

To Sarah Gardner, Ramblers' Association

## FOOTPATH STRATEGY CONSULTATION

Here are my responses. I am an RA Deputy Area Footpath Secretary (Hertsmere Borough), also on the OSS committee, and also chairman of a rights of way group BADFA (the Bushey And District Footpaths Association) which is an RA affiliate. This reply was written as a personal reply but review of it showed that it was entirely in line with BADFA's views and as Chairman I confirm that officially so please take it as both a BADFA and a personal response.

There is one overall concern about the consultation paper and that is the vision of what comprises the path network. I wasn't present for the 2006 General Council resolution (your paper para 3) but 2015 seems very ambitious unless it was only referring to current definitive rights of way. Then at Para 9 you say the long term aim is to see 100% of definitive rights of way open and easy to use. And para 10 says also to see the historic ways recorded. But there is no mention here of all the other non recorded ways, the rural and urban alleyways, the non definitive public paths in everyday use but not on the definitive map (both pre and post 1949). At our Albert Embankment offices a few months ago I noticed a quite senior RA person fall into the trap of thinking that paths not on the definitive map were not part of the public path network.

I have been attending recently some Defra/Natural England consultations on where the Lost Ways project should go (and actually officially stood in for Eugene Suggett at the most recent one). There was gratifyingly unanimous feeling that the government thoughts of limiting the scope of Lost Ways to tie in with for example the needs expressed in rights of way improvement plans was seriously misconceived. A view emerged that the identification of all unrecorded ways, historic, in use, pre and post 1949, should be the first task. And that when, and only when, that was substantially done we should look at the network as a whole in the light of rights of way improvement plans and other such aims to see which of all these unrecorded paths are sufficiently unimportant to the public that they could be traded off for new paths we really needed or for other network improvement. Whether or not Defra will take note of these sentiments, I do not know. But it could avoid lots of hassle for everyone over trying to claim all the paths.

I feel in the light of the above that it is very important for the RA always to include ALL unrecorded public rights of way in our thinking whenever we talk of 'the rights of way network' or 'public paths'. The definitive map and for that matter the List of Streets, are simply rooms in the great house of rights of way. Our Strategy should start from there.

Q1. 100% open and usable long term.

As the question is put, no. For definitive paths the aim should be short to medium, not long-term. The old National target was for ALL paths by 2000, that proved a bit too ambitious, but all definitive paths by say 2015 would not be too hard. However in the light of what I said at the start of this response then the first priority should be to identify the totality of the network. That

being so, with great reluctance, I think we should in the next few years go along with some sort of prioritization of paths to be got into National Target order, that is open, easy to use, and publicised, that is something short of 100%. We should insist on being part of the process which identifies these fully-in-order paths of course. Then when the unrecorded ways become mostly identified, we can take a fresh look at the network as a whole. There would need to be some legislative shift of course and that is touched on later in this response.

What do we mean by 'usable' in this question? Easy to use, wide, structures if any to BS5709, appropriate quality surface, waymarked and signed. Can we spell that out please.

Q2. Recording the historic network.

The RA should not continue to mislead people by only talking of 'historic' ways, despite Defra doing it. The question should have read "On the recording of the rest of the network,...". Yes, repeal of 2026 is certainly something we should aim for so long as we are fully aware of the risks of raising the issue, which include the CLA/NFU persuading the government to bring the date forward to say 2008, which might seem to them to solve the Lost Ways fiasco (although in fact it would bring other problems in its wake). Creation orders and agreements should certainly be looked at more positively than we may have done in the past, and if we work hard to get government to change the legal climate towards a presumption that landholder path-change should always give net benefit to the network, then such an approach could really take off.

Q3. Permissive.

Para 13 , last sentence seems to fly in the face of what was said before in that paragraph: "sometimes deliver benefits". I would much prefer the last sentence to read e.g.: "We will work with.....to secure permissive access in all appropriate situations." In general it is a distraction, it can mask path claims for the same route, it encourages landholders to think of paths as their property, whereas when they recognize that most public paths are (also) owned by the highway authority (HA80 S263) just like roads, they can be less proprietorial and more respectful of our paths.

Q4. Open and lineal access.

Entirely agree with your para 14 sentiments.

Q5. Other public policy agendas.

