

# *Bushey and District Footpaths Association*

Incorporating Watford Fieldpath Association (Founded 1899)

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## USE OF MECHANICALLY PROPELLED VEHICLES ON RIGHTS OF WAY

Here is the response of the Bushey And District Footpaths Association (BADFA).

BADFA is a group based in south west Hertfordshire with around 300 members. Despite the 'footpaths' in our name we support all legitimate use of public paths. But we are conscious of the issued of mixed use and strive to get a quality of path (eg Greenway) where all users may happily co-exist. We support the use of TROs to restrict otherwise lawful use of any class of path user but only in appropriate cases and where other measures have proved unsuccessful.

We are a Parish Path Partner and we do some Lost Ways type work and sometimes formalise paths by agreement and we draft and support diversion and creation orders where, and only where, we feel they are in the public interest.

Our input to your consultation comprises paragraphs numbered 1 to 10 inclusive below.

### **Proposal 1**

*We will develop a strategy to disseminate and better inform the police, local authorities, the courts and others about the extensive powers and penalties already available for dealing with vehicles using rights of way illegally, anti-socially, or, in sensitive areas, harmfully.*

*As a first step, we will be issuing a Departmental Circular shortly covering the use of the powers in paragraphs 6.1-7.5 below, with particular reference to encouraging the better understanding and appropriate use of traffic regulation orders.*

1. We strongly support this, and whilst welcoming the first step, we think the other steps should follow close on its heels. We would suggest that proposal 3 onwards might be rendered unnecessary if this Proposal 1 were well promulgated and some training encouraged.

2. The legal issues of vehicles on rights of way have caused difficulties over many years to path users' organisations (such as ourselves) and to legal owners and controllers of the paths (notably the highway authorities under HA80 s.263 and s130 respectively) and to the underlying landholders (farmers etc). As a local rights of way charitable body we ourselves are being impeded in our aims of improving RUPPs by the delay in the commencement of section 47 of the CROW Act, on restricted byways. The uncertainty caused to RUPPs by the existence of section 48 and more particularly of section 48(9) and (10) is serving as a disincentive from approaching landowners regarding RUPP improvements for fear the focus on the path might trigger a precautionary WCA81 claim which would effectively freeze progress for many years (and speaking personally, very likely beyond my lifetime). The local Borough Greenways officer is also being inhibited in her work by this uncertainty (though not, I am glad to say, by the age issue). The immediate commencement or abandonment of CROW section 47 would, we believe, complement and simplify your proposal to better inform various bodies about powers connected with vehicles on rights of way.

### **Proposal 2**

*We invite views on the revision of the advice and guidance on managing the different sorts of traffic on vehicular rights of way in the publication Making the Best of Byways (1997).*

*We will also publish the results of the research project on the use of byways open to all traffic, which will be used to inform the revision of Making the Best of Byways.*

3. The 1997 document gives legitimacy to a quite unacceptable kissing gate by BTCV at page 43. Any revision should incorporate extracts of and/or reference to BS5709:2001 Gaps Gates and Stiles, emphasising that it is not a design guide but a functional specification that must be met on an ongoing basis.

4. The 1977 document includes:

*Signs and Waymarks*

*Under S27 of the Countryside Act 1968, as amended by S65 of the Wildlife and Countryside Act 1981, highway authorities have a duty to erect and maintain signs where a BOAT leaves a metalled road. They may also erect waymarks along the route. The sign must include the status and at the discretion of the authority may indicate the destination and distance of a route.*

This summary, like many we have seen, does not satisfactorily state the current law (Countryside Act 1968).

The Act makes it a duty (not just a power) to indicate destination and distance on the sign unless the Authority considers it neither convenient (for the path user) nor appropriate in a particular case to do so.

As to waymarks, 'may' is again incorrect or at least very misleading. The Act says the Authority **shall** erect such waymarks as in the (honest) opinion of that Authority are required to assist persons 'unfamiliar with the neighbourhood' to follow the course of the path.

The document should be revised accordingly.

5. We would prefer to see the research results published first.

### **Proposal 3**

*We propose to introduce legislation to provide that any future use of a footpath or bridleway that would (immediately before the commencement of the relevant new legislation) have given rise to a public right of way for vehicles shall be treated as giving rise to restricted byway rights, but no other public rights of way.*

*This will prevent any future usage giving rise to claims for public rights of way for mechanically propelled vehicles.*

6. We have no comment to make on this.

### **Proposal 4**

*We propose to introduce legislation, which will make it no longer possible to establish the existence of a byway open to all traffic by reference to historic (pre-commencement) use by, or other evidence relating to, non-mechanically propelled vehicles.*

*We propose to do this by introducing a cut-off date after which (subject to certain exceptions) any unrecorded rights of way for vehicles shall be recorded as restricted byways in the definitive map and statement.*

*We propose the cut-off date should be one year from the commencement of the new legislation.*

7. This proposal doesn't seem to have been shown to be necessary. The question of lawful use and of lost modern grant is a bit of a legal minefield so even the effect of the proposal and the exceptions is not very clear. It does seem to be removing some lawful public rights and there should be cogent reasons for doing this. There is anyway 2026 looming. A one year cut-off is far too short. It will cut across the Lost Ways initiative. We are against it.

**Proposal 5**

*We propose that applications for definitive map modification orders (DMMOs) to recognise vehicular rights submitted before the end of the one-year cut off date will be processed to their conclusion. Similarly orders already in progress will be processed to final determination. We propose to introduce the register of applications<sup>6</sup> for DMMOs prior to commencing the relevant new legislation. We do not intend to review or amend the rights attached to ways already shown in the definitive map and statement as byways open to all traffic.*

8. We do not understand the promise to process to conclusion/final determination. Are you certain that Parliament will amend the current 2026 cut-off legislation to allow this? Because there are bound to be some cases still not finalised at that date.

The introduction of a register is welcomed, if freely available.

**Proposal 6**

*We propose that an easement conferring a private right of way for vehicles for the benefit of an owner or occupier should be recognised where (before the commencement of new legislation) a public right of way has arisen, which would before the one year cut off date have been treated as a right of way for vehicles, and is now being treated as giving rise to restricted byway rights.*

9. If this means the supporting by the state of private rights where public rights are being curtailed we would say that was entirely wrong. They should be treated even handedly. Or else the Government will stand accused of treating public rights as somehow less important.

**Proposal 7**

*We invite views on bringing forward the 2026 cut off date under section 56 of the 2000 Act and section 54A of the Wildlife and Countryside Act 1981 for the purposes of recording byways open to all traffic based on evidence of mechanically propelled vehicular use.*

10. We are not convinced of the need, fairness, lawfulness, or benefit of this proposal.

My Association (BADFA) thanks you for a chance to comment and requests that our observations above are carefully considered.

Yours faithfully



(Mr) Chris Beney, *chairman, Bushey And District Footpaths Association*