

# TELFORD & WREKIN LOCAL ACCESS FORUM

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Mrs S Worthington, Administrator to the Forum, 01952-382067 – 26<sup>th</sup> September 2016

## TELFORD & WREKIN LOCAL ACCESS FORUM

The Annual General Meeting of the Telford & Wrekin Local Access Forum  
will be held on Wednesday 5<sup>th</sup> October 2016 at 1.30 pm  
in The Studio, Graham Building, Wrekin College, Sutherland Road, Wellington,  
Telford TF1 3BH

*Disabled parking is available through the Black Gates in the  
Headmaster's Car Park*

A Working Buffet Lunch will be available at the meeting from 1.00 pm.

## A G E N D A

1. MINUTES  
To consider the minutes of the last meeting and any matters arising.  
Appendix A
2. APOLOGIES FOR ABSENCE
3. CHAIRMAN'S MATTERS  
Appendix B
4. MEMBERSHIP MATTERS
5. CURREN PROJECTS – REVIEW
6. REVIEW OF DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS  
Appendix C
7. RIGHTS OF WAY IMPROVEMENT PLAN
8. DATES OF FUTURE MEETINGS  
Appendix D
9. ANY OTHER URGENT BUSINESS

# TELFORD AND WREKIN LOCAL ACCESS FORUM



Minutes of the Meeting held on Thursday 7<sup>th</sup> July 2016 at 1.30pm  
at The Studio, Graham Building, Wrekin College, Sutherland Road, Wellington,  
Telford

**Present:** Anthony Francis-Jones (Horse Riding / BHS), Fiona Smith (Disability), Anne Suffolk (Telford & East Shrops Ramblers), Bob Alton (Ramblers Association), Bob Coalbran (Wellington Walkers Are Welcome), Malcolm Morris (STROWP), Peter Holt (CLA/ Landowner), Jan Mees-Robinson (British Driving Association), Jane Bonner (Severn Spokes, UK Cycling Shropshire)

**In Attendance:** Keith Harris (Group Manager - Development Team, TWC), Andrew Carless (Senior Rights of Way Officer, TWC), Ann Sharkey (Legal Assistant, TWC), Deb Moseley (Democratic and Scrutiny Team Leader, TWC), Stacey Worthington (Democratic and Scrutiny Services Officer, TWC)

## **LAF-1      Election of Chair**

**RESOLVED** – that Anthony Francis-Jones be elected Chair of the Local Access Forum for 2016/17.

## **LAF-2      Electon of Vice-Chair**

**RESOLVED** – that Fiona Smith be elected Vice-Chair of the Local Access Forum for 2016/17.

## **LAF-3      Minutes**

Matters arising from the minutes:

Information regarding the off-road Tramper buggy was circulated to attendees. This had been well used in other counties for less mobile individuals to access less urban pathways.

**Resolved** – that subject to the inclusion of J Bonner as present at the meeting, the minutes of the meeting held on 13<sup>th</sup> April 2016 be confirmed and signed by the Chair.

## **LAF-4      Apologies for Absence**

Cllr Liz Clare (TWC), Marion Law (Ramblers Association), Paula Doherty (Rights of Way Projects) and Cadi Price (Severn Gorge Countryside Trust)

## **LAF-5      Chairman's Matters**

The Chair reported on the following issues:

### LAF Annual Report.

The LAF annual report has been submitted and will form a part of the national report.

### PRoW Issues.

There were particular issues with a number of restricted byways being blocked by vehicles. Hill Top Road had been blocked; this was an adopted highway. A barrier had been put up across Restricted Byway 36 (Parish of Little Wenlock) and this was an illegal obstruction which would need to be removed. The landowner would be written to.

- **Action – landowner to be written to and instructed to remove the obstruction.**

### BHS Access training dates.

Dates of the training courses were shared with the committee.

### Definitive map update.

Since the last meeting, work had been completed regarding two DMMO's which were to be sent to the Secretary of State, the majority of the work had been done, but had not been sent.

There had been a lot of work done around legal event modification orders (LEMO), which were orders which had to be made following each public path order; be it a DMMO, or a planning act order, to enable the definitive map and statement to be amended. Some of them even went back to the Shropshire Council days. There had been a change in legislation which meant the more recent orders and those in the future would not be subject to these legal event orders. The exercise to get the LEMO's up to date took two officers (Ann Sharkey and Andrew Careless) working solely on the project four weeks to complete, with some mopping up still to do.

Work had been progressed with DMMOs and both A Sharkey and A Careless completed training to update these online. Work was currently being undertaken on statutory declarations to add these to an on-line register. It was hoped that the work on the DMMOs as regards the mapping and registers could be completed within 12 months dependent on workloads. It was suggested that an apprentice or student could assist with this work.

### TWC website update.

P Doherty was not present at the meeting however A Suffolk summarised her report. The website had significantly improved. There had been a few minor issues, but these had been addressed. The cycling map which was on the website was inaccurate, but had since been withdrawn. Members were asked to look at the website and report back any issues.

