

North Yorkshire Local Access Forum

27 January 2021

Discussion Document - Unsurfaced, Unclassified County Roads

1. One of our former members Michael Bartholomew carried out much research into this topic when he was a member of the Yorkshire Dales LAF, producing an explanatory document for our LAF in May 2019, we also had input at the June 2019 forum meeting from Ben Jackson, who handles UUR's for NYCC. He had earlier given a presentation to the Countryside Access User Group meeting stating that routes of this status are a valuable part of the rights of way network. He later confirmed in an email - "The view of the Countryside Access Team is that UUR's are an important recreational asset and form many vital links to the PROW network. It would therefore make sense for these to be considered, where appropriate, by the LAF in the context of enabling greater access to the countryside. I would be happy to support this approach."
2. The matter is somewhat complicated by the wording in the official guidance "Guidance on Local Access Forums in England" (DEFRA 2007) which states that Access Forums should not become involved in any UUR with a higher classification than a Byeway Open to All Traffic. To complicate matters further "Forums are required by section 94 of the Countryside & Rights of Way Act 2000 to have regard to guidance... this means that although not bound to follow this guidance, forums are legally required to pay attention to it and must take it into account in carrying out their functions." Therefore the 2007 guidance is unhelpful and ambiguous.
3. Two discussion papers were prepared for the Forum's consideration which resulted in a small 'working group' being convened to investigate.
4. The matter was again raised at the July 2019 Forum meeting at which the report of the Secretary provided two discussion papers on Green Lanes / UURs for the Forum's consideration (see copies at Appendices A & B respectively). The following is an extract from Minutes of that meeting (minute 285):

Michael Bartholomew introduced the item confirming there were approximately 800km of green lanes in North Yorkshire, most creating no problem for users. However, he highlighted that in some individual cases their fabric was being ruined and wildlife was being disturbed. When this became apparent, he suggested the question should be asked 'Is the use of this Green Lane by non-essential motor vehicles essential for the public's interest. If the answer is no, then closure should be sought.

Members discussed their opposing views on the use of UURs and Doug Cartwright suggested a compromise needed to be identified for any contentious UURs, in order that they could remain accessible to all.

Members noted that National Parks had historically worked well to identify a suitable compromise for contentious UURs, but Michael Bartholomew gave an example of where after 30 years of compromise a Green Lane had finally been closed to motor vehicles after the relevant Authority had accepted that the many compromises made had not worked.

Carol Murray proposed that in each instance, whatever right of access existed, that level of access should be maintained, and attention was drawn to her suggestion in the papers that an initial 'double check' be added, that 'Repair and Reopen' was the correct way forward, before doing so. It was also noted that any consideration of closure would need to include an holistic view of its effect on any adjoining routes.

Michael Bartholomew sought clarity on what was meant by a double check and Members discussed going on site visits to familiarise themselves with those green lanes whose use and condition had become contentious.

4. At the July 2019 meeting, Members were also made aware of an offer from the John Sugden, Chairman of Redcar & Cleveland LAF to attend a future NYLAF meeting to give a presentation on the various ways that highway authorities have handled UCR's in the old North Riding over the years. He was therefore invited to attend the November 2019 Forum meeting, and it was agreed that the NYCC PROW Officer should be invited too.
5. That meeting was in fact attended by a number of Countryside Access Services & Highways staff due to their interest in the matter, and the presentation given by John Sugden proved very informative.
6. Since then, information has been obtained from adjoining forums, in the North East and Yorkshire & Humberside Regional areas including our three adjoining National Parks, and it was found that [nationally] most forums do indeed pay attention to the guidance, but also regard UUR's as part of the public right of way network and take them into account when relevant.
7. It was proposed that in each instance, whatever right of access existed, that level of access should be maintained wherever possible and an initial 'double check' must be taken and that 'Repair and Reopen' was the correct way forward. It was also noted that any consideration of closure would need to include a holistic view of its effect on any adjoining routes which are part of the entire public right of way network. These 'Ancient Highways' are of similar lineage as most of our footpaths & bridleways and are indeed public rights of way.
8. This approach in itself is contradictory to an Access Forums general remit of looking into matters with a strategic view rather than specific cases, however, this seems the best option, and in some cases, members will need to carry out site visits to familiarise themselves.
9. Conclusion
Many hours have been spent discussing this topic for several years and it has never proceeded to become a formal 'Position Statement' that we do indeed regard unsurfaced, unclassified county roads as a constituent part of the Public Rights of Way Network.
10. Recommendation

Members are asked to consider the drafting and adoption of an agreed Position Statement on UURs.

