

# Public Document Pack

## North Yorkshire County Council

### North Yorkshire Local Access Forum

Minutes of the remote meeting held on Wednesday, 26th May 2021 commencing at 10.00 am.

Present: Paul Sherwood in the Chair, plus Roma Haigh, Janet Cochrane, Rachel Connolly, David Lepper, Barrie Mounty and Will Scarlett.

Apologies: Carol Murray, Helen Soutar, County Councillor Robert Heseltine and County Councillor David Jeffels. .

Officers Present: Neil Leighton (Senior Highways Officer); Ian Kelly (Countryside Access Manager); Melanie Carr (NYLAF Secretary);

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**Copies of all documents considered are in the Minute Book**

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#### **311 Introductions & Apologies for Absence**

Following members of the Local Access Forum introducing themselves, the Chair confirmed apologies had been received from Helen Soutar, Carol Murray, County Councillor David Jeffels and County Councillor Robert Heseltine.

#### **312 Minutes of the Meeting held on 27 January 2021**

**Resolved** - That the Minutes of the meeting held on 27 January 2021 be agreed as a correct record and signed by the Chair, subject to an amendment to the first paragraph of Minute No.304 – ‘Public Questions & Statements’. It was agreed the paragraph should be amended to correctly record that Mr Leon Foster was present at the meeting and did read out his own submission.

#### **313 Public Questions & Statements**

It was noted that a statement had been submitted by Mr John Vannuffel as a representative of the Trail Rider Fellowship. The statement had been circulated to Forum members ahead of the meeting due to its length so that they would have ample time to digest the information provided.

In Mr Vannuffel's absence the Chair agreed that the Secretary should read out the statement in line with the County Council's public participation scheme, which allowed three minutes for the presentation of a statement submitted by a member of the public.

The Secretary read out the following:

1.1 We write in response to the publication of a LAF document ‘NYLAF Sub-Group UUR Report’ and provide the following as a means to inform and assist NYLAF in formulating statutory advice.

2.1. North Yorkshire UUR's were surveyed in the 1950's as part of the process of producing definitive maps and statements. Both Parish and County Councils were subject of a statutory duty to include UUR's on the definitive map where it could be reasonably alleged that the UUR was a public path (i.e. bridlepath or footpath) or a

Road Used as Public Path (“RUPP” – a public carriageway mainly used by the public for horseriding/walking).

2.2. Where a UUR was not recorded on the definitive map and statement, there are the following possibilities:

A. The Parish Council and County Council properly discharged their legal duties and found that the UUR was a public carriageway mainly used as a carriageway that could not be reasonably alleged to be a public path or RUPP, or

B. The Parish Council and County Council were aware of the existence of the UUR but made a mistake in deciding to omit it from the definitive map and statement on the basis that it could not be reasonably alleged to be a public path or RUPP, or

C. The Parish Council and County Council were not aware of the existence of the UUR.

2.3. The law presumes that things done by authority are done correctly and properly. Conversely, the law does not presume that something done by an authority is the result of mistake.

2.4. “Ordinary road” is a term used in relation to UUR’s to denote that a road does not fall within the scope of ways that can be recorded on the definitive map and statement. Ordinary road in that context means a public carriageway mainly used by the public for the purposes of carriageway.

2.5 Ordinary roads are not public paths, restricted byways or byways open to all traffic.

2.6. Many definitive paths in North Yorkshire terminate on UUR’s and this demonstrates that UUR’s were surveyed and found to be ordinary roads providing a continuation of the highway network.

3.1. Some UUR’s in North Yorkshire were constructed after mechanically propelled vehicles (MPV) were first used as of right on the highway in 1801.

3.2. By 1831 a Parliamentary Select Committee published its report on the use of Steam Carriages on Common Roads. The report records some 43 items of legislation that provide for MPV.

3.3. The effect of the Locomotives Act 1861 was to ensure that all public carriageways created or constructed in exercise of statutory powers from thereon were intended for use by MPV.