- **Action – members to look at the TWC website and raise any issues.**

### Path clearance group update.

B Alton advised that the ramblers group had cleared footpaths near Lilleshall. There was another morning's work to complete before they were clear. It was agreed that notification of paths which need to be cleared would be helpful. There were a number of urban paths which need to be cleared.

B Coalbran stated that the Wellington Walkers Are Welcome had been clearing paths around Ercall Woods and had started to clear a path parallel to the motorway, down as far as the Buckatree Hotel. Over the next few weeks, they will be concentrating on urban paths within Wellington.

#### Dedicating a route to Jim Roberts' memory – 'The Jim Roberts' Way'.

A Careless noted that Jim did a great deal of work for Rights of Way in the area, so this would be a way of recognising the work that he did. If anyone had ideas for a route which would be suitable, this would be gratefully received.

#### Refreshing the Hutchinson Way.

There were routes within the area which needed refreshing, possibly by volunteer groups. A section of Hutchinson Way had been blocked and there was very poor signage along the route, with a lot of furniture needing replacing.

#### Climate Change and PRow.

There were national issues with erosion to Rights of Way or drainage onto third party properties. Work could be destroyed by just two or three rainfalls which raised a huge cost implication.

#### Westminster Briefing: 'Recording our Public Rights of Way: The Path to 2016'. (2026)

The Rights Of Way Officer would be attending this meeting. There were positives and negatives to this legislation but A Sharkey remained cautiously optimistic. There had been no mention of extra funding, as the aim of the changes was ultimately to save money. Condition 29 would mean that there were mandatory questions in regards to Rights of Way when property purchases were being made.

#### **LAF-6      Membership Matters**

The Chair advised that Peter Whittle had requested to join the LAF as a landowner; however, Mr Whittle was not a landowner. Mr Whittle suggested he could represent certain landowners and act as a person to engage with landowners on behalf of the LAF. Current Member, Peter Holt, was a landowner and he did a good job of representing the LAF to other landowners.

It was recognised that HCA were a major landowner in the area and it would be very useful if a representative could attend from HCA. NFU would also be helpful in seeking another landowner, potentially around the North of the County/Newport area.

**Resolved – that:**

- a) a letter to Mr Whittle declining his request to join the LAF as a landowner be sent.
- b) HCA be contacted by the Rights of Way Officer and requested to send a representative.
- c) NFU be contacted to support with recruiting a further landowner to the LAF.

**LAF- 7      Rights of Way Improvement Plan**

This had been on the agenda for some time. M Morris produced a discussion document on the Plan. He believed that Telford and Wrekin had set themselves an impossible task as the report stated the plan should be reviewed every 5 years. A Careless advised that circumstances had changed since the report was written in 2007 and the plan needed to adapt in line with major policy changes.

M Morris stated that the document should be strategic rather than specific. It was felt that the report was very out of date and did not reflect the current situation.

It was suggested that the Action Plan needed to be 'quick fixes', which relate to a longer term goal. Each year, the fixes should be reviewed, which would tie in with the strategic aims.

A Careless noted that the text and Statement of Aims of the Plan was fine, these could remain the same over a long period of time and follow guidance from DEFRA; it was the Action Plan which will need to be reviewed. The Action Plan was a working document, whereas the policy documents were for reference.

The LAF was advised that the Rights of Way Officer had recently moved Service areas. Previously, the work came under Neighbourhood and Leisure Services, but now fell under Business Development and Employment Development management, therefore, closer to planning. The idea was to create a more streamlined development process.

**LAF- 8      Any Other Urgent Business**

B Coalbran stated his concern regarding the state of Lime Kiln Wood. Lime Kiln Wood was the closest nature reserve to the town, and the most accessible. It was a bio-diverse and sensitive area. There needed to be a resolution of the ownership issue, which had been pushed back another year.

B Coalbran recommended the LAF appoint a Working Group to investigate and resolve the current worst issues within Lime Kiln Woods over summer 2016.

J Mees-Robinson noted the issues preventing access to public rights of way around the Huntington Lane UK Coal mining site in Little Wenlock. All of these issues were within one square mile.

**LAF – 9      Future Meeting Dates**

The Chair thanked everyone for their attendance and noted that the next meeting of the LAF would be held on the 5<sup>th</sup> October at The Studio, Graham Building, Wrekin College at 1.00pm for 1.30pm start.

The meeting ended at 3.29pm.