Paul Sherwood
Chairman of North Yorkshire Local Access Forum

7 January 2021

May 2019

From: Michael Bartholomew

To: NYLAF

Subject: The LAF's position on green lanes.

At the last LAF meeting we agreed to work our way, if possible, toward a policy on the management of green lanes. The following is a contribution to the debate that will be necessary. I hope that colleagues will submit their own papers and that at a future LAF meeting we will be able to debate them.

1. Introduction. First, are green lanes any of the LAF's business? Our statutory duties, as laid down in section 94 of the CROW Act, are to improve access to land, and to be mindful of the need for conservation of natural beauty and the needs of land management. Green lanes give access to land, often deep in the countryside. Commonly they run across areas of great, and often fragile, natural beauty. They are a necessary part of the infrastructure that farmers and land managers need for their day-to-day work. It follows, I think, that the LAF should carefully formulate a view of the way in which green lanes should be enjoyed, managed, and conserved. The use of green lanes, the condition of their fabric, and the expense required for their management, have been, and continue to be, contentious matters. This contentiousness should not be a reason for setting aside the challenge of formulating a policy. On the contrary, it is a reason for the LAF to carefully consider the issues and come up with a coherent position.

2. Definitions

2.1 'Green lanes' is a term that has no legal definition, but it is an indispensable term for signifying the network of unsealed tracks that have never been tarmacadamed throughout their length. They are survivors from the horse-drawn age, and are often beautiful and distinctive features of the landscape. What distinguishes green lanes from the ordinary, tarmacadamed roads that we all depend on, is their 'unsealed' character. That is to say, they have no waterproof tarmacadam or concrete coating. They may be cobbled, flag-stoned, surfaced with stone chippings, or, often, may simply be scarcely-marked tracks running across grass, or heather, or peat, with no surfacing at all.

2.2 There are three sorts of green lanes. The first sort are 'Byways Open to All Traffic' (BOATs). As the name suggests, they are legally open to every type of user. They are entered on the Definitive Map, and are signified on Ordnance Survey maps by lines of green crosses. They are administered by Rights of Way departments, in exactly the same way that footpaths and bridleways are administered. There are 53 kms of BOATs in North Yorkshire.

2.3 The second sort are 'Unsealed Unclassified Roads' (UURs). These are entered not on the Definitive Map, but on the Highway Authority's 'List of Streets', the purpose of which is to record routes that are acknowledged to be maintainable at public expense. UURs are also known as 'Other Routes with Public Access' (ORPAs), and are signified on Ordnance Survey Maps by lines of green dots. There are 750 kms of UURs in North Yorkshire. Administration of UURs hovers between the Rights of Way Department, and the Highways Department. The latter steps in when regulation orders are required or considered. Unlike BOATs (and footpaths and bridleways) the public rights of way on UURs are unclear. The cautious gloss

on ORPAs in the key alongside OS maps expresses this lack of clarity. Entry on the List of Streets tells us only that the route is maintainable at the public's expense, and that UURs have, at least, rights of way for pedestrians. What higher rights any particular UUR may have must be considered case by case. No blanket assumptions may be made. This is the view of DEFRA's lawyers, and it is endorsed by NYCC Highways.¹ Vehicle user organisations contest this view. They assert that, by definition, UURs carry public rights for motor vehicles. In the absence of certainty, recreational vehicle users (along with cyclists, and horse-riders) routinely drive and ride along UURs. It is not the job of LAFs to settle the rights of way on UURs: that is a matter for public inquiries. Our duty is to consider how they are used, and what, if any, management measures may be required.

2.4 The final sort of green lane are 'Restricted Byways' (RBs). They are marked with purple lines, or, on some OS maps, green lines with dashes. They bear all the rights of BOATs, with the exception of non-essential motors. They differ from bridleways only in bearing rights for horse-drawn vehicles. There are very few RBs in North Yorkshire.