3.4. MPV’s were first driven in 1769. The non-motorised bicycle wasn’t invented and ridden until the “draisne” of 1817 – some 16 years after Trevithick first drove a mechanically propelled vehicle as of right on an English highway.

3.5. The first motorcycle was produced in c.1863. The safety bicycle (where the rear wheel is chain driven) was invented in c.1885.

3.6. Some roads built between 1801 and 1861 were built for MPV.

3.7. Some 27 years after the Locomotives Act 1861 protected the public’s entitlement to use MPV on carriageways, the Local Government Act 1888 recognised non-motorised “bicycles, tricycles and velocipedes” as carriages for the purposes of the Highways Acts.

3.8. The public did not acquire statutory power to create and build roads until the Highways Act 1864. Up to that point, the creation and building of roads was either by private individual, inclosure, or by Act (typically a turnpike act).

3.9. The Highways Act 1864 provided new powers for the public to create and build roads, and also to convert existing soft roads into hard roads. But those powers were exercisable in the context of the Locomotives Act 1861 – all powers to create, build and improve carriageways were exercised with the intention of providing for use by MPV.

At this point after nearly 4 minutes of reading the statement, it was agreed the full statement would be published as an attachment to the Minutes of the meeting, and with the Chair’s agreement that the Secretary would move on the final section to read out the suggested considerations proposed by **Page 2** **by** **anuffel** as follows:

7.1. TRF respectfully suggests that NYLAF consider:

I. The UUR issue from a foundation of acknowledging the differences between a way, right of way, and the limits and conditions on entitlement to use a right of way.

II. That UUR's and Byways Open to All Traffic are not open to all traffic. As with all highways, they are only open to traffic that travels for a legitimate purpose and does not commit a common-law nuisance or other offence.

III. Not all horse and cart traffic was/is entitled to use all carriageways, as some use will amount to nuisance. It is possible in certain circumstances for a motorcycle to be entitled to use a carriageway but not a horse and cart – e.g. where the road is narrow, or where the road passes over a weak bridge that can safely accommodate motorcycles but cannot bear the greater weight and impact of horse and cart.

IV. That a source of conflict rests in a fundamental misunderstanding as to what highways are for. As outlined herein, highways – roads if you will – primarily exist to facilitate travel by the public. They are not for particular classes of user. All classes of user have an equal entitlement to use the road, and that entitlement is limited and subject of conditions. Those conditions include a duty of care and consideration to other road users.

V. The UUR network has already been surveyed and found to be ordinary road. The question is as to whether mistakes occurred on a case-by-case basis. There is no presumption of mistake. There is a presumption that authority discharged its duties properly.

VI. That the UUR network is comprised of a variety of roads, some of which originate in the motoring era and/or were improved for use by MPV at public expense in exercise of statutory powers.

VII. That the MPV pre-dates the non-motorised bicycle and the pre-existing entitlement to use MPV on the highway was protected by statute from 1861.

VIII. "Share With Care" approach helps all users to enjoy the road. Responsible riders and drivers (whether or not in MPV or on bicycle/horse/carriage) take care to share the roads with others. It is wholly unacceptable for responsible users to be met with abuse and unfair treatment from those who have a false sense of greater entitlement to use the road.

IX. Trailriding is a traditional and proper countryside pastime that traces its roots back to the late 1800's and was established prior to the first world war.

The Chair noted his thanks for Mr Vanuffel's public statement submitted in support of agenda items 5 - Countryside Access Service Unsurfaced Unclassified Roads (UURs) Management Review; and 6 - Sub-group Review of NYCC's UUR Statement, and the Forum agreed to take it into account as part of their consideration of those agenda items.