The RA is commendably increasingly recognizing the value of higher rights paths to us. I wonder if in some areas we should be more proactive. Sustainable access was 'hot' in the 1990s but we hear less of it. The government Greenways initiative which merges with Quiet Roads is still alive. Funding seems to have to come from Local Transport Plans and TCPA S106 money. But where it succeeds it is likely to encourage more adventurous use of public paths by the population at large which is to the benefit of us and our aims. I have heard it said we are not interested in Greenways because they are for horses and cycles. That is not necessarily true and in any case Greenways are nearly always exemplars of satisfactory sharing, being designed for the purpose, normally wide, good sight lines etc. The RA could with advantage be more proactive here. I illustrate this by saying that my local Greenways officer's advisory committee has no RA representative on it (I happen to be on it but with another hat). And we are lucky to actually have a Greenways officer.

Q5a. An unwritten question re para 17, working with IPRoW and others.

I am surprised you haven't asked for endorsement or otherwise of para 17. IPRoW seems to be seen as already a partner. I wonder why NFU isn't mentioned. Clearly IPRoW has many more of our aims in common. I would like to see the reasoning for one not the other to be spelled out more.

Q6. Para 18 sounds like Natural England/ Defra speaking. It is not necessarily wrong, indeed it has much to commend it. But without considerations of process and safeguards being thought through and practice policies and procedures, in a word 'rules', we could be swept along in the enthusiasms of government and highway authority for being let off the hook and becoming only truly responsible for key routes.

Q7. Realistic for RA to draw up local PRoW strategies?

Possibly. For example some will go for structures, others for missing links, others for circular routes, or easy walks. Within reason there is no harm, indeed much benefit, in that. A global RA framework for these decisions is still needed however.

Q8. The mix of casework, campaigns, legal.

Yes, such a mix is the right approach so long as legal includes taking opportunities to change the law. For example to make changes to the network to generally require some overall public benefit, and the others mentioned in this response.

Q9. National campaigns for more local issues.

I don't understand this. Is it things like MoD? We need only to keep a sense of proportion.

Q10. Other ways to monitor local authorities' performance.

If the RA's indicators are well thought out that is good. If that is done then the question becomes irrelevant.

Q11. Is the approach to legal action as suggested the right one?

Yes generally. There is though an additional approach that we should seriously consider following, that is provide our members with short but accurate legal papers on specific issues. The Blue Book is brilliantly comprehensive (well very nearly), our web site legal information only very recently moved up from downright misleading to not a bad overview. The Rights of Way Law Review is not accessible and, to most, overwhelming. So a series of monographs (is that the right word) would be very helpful. I have given talks on widths of paths, on ownership of paths and on structures on paths, all including legal references and framework; there must be dozens of other narrow but important topics

Q12. Legislation. 1. Key legislative changes. 2. Gov consultation (added by me).

1.) Key legislative changes. I see the key issue as being the need for an overall shift of emphasis to a presumption against diminishing the public path network as a whole. We are presently being diminished and nibbled away at from all sorts of directions: RoW improvement plans are being used to justify ignoring other paths, gating is being made easier, stopping-up for landowner gain etc. etc. How to counter that? Clearly whatever is done will in the real world have to take account of landowner interests. I have a vision that if we could get the concept of

'no net diminution of the network' or even 'some net gain to the network' into law we might be close to a win-win situation. The law is fairly near there already. 'Not substantially less convenient' are words already in part of the highways act, the need to provide or consider providing alternative routes for diversions or TCPA stoppings up. But all seem to allow the network to end up not quite as good as before. It is only a small step, but a very important one for perceptions, to say there should normally be an overall public gain, however small that gain might be. It would make landholders actively recognize that if they want co-operation they have to offer us something, that if they are taking away a public asset for personal gain or school security or even for some other public purpose (eg Olympic Games!) then they must compensate the path network somehow. This idea also ties in with the current thoughts on Lost Ways (as mentioned in the opening paragraphs above) that after identifying the bulk of unrecorded ways we should look at the network as a whole in the light of rights of way improvement plans and other such aims to see which of all these unrecorded paths are sufficiently unimportant to the public that they could be traded off for new paths we really needed or for other network improvement. So 'overall significantly more convenient' or whatever to go into legislation.

Other ones are:

# Revise CROW S63 ( HA80S130B(4)(c) ) so that 'significantly interferes' means interferes in the legal sense, that is diminishes the public right only greater than *de minimis*. That otherwise useful law is a dead duck otherwise.