3. Traffic Regulation Orders (TROs). These are legal orders that suspend the rights of all, or some users, either temporarily or permanently. There are three types:

3.1 Temporary TROs. These may be imposed for periods up to 18 months, with the possibility of an extension for a further 18 months. Temporary TROs on green lanes are imposed usually when there is damage that can and will be repaired within the 18 month closure. The expectation of both the Authority and users of the TRO'd route is that it will be repaired and re-opened to all users.

3.2. Experimental TROs. These are designed to test the likely efficacy of particular, targeted prohibitions: eg What might be the effect of prohibiting 4x4s but not motorbikes? What might be the effect of prohibiting non-essential motors during the winter? These experiments are difficult to perform, for in order to produce good data, a control route of the same character, but upon which no restrictions are imposed, needs to be included in the experiment. This is a tall order.

3.3 Permanent TROs. These can be total prohibitions, 24 hours a day, 365 days a year, on all non-essential vehicles. Equally, they may be targeted at particular users (eg 4x4s), or may apply to all vehicles during certain months of the year, or may specify the direction of travel for vehicles – ie make the green lane one-way only.

3.4 TROs are legal instruments. They are costly to prepare, and if they are not legally bomb-proof, right down to the smallest detail, they can provoke litigation from disgruntled users or landowners. And if the court case goes up to the Supreme Court, the costs are eye-watering. Authorities that are considering the imposition of permanent TROs often conduct public consultations in order to fortify their legal departments against charges of abuse-of-process.

3.5 For what reasons may TROs be imposed? To simplify somewhat, highway authorities have a duty to keep all ways open to all legal users: 'to secure the expeditious, convenient and safe movement of traffic (including pedestrians).' (*Blue Book*, p496, p579.) This is a primary duty, but it is not an absolute one. If certain closely-specified conditions are met, the duty to keep a way open may be suspended for all, or some users, by means of one of the various sorts of TRO - permanent, experimental, temporary. To be successful, a TRO

¹ NYCC Highways paper on management of UURs, 23.3.18

has to be supported by evidence that one or more of the following eight outcomes will be achieved:

- (a) The avoidance of danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising.
- (b) The prevention of damage to the road or any building on or near the road.
- (c) The facilitation of the passage of any kind of traffic (including pedestrians) on the road or any other road.
- (d) The prevention of the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property.
- (e) The preservation of the character of the road in the case where it is particularly suitable for use on horseback or on foot.
- (f) The preservation or improvement of the amenities of the area through which the road runs.
- (g) The conservation or enhancement of the natural beauty of an area. This includes conserving flora and fauna, and geological or physiographical features.

(DEFRA publication, *Making the Best of Byways*, p27, *Blue Book*, p567.)

If the proposed TRO is for a green lane that runs through protected countryside (eg national parks, AONBs, SSSIs, National Trails) an additional consideration applies:

- (g) Affording better opportunities for the public to enjoy the amenities of the area, or recreation, or the study of nature in the area.

4. Other management measures

4.1 Vehicle user groups often recommend their members, and any other vehicle users who may be persuaded, to exercise 'voluntary restraint' when the condition of a green lane is judged by them to be parlous – eg when it is waterlogged, or has been so seriously rutted that it should be avoided altogether, or used in only one direction. As far as I know, no clear evidence of the effect of appeals for voluntary restraint has so far been produced. Such evidence would need to show that compared with an equivalent period when no appeals for voluntary restraint were in place, the period of voluntary restraint produced a measured decrease in the volume of traffic.

4.2 Volunteer working groups. As with footpaths, green lanes elicit volunteers who will make repairs, usually to ruined surfaces. Local authorities that are strapped for cash welcome volunteers, provided that problems of insurance and health and safety can be solved. But unlike footpaths, where, say, a stile needs rebuilding, ruined green lanes tend to necessitate the use of heavy equipment and tons of materials. In relatively few cases will volunteer labour be capable of bringing a ruined green lane back up to the required standard.

5. Damage to green lanes

5.1 All users of green lanes make an impact. But the impact is proportional to the size and weight of the user. Obviousy, a 4x4 makes a far greater impact than the impact that would be made by the driver if he or she got out and walked. Peace and tranquillity are prized

features of green lanes. A party of half a dozen motorbikes obviously make a far greater impact on peace and tranquillity than would be made if the riders left their motorbikes where the tarmac stops and walked.