## 314 Secretary's Update Report

Considered –

The report of the Secretary, which updated on developments since the last meeting. Specific attention was drawn to:

- The proposed amendments to the Forum's terms of reference, as detailed in Appendix B of the report around the formation of sub-groups;
- The options for the future recruitment of Forum members, as detailed in section 4 of the report. The Chair confirmed he had looked at how other LAFs carried out recruitment. He also highlighted the need to encourage landowners to apply. It was noted other Local Access Forums had members who were able to contribute from a Business and tourism perspective, and others had members who were able to contribute on disability or environmental issues. Members agreed the members' range

of interests needed to be as diverse as possible, and the Secretary confirmed that the diversity of the membership had always been a key factor in the criteria for the consideration of applications. It was also suggested that the new volunteer co-ordinator in the Countryside Access Service team, may be able to identify volunteers who would also be interested in being a Forum member. The Secretary confirmed there were currently two vacancies on the Forum and members agreed a more informal approach to recruitment might assist in generating more interest, and that the process may benefit from having a long-standing Forum member involved in that more informal approach as described in the paragraph 4.5 of the report. Finally, it was suggested a press release on the role of the Forum could be issued, or whenever a press release was issued on a related subject by the County Council, the opportunity to raise the profile of the Forum should be taken. Janet Cochrane agreed to draft and circulate a press release for Forum members' consideration.

- The draft 'Shared Use' position statement submitted by the Yorkshire & Humber Regional Access Forum at Appendix C – some Members agreed it was a fair and valid statement and therefore were minded to adopt it. However, Neil Leighton, Senior Technical Officer in NYCC Highways drew attention to the fact that the County Council's own position statement on the usage rights of UURs differed from what had been proposed, and therefore would conflict with that of NYLAF's if it chose to adopt the Yorkshire & Humber Regional Access Forum's position. It was therefore agreed that consideration should be given to both agenda item 5, which detailed NYCC's position on UURs & agenda item 6 – the sub-group's review of NYCC's position, before a decision was taken on whether or not to adopt the Regional Forum's position statement on Share Use, and it was agreed to defer the decision to the Forum's next meeting in September 2021;
- The draft position statement on 'Preliminary Involvement in Major Projects' at Appendix D. The Chair confirmed the statement had originally been drafted in response to a feasibility study for a major development on the A59, i.e. at an early stage in the development before detailed information was known. He also confirmed that subsequently after its submission, a number of amendments to the statement had been proposed. The Chair suggested those amendments would make the statement less generic and therefore not suitable for issue at an early stage in response to other major projects in the future. Members agreed to defer the signing off of the position statement to a later meeting to allow further consideration of any additional amendments required.

**Resolved – That**

- i. The update be noted;
- ii. The proposed amendments to the Forum's terms of reference, as detailed in Appendix B of the report be agreed;
- iii. A more informal approach be taken for future recruitment;
- iv. A press release raising the profile of NYLAF and encouraging members of the public to join, be drafted by Janet Cochrane and circulated for members' consideration;
- v. The Yorkshire & Humber Regional Access Forum's position statement on UURs be re-presented at NYLAF's next meeting for further consideration of its adoption.
- vi. Work continue on the draft Position Statement on 'Preliminary Involvement in Major Projects' and that it be re-presented for sign off at the next Forum meeting in September 2021

Considered – A report of the Countryside Access Manager providing a progress update following the transfer of management responsibility for the maintenance of the entire UUR network to North Yorkshire County Council, including the two National Parks, from Highways & Transportation to the Countryside Access Service (CAS) in July 2018.

Ian Kelly presented the report and provided an overview of partnership working with the two National Parks, user group liaison (understanding their priorities and issues), community engagement and use of individual and third party volunteers. He went on to outline the projects undertaken by CAS and provided an understanding of NYCC position on the status of UURs.

