for 18 months were hastily imposed. Temporary TROs may not be indefinitely renewed. The last temporary TRO has now expired, and 4x4s and motorbikes are returning to the moor. If nothing is done, there is every reason to expect that the good work of the first zonal TRO will be undone, reducing the moor and the SSSI once again to the deplorable condition they were in back in 2004.

3. LAF Recommendation

The LAF recommends to NYCC that, as a matter of urgency, the zonal TRO that was so painstakingly formulated in 2004/5, be re-imposed on the network of UURs on Blubberhouses Moor and made permanent.

4. Legal Powers

- 4.1 The legal powers to impose TROs will be well-known to you, but for completeness, and for the information of LAF members, they are set out below:
- 4.2 Under the Road Traffic Regulation Act 1984, a permanent traffic regulation order may be imposed if there is evidence that the order will achieve one, or more, of the following six outcomes:
- i. Avoid danger to persons or other traffic using the road.
 - ii. Prevent damage to the road or any building near the road.
 - iii. Facilitate the passage of any kind of traffic (including pedestrians)
 - iv. Prevent unsuitable use by vehicular traffic.
 - v. Preserve the character of the road in the case where it is particularly suitable for use on horseback or on foot, or preserve or improve the amenities of the area through which a road runs.
 - vi. Conserve or enhance the natural beauty of an area. This includes conserving flora and fauna, and geological or physiographical features.

(From the DEFRA publication 'Making the Best of Byways' 2005, p27)

- 4.3 All six of these conditions are met in the case of Blubberhouses Moor, although numbers ii, iv, v, vi are the most obvious.
- 4.4 Finally, you will be aware that TROs can sometimes provoke expensive litigation from opponents of the orders. In order to head off High Court challenges, it is essential that NYCC observes every detail of the legal provisions governing the making of TROs. In particular, it must document that has performed the balancing act between, on one hand, its duty under section 122 of the Road Traffic Act to keep ways open to those legally entitled to use them, and, on the other, its duties under the Road Traffic Act to restrict use of ways for the compelling reasons set out above.

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