5.2 Agricultural use. Plainly, tractors and other heavy agricultural equipment leave a heavy footprint. And high in the fells, quad bikes, which leave a rather small footprint on the ground, produce noise that can be heard from afar. But two points need to be made. First, vehicles that are used in agriculture or land management are there because they are necessary: they are not leisure vehicles. They are not there for fun. Second, farmers and land managers who depend on their local green lanes to get to their fields, pastures and moors have a powerful incentive to keep their lanes in reasonable condition, and they tend to make rough and ready repairs. Sometimes, repairs are made by land-owners, at their own expense, and are carried out to a very high standard. The programme by the Yorkshire Dales National Park for the imposition of ten permanent TROs has produced some instructive results concerning the impact of agricultural vehicles on green lanes. Every one of the ten routes is used by farmers. Yet every one of the routes is now in far better condition than it was when they were open to recreational motorbikes and 4x4s, even though, with a few exceptions, no maintenance was carried out following the imposition of the TROs (a finding that was borne out in the tables produced by Countryside Access Services at our LAF's 10 April meeting). Agricultural use of the ten TRO'd routes has not changed, yet the lanes recovered spontaneously when recreational vehicles were prohibited. The conclusion is obvious.

5.3 The weather. It is often asserted that the damage to green lanes is chiefly attributable to water - water either rushing downhill, scouring the lane, or water standing in dips, unable to drain away, thereby waterlogging the lane. Effective drainage is obviously important, but lanes that are not used by recreational vehicles tend to take rainfall in their stride. If the lane has a reasonable thatch of grass covering it, and/or ditches alongside, the grass acts as a sponge, soaking up the rain and releasing it slowly. But once the grass has been stripped away by the passage of vehicular traffic, the rain will rush downhill as soon as it falls, and will scour out the bare surface, washing out loose stones and often scouring the lane down to bedrock, especially on lanes with steep gradients. Comparisons between lanes that are at similar gradients, but which differ only in whether or not they carry vehicular traffic, show that the traffic-free lanes remain intact, while the lanes suffering vehicular traffic are washed out, even though the two lanes are subject to exactly the same weather conditions.

5.4 Peace and tranquillity. High on the list of the special qualities of national parks and areas of outstanding natural beauty are peace and tranquillity. The countryside outside these specially-protected areas is also valued by most visitors for its capacity to enable users to escape the noise and nuisance of motor vehicles. On open, tree-less fellsides, the noise of vehicles, especially noise produced by parties of motorbikes, carries for over two miles. Recreational vehicle users respond by asserting their right to take their vehicles along green lanes, and insisting that their vehicles are fully road-legal. As long as vehicles are within the legal limits for noise emissions, users say, they should not be prohibited, however audible they are.

5.5 Flora and fauna. Numbers of green lanes cross Sites of Special Scientific Interest (SSSIs). Blubberhouses Moor is an example with which LAF members will be familiar. English Nature, the agency that looks after SSSIs, fully supported the imposition of the zonal TRO on the moor, on grounds that the important blanket bog had been damaged – in some

places irreparably – by the passage of motorcycles. Obviously, non-motorised users can damage SSSIs – eg by disturbing ground-nesting birds – but in comparison with motor vehicles, non-motorised users make little impact.

6. Illegal use. If vehicles leave rights of way they are breaking the law, and if they damage the land adjacent to the right of way, they risk a charge of criminal damage. These are matters for the police, not rights of way departments. The only potential role to be played by the LAF is to encourage the police to take action, along with action against users whose vehicles are not street legal. In North Yorkshire, the hard-pressed police have had some success in prosecuting law breakers, but it's a difficult business.

7. Disabled people on green lanes

7.1 Green lanes do not have stiles, and often have reasonably manageable gradients. Also, they are wide enough for a blind walker and his/her guide to walk side by side, rather than in line – a configuration often demanded by narrow footpaths. Since recreational vehicle use became popular, the condition of the surfaces of green lanes has deteriorated to the extent that sight-impaired people and people with limited agility have real difficulties in making progress. Green lanes that used to be ideal for expeditions of disabled people are now hazardous, especially when a party of 4x4s or motorbikes comes along.

8. What do the general public think about vehicles in the countryside?

8.1 When the Yorkshire Dales National Park was conducting research in connection with its programme for the imposition of TROs, it found that the non-motorised public's enjoyment of their day in the Dales was enhanced by meeting no recreational vehicles, and encountering none of the damage that such vehicles inflict. The formal responses to the consultation on the advisability of imposing the TROs, overwhelmingly demonstrated the public's support.