It was noted that:

- The Highways Authority was the only one able to restrict access;
- Temporary Traffic Restriction Orders (TROs) were an essential tool for CAS enabling works to be undertaken and allowing time for works to bed in, repair and recover;
- There were currently 11 temporary TROs currently in place by the Highways Authority and a permanent TRO's, informed by CAS;
- The County council's website now included a record of all live temporary and permanent TROs;
- CAS was now moving into a phase of being able to plan ahead the works to be included in the annual maintenance programme;
- Representatives from a most user groups attended the regular user liaison group meetings;
- A Countryside Volunteer Co-ordinator was now in place within the CAS team;
- The spectrum of use of the volunteers was broad with further opportunities expected;

The report detailed NYCC Highways' position on UURs and attention was drawn to paragraphs of the report that outlined how that was interpreted practically on the ground.

Attention was also drawn to the images in the report, which illustrated the types of remedial works undertaken by CAS as part of their UUR projects, utilising funding from Highways.

Finally, Ian Kelly provided an overview of the next steps, as detailed in the report and confirmed he would welcome the views of NYLAF to assist in the development of an appropriate route prioritisation model to inform future UUR maintenance programmes.

Forum members thanked staff in CAS for the remedial works undertaken to date and noted that many routes became inaccessible due to flooding / drainage problems, and the problems that a blocked ditch could cause elsewhere. They questioned how many years it would take to complete all of the works in the pipeline based on the annual budget available. In response, Ian Kelly confirmed it was not that straightforward, as completed works also required an ongoing cyclical maintenance routine, which the budget also needed to cover.

In regard to NYCC Highways' position on UURs, it was confirmed that CAS did not have the capacity to take a pro-active approach; the DMMO process helped to identify where action needed to be prioritised. The backlog in maintenance was difficult to assess for UURs.

It was also confirmed:

- The backlog in maintenance was difficult to assess for UURs.
- UURs were recorded on the List of Streets, and not on the Definitive Map;
- the DMMO process would have to be followed in order to add a UUR to the Definitive Map
- There was also a backlog of 162 DMMO applications at present – reference was made to the change in process detailed at the NYLAF meeting

- In regard to usage rights on UURs, the following types of evidence were required by the North Yorkshire Highway Authority to prove higher rights:
  - Routes which were improved and adopted under the Agriculture (Improvement of Roads) Act 1955;
  - Inclosure Awards - routes described as 'public carriage roads';
  - Tithe Awards - routes referred to as 'public roads', often described as being in the 'ownership' of the 'Surveyor of the Highways';
  - Turnpike, railway and canal company, Deposited Plans subject of an Act of Parliament - routes described as 'public carriageways' or Turnpike roads;
  - Other legal orders or creations under statute;
  - Evidence of dedication by landowners and the extent of such dedication.
- The maintenance budget for UURs had dropped as a direct result of a cut in Local Transport Plan funding from central Government;

Finally, Neil Leighton provided an overview of RTs and how they were maintained, and confirmed that approximately 30 UURs were RT routes.

The Chair thanked officers for their update and Members agreed to note the report.

### **316 Sub-group Review of NYCC's UUR Statement**

Considered:

Janet Cochrane introduced her report which provided an overview of the sub-group's review of NYCC's UUR statement. She drew attention to the information provided by Mr Vanuffel which represented the views of the Trail Riders Fellowship, and confirmed the sub-group had also received some informal input from the British Horse Society.

It was noted the sub-group's report had been drafted prior to seeing the UUR Management Review report at agenda item 5. The sub-group members acknowledged that in light of that report and the additional information provided at the meeting, there was further work to do and agreed they would be happy to continue their review

Ian Kelly, Countryside Access Manager confirmed the service was looking to develop a prioritisation model for the maintenance of the existing UURs and would welcome a steer from the LAF on that model.

It was noted that as part of their review, the Sub-group had already agreed it would be helpful to survey and classify all UURs. Janet Cochrane was pleased to note the use of volunteers in that task but questioned the scoring matrix used for assessing UURs. The Chair agreed further information was required on how UURs were currently scored and Ian Kelly reiterated his request for input on developing a set of criteria.