# Make clearing crops a duty on highway authorities more than at present, perhaps by giving the public the right to apply for crops to be cleared. Even allow the public, or suitable authorized persons, to clear them themselves: it may seem daft, but as a Parish Path Partner I would love to do so in some cases, but present laws make it very difficult. Give explicit duty to level disturbed routes within a certain time following a public request, say four weeks

# Make HA80 s133 much more explicit. This is the clause reminding highway authorities that they can use common law ownership powers (and others) despite there being relevant statutory provisions and procedures, which can take far longer. 28 days to remove a new locked gate under statute, immediate under common law (Path Bushey 50, not long ago). It may be that all that is required here is a guidance note.

# Incorporate BS5709, the British Standard for Gaps Gates & Stiles into all new appropriate legislation as well as into HA80S147 etc..

That is just a quick think list. It would be very useful if the RA were to keep an accessible list to which we could make additions when they arise in our heads as a result of our path work, especially useful for forgetful fogies like me.

Q12 Contd. Government consultations. I have inserted this here as you don't seem to have raised it. It could be seen as detail, but I see it as part of strategy. I speak of the many government (England and Wales) consultations that impact on our work. I know that from time to time officers ask certain or all members to contribute. But I think it should be more formalized, I have rarely been part of the RA loop, but have responded frequently to these consultations with some success. For example my group BADFA got the recent Welsh Government guidelines on structures modified to the benefit of the RA aims. But I am not even aware if the

RA responded at all. I would like to see the process more formalized, with a list of people or groups being informed of new consultations and the RA's intention to reply or not being stated. We could make input to the RA then or at a later stage when a RA draft is available. There are some issues of confidentiality during the draft stage of the response and sometimes there is not a lot of spare time (like me, last minute, today) but I really think something could be worked out.

Q13. Any misgivings over monitoring local authorities?

Well it is good in principle. I just wonder if we have the caliber of footpath secretary to do it. But well worth a try. We are already exploring the two level looking-after-paths thing and this may pick up from that.

Q13A. Re para 32, email or other network for advice and shared experiences.

We have ramblers.net, great but not used a lot.

Q14. Tighten up terms footpaths and rights of way.

Absolutely. Yes footpaths is often understood to include some higher right ways. We had the issue with the name Bushey And District Footpaths Association. We always had all paths at the heart of our constitution, but even some of our trustees still query us getting involved in Byways, until they are reminded.

But is rights of way the right substitute? A right of way is what the public actually legally has, that is we have no ownership of the path as path, just the right to use it. But the highway authority actually owns most public paths (see e.g.

<http://www.badfa.org.uk/laws/ownership/ownership.htm> )

and so they are indeed public paths in a physical sense. I happen to think that rights of way smacks of subservience to the landholder. 'Public paths' gives a sense of ownership, of needing protection, like 'public parks'. It involves 'ownership' by the public at large, not just someone else's private rights. Have I banged on enough here? Let's call them Public Paths.

Q15. Other communications strategy?

I mentioned above provision of monographs on legal issues. We could have some monographs on history of highways and access and other matters (we have the material for some already mostly I am sure). The national press tends to have some space for topics and we could have versions aimed there, the human coverage is very large and could help our cause no end. WALK is really quite good, but it could have more on issues. The recent two page spread on the House of Lords Dorset decision case is an example of good practice here, though perhaps even that needed a 'box' on path claim practice.

Q16. Step up HQ support for practical work?

Yes. And insurance is a big problem. Highway Authorities do cover it but only in an absurdly controlled and formal way. Even as a P3 member it is very restrictive. I would love to have insurance from RA for a defined, but inclusive, range of path work.

Q17. More education of public, more involvement.

Well renaming Footpath Guardian to Public Path Guardian (see Q14) could enhance apparent

status. And please stop calling unrecorded paths 'forgotten', most are not, they are in use but are simply not recorded.

Having got that off my chest, lets have promotion of adopt-a-path, find-a(unrecorded)-path, remove-a-structure (that is get it removed not normally unilateral removal, though RA members do sometimes have usefully strong boots, perish the thought).

Q18. Compromise to get support of others?

Probably only where there is overall public gain or where loss is almost certain. The lesser of two evils.