8.2 In 2004, the polling company ICM were commissioned to undertake a national opinion survey on attitudes to the countryside. Respondents were asked to give their response to the following proposition: *The use of recreational motor vehicles on rights of way in national parks and other areas of outstanding natural beauty should be banned so that people can go there for quiet recreation and so that the peace and tranquillity of the countryside can be preserved for future generations.* 87% agreed with the proposition. 8% disagreed. 5% didn't know.

9. 'Open air recreation'

9.1 This is the term used in the CROW Act (section 94) when it sets out the functions of LAFs. It says that LAFs are to advise on the improvement of public access to land 'for the purposes of open air recreation'. The question then arises, what constitutes 'open air recreation'? Obviously, walking, cycling, and horse-riding qualify. Arguably, motor cycling qualifies. But what about travelling in a car or 4x4? Is there any sense in which travelling by car along a main road – which nobody would call 'open air recreation' - suddenly changes its essential character when the vehicle leaves the tarmac and enters a green lane? The whole impetus of the CROW Act is to encourage people to get out of their cars and to walk, cycle, or horse-ride. The LAF might usefully reflect on whether the users of 4x4s on green lanes are partaking in open air recreation at all.

10. NYCC's current practice

10.1 In a report to NYCC Executive Committee in March 2018, the Highways department set out its general approach to the management of UURs. Among the important statistics included in the report is an estimate that £1.85 million would be needed to bring the UUR network in the county up to the standard required for regular use by those entitled to use the network. The report also acknowledges the contentious nature of debates over the proper management of the network. It notes that £37,434 of staff time has been expended on research into 5 cases, and a few general enquiries, that have become contentious. This is just staff time – not the cost of actual repairs.

10.2 What the report notably does not do is consider the role that will be played by the imposition of TROs. The emphasis in the report is on repair and maintenance, not on management regimes that might restrict non-essential motors. Indeed, relying on a rather dubious estimate of the economic benefits of motor cycle use of green lanes, prepared by the Trailriders' Fellowship, the report even canvasses the idea that North Yorkshire's UURs might actually be *promoted* as tourist destinations for vehicle users.

10.3 In exceptional cases, NYCC has imposed TROs of various sorts on a few green lanes, but its default position is that green lanes must be kept open to those who are legally entitled to use them, even when this necessitates regular, expensive repairs to the damage inflicted by recreational motors.

11. Two case studies

11.1 Deadman's Hill, a UUR which crosses the boundary between the Nidderdale Area of Outstanding Natural Beauty, and the Dales National Park, runs from Scar House reservoir in Upper Nidderdale, over the watershed, to descend to Arkleside, in Coverdale. It used to be one of the most beautiful, remote green lanes in the county. But since 4x4 and motorbike use became popular, its condition and ambience have steadily been degraded. The noise of vehicles, especially those on the higher sections carries for miles. At its worst, and because of the passage of 4x4s and motorbikes, the section at the summit was impassable, for all users. Over the years, numbers of attempts to repair the route have been made, some voluntary, most paid for by NYCC. On the northern side, expensive repairs were paid for by the landowner, even though his use of the track was limited to the access required by his gamekeeper. Temporary TROs were imposed, but they were revoked as soon as repairs had been made. The latest NYCC repairs, which entailed the use of heavy equipment, are unlikely to last, given the impact that 4x4s and motorcycles make. NYCC has no plans to consider whether a permanent TRO, prohibiting non-essential motors is required. There is one short section of this ancient route, just south of Lodge, that is not part of the UUR. It shows how the lane used to look, before vehicles were attracted to the route. This undisturbed section, with its flagstones and its grass border is a reminder of what a superb, historic feature of the landscape the entire lane used to be. Deadman's Hill is now ruined. A beautiful place has been made ugly, with no end in sight.