Rachel Connolly suggested that an easier and less expensive way forward would be to agree a simplified approach of maintaining stoney roads for vehicular use and for earthy roads to have TROs put on them to retain them for non-vehicular use.

Neil Leighton, NYCC Senior Highways & Transportation Officer drew attention to NYCC's agreed legal position statement on UUR usage, and confirmed all UURs were on the List of Streets; the List of Streets did not define usage rights - the Definitive Map defined usage rights. He accepted it would be up to the LAF to have its own interpretation and decide whether it wanted to agree a position statement that differed from the County Council's.

**Resolved:**

That the sub-group continue its work on reviewing NYCC's UUR position statement in order to inform the LAF's decision on whether or not the LAF should have its own UUR position statement.

### **317 Sub-group Review of the County Council's webpages relevant to NYLAF**

Considered:

Will Scarlett introduced his report on the Sub-group's review of the County Council's webpages relevant to NYLAF.

He highlighted the work undertaken as detailed in the report and the draft recommendations presented for the LAF's consideration. David Lepper suggested that a map to clearly define the area covered by North Yorkshire LAF would be a useful addition to the webpages and it was noted that the addition of a visual representation of the area was already covered by the draft recommendations.

The Chair thanked the sub-group for their work and it was

**Resolved – That:**

- i. The draft recommendations in the report, be agreed by the Forum.
- ii. The agreed recommendations be submitted to the Countryside Access Service for its consideration, with a request for feedback on implementation.
- iii. The sub-group be dis-banded

### **318 District Council Liaison & LAF Sub-Group Updates**

Considered –

The report of the Secretary giving LAF members the opportunity to update the Forum on District Council liaison and other LAF representative project activity since the last meeting.

In addition to the information provided for the report, the Chair confirmed he had received an invitation to attend a virtual A66 project meeting on 27<sup>th</sup> May 2021, and would provide feedback on that meeting in due course.

Barrie Mouny provided a verbal update on the Selby District and confirmed that Selby District Council had recently put out a statement on a number of village/small town improvements. He noted that they had each been aimed at improving pedestrianisation, but none had included opportunities for out of town parking. He suggested that surrounding rural communities would have difficulty in accessing those pedestrianised centres.

Rachel Connolly confirmed she had now received a long awaited feasibility study from Highways England for the A1 upgrade. She also drew attention to a number of outstanding areas of work for Highways England.

**Resolved –**

That the additional information provided at the meeting be noted, alongside the written updates provided in the report.

### 319 Work Programme

Considered –

Members considered the Forward Plan provided at Appendix 1 to the report, and invited members to identify any additional items of business to be added.

David Lepper suggested the addition of two future items:

- A presentation on DEFRA's new Environmental Land Management Scheme (ELMS) which includes the possibility of creating new access opportunities
- An update on Volunteers who work on rights of way

It was noted that an update on volunteers was scheduled to come to the next meeting of the LAF in September 2021.

Ian Kelly confirmed that the development of a Policy on the prioritisation of DMMOs had yet to be completed, as the Service were still awaiting feedback from applicants.

Finally, Roma Haigh confirmed she wished to stand down as Vice-Chair. It was agreed that members should contact the Secretary if they were interested in taking up the vacant post.

Members thanked Roma for her contribution both as Vice-Chair and previously as Chair and it was

**Resolved – That:**

- i. NYLAF's work programme be updated to include a future update on ELMs.
- ii. Roma Haigh's resignation as Vice-Chair be accepted

The meeting concluded at 12.28 pm.



Trail Riders Fellowship  
Third Floor, 218 The Strand  
London WC2R 1AT  
[john.v@trf.org.uk](mailto:john.v@trf.org.uk)

21st May 2021

## **RE: NYLAF UUR Report**

### **1. Introduction.**

1.1. We write in response to the publication of a LAF document “NYLAF Sub-Group UUR Report” and provide the following as a means to inform and assist NYLAF in formulating statutory advice.