Q19. Other strategic choices re highway authorities.

I think your paras 37 to 45 state these very well.

Q20. Other strategic choices re Gov CCW Natural England?

We could offer to support a pruning of public paths after Lost Ways is satisfactorily completed to the identifying paths as candidates-for-recording stage. As stated above that means identifying the used but unrecorded paths too. The principal for this pruning would be, again as stated above, that the expected loss must be offset by gains nearby e.g. improved widths, removal of (lawful) structures, new routes. The concept of ensuring public gain, however little, out of closure would very possibly revolutionise landholder thinking and allow us to be seen for the constructive co-operative people we really are, rather than the negative people which we are now often forced to be.

Q21. Building up promotion and path problem reporting.

As in Q17: promote adopt-a-path, & find-a(unrecorded)-path. Note that unrecorded paths are paths, and should be reported on as such, despite some highway authorities denying they are responsible. Our Use Your Paths Challenge sadly failed to grasp that sufficiently.

Will the on line database be able to be accessed not just for reading but for a degree of writing by our Public Path Secretaries (formerly Footpath Secretaries!).

Q22. Style.

Yes, we are right to give thought to this. If we could get that legal switch to 'significantly more convenient' that would help us be more constructive, not just seem to be so.

My answer to Q20 would help here. And some of the other things proposed.

Q23. Key strengths to be retained.

Currently individuals who get involved can get involved at a level of their own choosing. If forced into a groove they may withdraw altogether. We do not have enough helpers to allow that to happen. Having said that, contact and sharing is beneficial and hard to sustain without a public path committee and a structure. Clarity and some tidying up would be welcomed, but we have to be careful.

Q24. RA areas to tie in with highway authority areas?

In principle that is an admirable idea. As to the regions, I suppose there is also the question of national parks and places like The Chilterns. These are not always highway authority areas or where they are, do they not leave odd bits around them?

Your last sentence of para 59 refers to the person who will be the key contact point with the highway authority. Saying this may require a little thought. In a way, at least in my area, the individual footpath secretaries are the key contacts now. The authorities' officers for whatever parishes they each do, talk to the relevant RA secretaries for those parishes, both individually and now from time to time as an all together meeting. It may not be so elsewhere, but we need to retain some flexibility.

Q25. Should we move to tie in quickly?

When the issues in Q24 have been addressed, and the areas themselves have had a chance to feedback on the draft proposals, it would then be best to move quickly.

Q26. Should groups or areas do footpath work?

I understand both models exist and have no information on their relative merits.

If the case truly is strong for groups having no responsibility here (and it is not stated in your document, is it based on 'they don't do much now' or are the reasons more fundamental?) then I think it desirable that there still be a liaison officer within the group. They could feed path problems/opportunities found on the group walks to the relevant footpath secretary or to the area secretary, too little of this happens at present, many members seem blind to problems and opportunities. Perhaps groups should be responsible for adopt-a-path. I think it would be very undesirable to disengage groups, the only RA people most members meet up with, from the footpath work of the RA. It would give a very lopsided view to the ordinary member.

Q27. Training.

I have to admit to a degree of ignorance on these training days in para 62. I will raise it at my area committee tonight.

Yes, a modular training programme would be good.

Q28. Other training topics?

Yes: Path improvement e.g. Structures (not the same as obstructions); Widths, Surfaces, Signage. Some or all could be combined.

Q29. Any topics need review in Guidance... and Notes...

(time has prevented comment here, there must be but I cannot instantly say. Sorry and I have had ages to respond and did read the consultation document the first day I got it).

Q30. Maintain a database?

Historic record is very valuable so even if not done as now, the key documents should be scanned and stored electronically.

The data to enter should give the location, the type of order and the date as a minimum. Access for workers is important. Indexing by Km square (easily taken from grid references) should be sufficient. Ideally users should thereby be able to search for entries by quoting any Km square or any ten Km square. And the scanned sheets should be directly accessible ideally, failing that easily extracted at HQ.

I would have found such a facility useful more than once.

Q31. Other areas of work to drop?

None come to mind.

Q32. A central group to oversee?

If not then who does it? Yes, such a group. But it should have a mandate to continually consult with a wider group of active/knowledgeable members by circulating documents well before decisions are made.

Well, I hope some of this is useful, I hope it is clear, come back if not, I know it is overall an important thing for the RA.

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