11.2 Gayle Lane, Braythorn, north of Otley. By contrast with Deadman's Hill, Gayle lane is short – just a mile or so. It used to be a quiet, charming lane used by walkers, horse-riders and a few cyclists. The local landowner and his neighbours kept the drainage in good repair – cleaning ditches and clearing old cross-track culverts. Then, Gayle Lane started to attract recreational motorists. The inward growth of trees and bushes which inhibited the passage of 4x4s (but which provided a habitat for birds) was cut back by 4x4 user group volunteers,

wall-to-wall. Now that 4x4s can get through, the old ceramic cross drains have been crushed, the parapet of the bridge over the beck has been damaged, and a deep gully, deepened yet further by running water, on the western side has opened up. The amenity of non-motorised users, and the landowner, have been severely compromised by the activities of the minority of users who prefer motoring to non-motorised modes of access. NYCC has no plans to prohibit non-essential vehicles. Instead, and in line with its repair-and-reopen practice, it hopes to deploy resources to patch up the damage inflicted by vehicles, and to keep the lane open to the 4x4s and motorbikes that caused the damage. A small, but beautiful feature of the lower Wharfedale landscape has been spoiled.

12. Conclusion

11.1 In formulating a policy on the management of green lanes, the LAF has to balance competing needs. First, it has to balance the duty to improve access to land, against the need to conserve the beauty of the countryside and to consider the interests of landowners. In most cases, the balance will be easy to strike: most recreational activities are consistent with the conservation of the countryside. But where particular activities inflict damage, the environment must come first, especially when people doing the damage can exchange their modes of enjoying the countryside for less damaging modes.

11.2 Second, the LAF has to balance the needs and desires of the wide variety of people who are seeking open air recreation. It would be wonderful if every need could be met. But we have to be alert to cases where one user group's enjoyment damages the amenity of other groups. Is there a realistic prospect of peaceful co-existence between motorised and non-motorised recreational users of green lanes, and the farmers across whose land the green lanes run? First, the sheer scale of the damage inflicted on green lanes by motor vehicles inescapably diminishes the amenity of non-motorised users, (and farmers) even when no actual vehicles are encountered. And second, when encounters do take place, non-motorised users generally find them disagreeable. But when the damage to the environment is added in to the balance, and when the interests of landowners are taken into account, there can be very little doubt that the fabric of the countryside would be improved if non-essential motor vehicles were kept out. The LAF should develop a policy that concludes that, on balance, the needs of both the landscape and of non-motorised visitors to it, outweigh the desires of motorised users. If this sounds draconian, or even spiteful, it should be remembered that TROs prohibit nobody from green lanes. The prohibitions embodied in TROs apply only to motor vehicles, not to humans. The amazing and beautiful network of green lanes would remain open to anybody who walks, rides a bicycle, or rides a horse

13 Recommendation.

13.1 Green lane management strategists might usefully learn from the thinking behind the now perfectly routine business of pedestrianising city centres. The questions asked when such schemes are considered are not 'Do motor vehicles have legal rights to drive, (to take an example), on the streets around York Minster?' Obviously they do. 'Can money from the Highways budget be spent on repairs and maintenance of the roads around York Minster?' Obviously it can. But the much larger question that has been asked is 'Do we want non-essential vehicles to be driven around the Minster precincts and the adjacent medieval streets at all?' And the answer given by York authorities and authorities up and down the country, supported by the general public, is 'No we don't'. This prior, strategic question has led to what most people would agree are more human-scale, agreeable city centres. A similar

strategic question needs regularly to be asked of green lanes: do we want 4x4s and motorbikes on them?

13.2 In my view, the LAF should do two things. First, we should familiarise ourselves, first hand, with green lanes whose use and condition have become contentious. We should regularly make site visits. Such visits will equip us to speak with authority when management schemes are proposed by NYCC, or when we propose them ourselves – as we did with Blubberhouses Moor.

13.3 Secondly, we should produce a policy that recommends to NYCC that its current default practice of spending large amounts of money on repair-and-reopen schemes, should be replaced by a policy that considers that whenever the state of a green lane becomes contentious, the first question to be asked is: 'Is it in the public interest for this lane to remain open to non-essential vehicles?' If the damage inflicted on the green lane in question by non-essential motor vehicles has ruined its natural beauty, compromised the amenity of non-motorised users, and made life difficult for farmers and land managers, then the answer should be 'No'. And if the answer is indeed 'no', then consideration of the imposition of traffic regulation orders should be the first, not the last resort.