### **2. Unsealed Unclassified Roads (UUR's): status determined by definitive map surveys.**

2.1. North Yorkshire UUR's were surveyed in the 1950's as part of the process of producing definitive maps and statements. Both Parish and County Councils were subject of a statutory duty to include UUR's on the definitive map where it could be reasonably alleged that the UUR was a public path (i.e. bridlepath or footpath) or a Road Used as Public Path (“RUPP” – a public carriageway mainly used by the public for horseriding/walking).

2.2. Where a UUR was not recorded on the definitive map and statement, there are the following possibilities:

- A. The Parish Council and County Council properly discharged their legal duties and found that the UUR was a public carriageway mainly used as a carriageway that could not be reasonably alleged to be a public path or RUPP, or
- B. The Parish Council and County Council were aware of the existence of the UUR but made a mistake in deciding to omit it from the definitive map and statement on the basis that it could not be reasonably alleged to be a public path or RUPP, or
- C. The Parish Council and County Council were not aware of the existence of the UUR.

2.3. The law presumes that things done by authority are done correctly and properly. Conversely, the law does not presume that something done by an authority is the result of mistake.

2.4. “Ordinary road” is a term used in relation to UUR's to denote that a road does not fall within the scope of ways that can be recorded on the definitive map and statement. Ordinary road in that context means a public carriageway mainly used by the public for the purposes of carriageway.

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- 2.5. Ordinary roads are not public paths, restricted byways or byways open to all traffic.
- 2.6. Many definitive paths in North Yorkshire terminate on UUR's and this demonstrates that UUR's were surveyed and found to be ordinary roads providing a continuation of the highway network.

**3. UUR's: not all ancient horse and cart tracks.**

- 3.1. Some UUR's in North Yorkshire were constructed after mechanically propelled vehicles (MPV) were first used as of right on the highway in 1801.
- 3.2. By 1831 a Parliamentary Select Committee published its report on the use of Steam Carriages on Common Roads. The report records some 43 items of legislation that provide for MPV.
- 3.3. The effect of the Locomotives Act 1861 was to ensure that all public carriageways created or constructed in exercise of statutory powers from thereon were intended for use by MPV.
- 3.4. MPV's were first driven in 1769. The non-motorised bicycle wasn't invented and ridden until the "draisne" of 1817 – some 16 years after Trevithick first drove a mechanically propelled vehicle as of right on an English highway.
- 3.5. The first motorcycle was produced in c.1863. The safety bicycle (where the rear wheel is chain driven) was invented in c.1885.
- 3.6. Some roads built between 1801 and 1861 were built for MPV.
- 3.7. Some 27 years after the Locomotives Act 1861 protected the public's entitlement to use MPV on carriageways, the Local Government Act 1888 recognised non-motorised "bicycles, tricycles and velocipedes" as carriages for the purposes of the Highways Acts.
- 3.8. The public did not acquire statutory power to create and build roads until the Highways Act 1864. Up to that point, the creation and building of roads was either by private individual, inclosure, or by Act (typically a turnpike act).
- 3.9. The Highways Act 1864 provided new powers for the public to create and build roads, and also to convert existing soft roads into hard roads. But those powers were exercisable in the context of the Locomotives Act 1861 – all powers to create, build and improve carriageways were exercised with the intention of providing for use by MPV.
- 3.10. All roads built from 1861 were built for MPV. All roads built from 1888 were built for cars and "bicycles, tricycles and velocipedes".
- 3.11. The UUR network in North Yorkshire includes roads that were constructed in the petrol age. For example, the UUR around Scar House reservoir was created and constructed for use by MPV.

**4. UUR's: Primarily for the purpose of travel by any reasonable means. Equal entitlement to use the road.**

- 4.1. It is wrong in principle and law to assert that a road is *for* any particular user group.
- 4.2. Roads exist to accommodate traffic and facilitate travel by any reasonable means. The primary purpose of a highway is to enable the public to pass and repass along a way, for the purposes of legitimate travel.



