



Trail Riders Fellowship
Third Floor, 218 The Strand
London WC2R 1AT
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.



- 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 Byways¹ ("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 research² commissioned by Government that found:

¹ https://laragb.org/pdf/DEFRA_200512_MakingTheBestOfByways.pdf

² 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 paper³ “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 debate⁴ 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.

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

³ 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).

⁴ <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