Discussion Document on Unsurfaced County Roads (Green Lanes)

The DEFRA publication “Guidance on Local Access Forums in England” published in March 2007, (which appears to be the latest edition) states (2.2) that “Forums are required by section 94 of the Countryside & Rights of Way Act 2000 to have regard to guidance issued by the Secretary of State in carrying out their functions. This means that although not bound to follow this guidance, forums are legally required to pay attention to it and must take it into account in carrying out their functions.”

Under section 3.1.1 of the guidance, it defines the statutory function as being to advise as to the improvement of public access to land in the area for the purposes of *open-air recreation and the enjoyment of the area*. It does not specify whom is included or excluded for this enjoyment of open-air recreation. Horse riders, cyclists, motorists, walkers, motor cycle riders are all equal. Under section 3.1.2 it further states; public access to land in the area for “any lawful purpose” and continues “For mechanically propelled vehicles this is limited to access insofar as this relates to byways open to all traffic (BOAT)”.

The term ‘Mechanically Propelled Vehicle’ is not defined in legislation but DEFRA had issued further guidance in December 2005 “Regulating the use of motor vehicles on Public Rights of Way and Off Road.” Unfortunately, most links to the DEFRA site are no longer available, I certainly can’t find it, but I think we can all imagine motor vehicles in their various guises. The other publication giving LAF’s advice is the ‘Natural England -Handbook for LAF Members, issued in 2008, this too is dated and many links no longer available. However on page 9 ‘Subjects on which LAF’s can give advice’:- Public access to land for any other lawful purpose and driving of mechanically propelled vehicles only with respect to use of byways, including utilitarian purposes (e.g. cycling to school or work). Public vehicular access on byways open to all traffic including use for utilitarian purposes such as accessing private property. This publication shows the definition of a BOAT as:- The Wildlife & Countryside Act 1981 defines ‘byway’ as: 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 purposes for which footpaths and bridleways are so used.

The Motoring Organisation’s Land Access & Recreation Association (LARA) have produced a very informative document “Unsealed, Unclassified Roads” published in March 2013; this outlines the plethora of types of tracks, details of maintenance responsibility, legality, case law etc. It appears to be the only helpful publication, and is supposedly kept updated for the on-line version. However, by virtue of the publishers is it entirely unbiased?

I have been in contact with the chairmen of adjoining Local Access Forums (Tees Valley, County Durham, Redcar & Cleveland, Cumbria & The Lakes, North York Moors National Park and Yorkshire Dales National Park) trying to ascertain their particular interpretation of the rule; ‘...is limited to access insofar as this relates to byways open to all traffic (BOAT)...’ this causes further complication, as their opinions differ, an interesting point is raised in the minutes of a meeting of the North East Regional LAF chairmen, that Northumberland Joint (with Northumberland National Park) LAF have had problems with trail riders, quad bikes, 4x4’s and Jet Skis on the river Tyne, so it’s not only byways to worry about.

John Sugden the Chairman of Redcar & Cleveland LAF sent me this interesting fact:- “The issue of status is more of an issue in your area. NYCC argue that the ways they record as unsurfaced roads may only have rights on foot – they do not say that they definitely do only have this status but that they might have. This vagueness seems to carry over to the management issue as how can you manage them if you don’t know what public rights they have over them? But it also rings alarm bells for higher rights users who worry that owners might take advantage of this vagueness and try to restrict use to walkers only. There is also concern as to what might be the effect of the 2026 cut-off. However, this is less of a problem in Redcar and Cleveland as this was all urban

districts before 1974 and the North Riding was only responsible for minor roads. Most of the unsurfaced roads were added to the definitive map as RUPPs and during the Cleveland County Council era were reclassified as BOATs. So at least we do not have the status problem.”

John continued by mentioning some research he’s currently undertaking:- “I take a great interest in the status issue, the current situation is that I am within a couple of months of completing a major report on the highway records of the North Riding which will examine every one of the routes that might be uncertain – there are around 500 of these. My researches show that, with only a handful of exceptions, the routes recorded as unsurfaced roads do indeed have vehicular rights – the real issue is the extent to which roads designed for horse-drawn traffic and never improved to vehicular standards are suitable for motor vehicles. This needs to be looked at on a road by road basis to see in which cases it is appropriate to impose TRO’s prohibiting motor vehicles. This may lead to formal objections – that is their democratic right. But I cannot see that there is any mileage in trying to bypass this by pretending that vehicular rights don’t exist.”