- 4.3. UUR's, as with byways open to all traffic or any other highway, are not open to all traffic. They are only open to traffic that uses the road for a legitimate purpose without committing a nuisance at common-law or other offence.
- 4.4. There are three separate matters:
- I. The "Way": the physical road on the ground.
  - II. "Right of Way": can be public or private and is a term of legal abstraction used to describe a right to pass and re-pass along a way.
  - III. Entitlement to use the right of way: can be public or private, limited to certain types of traffic and/or activity and subject of conditions.
- 4.5. The existence of a public right of way on a road does not confer an unlimited and unconditional entitlement for the public to travel on the road.
- 4.6. The common-law offences of nuisance to the highway have their origins in the horse and cart era. More latterly they have become statutory offences for MPV.
- 4.7. Highways are not for particular classes of user. They exist to enable the function of travel by the public. Different classes of user have an *equal entitlement* to enjoy the highway. All road users owe a duty of care and consideration to other road users.

## 5. UUR's: Repair standard and impact of responsible motorcycling

- 5.1. As a general rule, a responsibly ridden motorcycle will cause no more impact on the road surface than a ridden horse. It follows that roads that are repaired and maintained to sustain a combination of equestrian, pedal cycle, and pedestrian traffic, will comfortably sustain motorcycle traffic. Where a road is also repaired and maintained to accommodate private motor traffic (e.g. for land management or access purposes) and horse and cart traffic, it will by necessity have to be repaired and maintained to a more robust standard than that which is required to safely accommodate and sustain a mixture of equestrian, pedal cycle, and motorcycle traffic.
- 5.2. We refer to the DEFRA publication Making the Best of Byways<sup>1</sup> ("MBOB"), page 11 and 12 of which refer to the statutory guidance for ROWiP's and record the following as a factor to consider:

*"In addition, the statutory guidance for England [Defra, 2002] states that "Wherever possible proposals for improving rights of way should not unduly benefit one class of user at the expense of another. Improvements that are intended to benefit cyclists, harness-horse drivers, horse riders or walkers should not unduly restrict lawful motorised use of public vehicular rights of way.""*

- 5.3. MBOB has further relevant content on repair options and mechanisms of distress to road surfaces.
- 5.4. We also refer to the Independent research<sup>2</sup> commissioned by Government that found:

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<sup>1</sup> [https://laragb.org/pdf/DEFRA\\_200512\\_MakingTheBestOfByways.pdf](https://laragb.org/pdf/DEFRA_200512_MakingTheBestOfByways.pdf)

<sup>2</sup> Page 62. Use of mechanically propelled vehicles on Rights of Way: The Governments Framework for



“Damage to byway surfaces in general increases exponentially with the increase in axle loading. Motorcycles are likely to have the lowest axle loading of any vehicle but their ability to accelerate quickly can produce rutting on soft surfaces. However, the main concern is with vehicles with heavier gross vehicle weights. The effects of land management vehicles, which are generally heavy, are likely to be much greater than dwelling access and recreational traffic although their impact may be mitigated by the low speeds at which such vehicles operate.”

5.5. There is evidence to demonstrate that damage to highways from horse and cart was a significant problem. Alexander Glen and William Nethersole published a paper<sup>3</sup> “The Construction of Roads” that recorded the duration of granite block roads during the 1840’s-60’s. The average duration was found to be 15 ½ years, and as little as 6 years.

## 6. Open Air Recreation

6.1. The term “open air recreation” is used in the National Parks and Access to the Countryside Act 1949 and the Countryside and Rights of Way Act. It is also used in statutory regulations and guidance produced in exercise of powers under those Acts – including the LAF regulations and ROWiP guidance.

6.2. It is apparent that Parliament deliberately chose not to define “open air recreation” because they did not want it to be subject of a restrictive interpretation.

6.3. A clear demonstration of Parliament’s intention is found in the Lords Hansard debate<sup>4</sup> for the CROW Act. In response to a proposed amendment to confine the term “open air recreation” to use “on foot”, Baroness Farrington of Ribbleton said:

*“The Bill provides a right of access to land for “the purposes of open-air recreation”. This term was not defined in drafting the Bill because we considered that a definition would be undesirably restrictive and unnecessary.”*

6.4. One can also see from the statutory guidance flowing from CROW Act, the LAF regulations, and the statutory ROWiP’s, that “open air recreation” firmly encompasses use of all roads by motorcycles and cars.

6.5. Use of main roads by cars for recreation is included in “open air recreation” and the LAF regulations make express provision for this.

6.6. The exception (<https://www.legislation.gov.uk/ukxi/2007/268/regulation/22/made>) for LAF’s to provide advice as to use of BOAT’s by MPV for utility purposes, proves the rule that use by MPV of all roads (including BOAT’s and UJR) for recreational purposes is a matter on which LAF’s can advise.

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Action ( <https://webarchive.nationalarchives.gov.uk/20070103024343/http://www.defra.gov.uk/wildlife-countryside/cl/mpv/pdf/consult-govresponse.pdf> )

<sup>3</sup> [https://books.google.co.uk/books?id=0LkDAAAQAAJ&source=gbs\\_book\\_other\\_versions](https://books.google.co.uk/books?id=0LkDAAAQAAJ&source=gbs_book_other_versions) The Highway Acts, 1862-1878, the Locomotive Acts, 1861-1878, and the General Provisions of the Turnpike Continuance Acts, 1863-1878: With Introduction, Notes, &c (at appendix b, p.306-7).

<sup>4</sup> <https://hansard.parliament.uk/Lords/2000-09-27/debates/a21f8a60-73e8-4c32-b720-71ebfda312f9/CountrysideAndRightsOfWayBill>



## **7. Suggested Considerations.**

### 7.1. TRF respectfully suggests that NYLAF consider:

- I. The UUR issue from a foundation of acknowledging the differences between a way, right of way, and the limits and conditions on entitlement to use a right of way.
- II. That UUR's and Byways Open to All Traffic are not open to all traffic. As with all highways, they are only open to traffic that travels for a legitimate purpose and does not commit a common-law nuisance or other offence.
- III. Not all horse and cart traffic was/is entitled to use all carriageways, as some use will amount to nuisance. It is possible in certain circumstances for a motorcycle to be entitled to use a carriageway but not a horse and cart – e.g. where the road is narrow, or where the road passes over a weak bridge that can safely accommodate motorcycles but cannot bear the greater weight and impact of horse and cart.
- IV. That a source of conflict rests in a fundamental misunderstanding as to what highways are for. As outlined herein, highways – roads if you will – primarily exist to facilitate travel by the public. They are not for particular classes of user. All classes of user have an equal entitlement to use the road, and that entitlement is limited and subject of conditions. Those conditions include a duty of care and consideration to other road users.
- V. The UUR network has already been surveyed and found to be ordinary road. The question is as to whether mistakes occurred on a case-by-case basis. There is no presumption of mistake. There is a presumption that authority discharged its duties properly.
- VI. That the UUR network is comprised of a variety of roads, some of which originate in the motoring era and/or were improved for use by MPV at public expense in exercise of statutory powers.
- VII. That the MPV pre-dates the non-motorised bicycle and the pre-existing entitlement to use MPV on the highway was protected by statute from 1861.
- VIII. “Share With Care” approach helps all users to enjoy the road. Responsible riders and drivers (whether or not in MPV or on bicycle/horse/carriage) take care to share the roads with others. It is wholly unacceptable for responsible users to be met with abuse and unfair treatment from those who have a false sense of greater entitlement to use the road.
- IX. Trailriding is a traditional and proper countryside pastime that traces its roots back to the late 1800's and was established prior to the first world war.

John Vannuffel

Technical Director

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