John Richardson the chairman of the North York Moors National Park LAF has also been helpful, “There are many longstanding issues countrywide on this subject, with opposing points of view being regularly aired. As you rightly say, a few years ago the North Yorkshire County Council Highways Authority did absorb the inappropriately named 'Green Lanes' into their care from the two National Parks. The Moors LAF, together with members of the NPA and other bodies, several years ago did survey a number of routes which legally have vehicular access, but which, for a number of reasons were not negotiable by vehicular traffic and in some cases by equestrians, due to natural occurrence’s, land slips, severe surface degradation, blocking trees, fallen bridges, collapsed walls and buildings etc. Reports on the conclusions of the surveying team are now filed at Northallerton. On one particular route, the LAF did make a proposal for a motor-cycle only, single directional TRO to preserve an extensive rebuild following what was actually criminal damage, though no charges were brought. The stability of this route was secured and the TRO has been removed, though quite correctly remains motor cycles only.” I have been invited to their next meeting in June when this topic is to be discussed.

Peter Charlesworth the chairman of the Yorkshire Dales National Park LAF has sent me several links to work they have done with the National Park authority & the highway authority:-
“As you know we have put a lot of resources into this issue over the years and our position (including on cross boundary routes) is clear here on our website:
<http://www.yorkshiredales.org.uk/looking-after/achievingourvision/the-experience/green-lanes-management>

Our approach is highlighted in our green lanes framework here:
<http://www.yorkshiredales.org.uk/looking-after/achievingourvision/the-experience/green-lanes-management/Green-Lanes-Framework-2017-FINAL.pdf>

The sensitivity assessment we have used is here:
<http://www.yorkshiredales.org.uk/looking-after/achievingourvision/the-experience/green-lanes-management/sensitivity-assessment-methodology-nov2006.pdf>

Everything we have done in relation to green lanes has been evidence based, and undertaken in consultation with North Yorkshire & Cumbria County Councils and others. When we have made TROs under own powers - LAF are a consultee. We continue to monitor usage and compliance. I have copied in Rebecca Greenfield for information, as this is a new area for her and its useful to see the level of interest and many issues it involves.”

The response from Tees Valley, an area I thought may have had problems due to the predominately urban area it covers didn’t come from their LAF but from Chris Scaife the Countryside Access Officer for Hartlepool Borough Council:- “This will be one of the items at our

next meeting and we can ask the LA officers as to their procedures (if they have any) in relation to Green lanes.” I have heard nothing further.

Charles Eckroyd the chairman of Cumbria has responded but was wanting to discuss his response after speaking to the Cumbria County Council highways people, and David Maughan of the Durham LAF responded “I really need to have a word with our footpath people at County Hall on this as it is not such a hot topic with us . I suspect it is something they do not wish to develop too much. There was talk around this issue a number of years ago when discussion was taking place about various routes in Hamsterley Forest, I recall that it didn’t reach any firm conclusions. I can think of a number of UCR’s in my own area that are used by varied user groups with maintenance picked up on a voluntary basis. “

So, these three were not very conclusive, to date.

The three National Parks adjoining us; North York Moors National Park, Yorkshire Dales National Park and The Lake District National Park all have useful information on their websites as do their three Local Access Forums. Some including details of which routes can be legally driven/ridden on, and those that can not be used, including lists of TROs imposed.

Ben Jackson the North Yorkshire Public Rights of Way Officer – Unsurfaced Unclassified Roads & National Trails; mentioned this issue at the recent Countryside Access User Group meeting stating that routes of this status are a *valuable part of the public rights of way network*. I have received the following e-mail from him:- “The view of the Countryside Access Team is that UURs are an important recreational asset and form many vital links to the PROW network. It would therefore make sense for these to be considered, where appropriate, by the LAF in the context of enabling greater access to the countryside. I would be happy to support this approach where necessary if that would be helpful.”

Conclusion

Although there is a suggestion in guidance, that Local Access Forums should not get involved in Unsurfaced Unclassified Roads if they are of a higher legal status than a Byway Open To All Traffic, this is not the actual case in real life. Even in the case of several forums contacted in northern England they do actually take them into consideration during their deliberations and some, work with their appointing authority regarding use and maintenance. Following Ben Jacksons comments regarding UUR’s being a valuable part of the public rights of way network we should have a more pro-active approach, they won’t just go away!

P.A.Sherwood...
1 June 2019