**Chairman:** .....

**Date:** .....

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## Chairman's Matters

October 2016

A brief summary of the projects that the Chairman and LAF members have been involved in since the last meeting

*Think – 'If we had no network of PRow how much would it cost to put it in?'*

- 1) Definitive Map – update
- 2) TWC website update – Paula Doherty
- 3) Path clearance groups update – Ramblers and Wellington Walkers are Welcome
- 4) UK Coal restoration site (Huntington Lane, Little Wenlock)
- 5) Shropshire Way consultation + way marker ideas
- 6) The green prescription model - New Zealand
- 7) Off Road cycling survey: <https://www.surveymonkey.co.uk/r/6TKDFTQ>
- 8) National Travel Survey: <http://www.bhfactive.org.uk/latest-news-item/399/index.html> "The latest results from the National Travel Survey (NTS) 2015 reveal that walking as a mode of transport is at its lowest since 1995/97 with a decrease from 27% to 22% of walking trips."
- 9) Cycling on public footpaths – attached to agenda
- 10) Rail crossings – attached to agenda

## Public Footpaths

### THIS BRIEFING COVERS:

Legal status of public footpaths; countryside footpaths; conflict and conduct; pushing cycles on footpaths; upgrading footpaths; urban footpaths; gating orders. **Please note:** This briefing is about *footpaths* (paths for pedestrians that are away from the carriageway). It is not about *footways/pavements* (paths for pedestrians at the side of roads).

### HEADLINE MESSAGES

- Opening up much more of the Rights of Way (RoW) network in England and Wales would be of enormous benefit for the healthy and environmentally-friendly activity of cycling, both for recreation and day-to-day travel.
- Whether a legal right exists to cycle on a RoW does not necessarily relate to how suitable it is. Many footpaths are better for cycling than many bridleways (see photo below) – but, in law, cyclists are only permitted to use the latter. From a cyclist's point of view, therefore, this often makes the RoW network incoherent, illogical and frustrating. This is a problem that can only be sorted out through legal reforms and political will.
- Even within the current laws, though, there are many ways in which local authorities could open up more paths for cycling.

### KEY FACTS

- Cycling is legally permitted on less than a quarter (22%) of the Rights of Way network in England and Wales; in contrast, *Scotland's Land Reform Act* (2003) opened up most of the Scottish countryside to cyclists, as long as they abide by an access code.
- England has 146,000 km of public footpaths, and Wales over 26,000 km. These are mostly rural rights of way specifically restricted to pedestrians and the right to walk along them is legally protected. If most English footpaths were opened up for cycling, it could more than triple the mileage currently available to cyclists in the countryside.
- Unless the landowner permits it, cycling on a footpath in England and Wales normally constitutes trespass, making it a civil but not a criminal matter. A local by-law or Traffic Regulation Order (TRO) covering a particular footpath, however, can make it an offence.
- Although there is no legal right to cycle on footpaths, some are regularly used by cyclists. If enough cyclists use a footpath in this way without the landowner challenging them for (usually) 20 years, then a restricted byway may be claimed through 'presumed rights' under s31 of the *1980 Highways Act*.

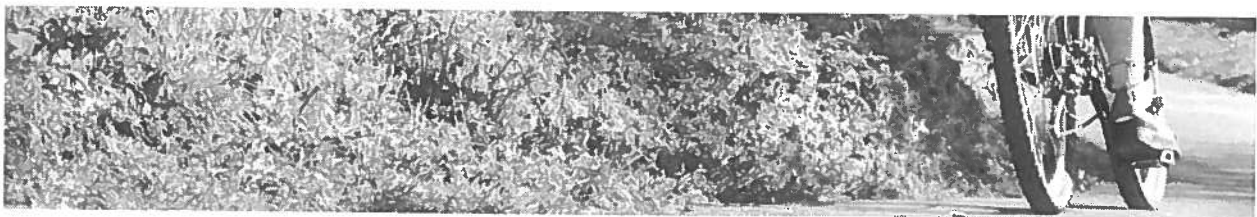


An example of inconsistencies in the Rights of Way network: cyclists have no right to use the well-surfaced footpath on the left, but can ride on the muddy bridleway to the right.



## Cycling UK VIEW

- The public footpath network offers the only realistic option for providing significantly more off-road routes to meet current and future demands. The *Scottish Land Reform Act (2003)* gave cyclists lawful access to most countryside in Scotland. Its success suggests that public footpaths in England and Wales could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists and the fragmented nature of the available route network.
- Rights of way laws should be amended to permit cycling on footpaths with few limited exceptions only where there are clear location-specific reasons not to do so (e.g. where the increased use of the path would create significant environmental or safety hazards).
- Conflict on rights of way between cyclists and pedestrians is often more perceived than real. It can be mitigated by good design.
- Cycling UK believes that it is acceptable for cyclists to use footpaths, provided they do so in a manner which respects the safety of other path users and their peaceful enjoyment of the outdoors, and with regard for the environment and its ecology. These are the circumstances in which Cycling UK believes it is acceptable for cyclists to ride on footpaths:
  - Where the surface and width of the path make it eminently suitable for safe cycling without causing disturbance or risk to pedestrians; or
  - Where the path is lightly used, such that the likelihood of disturbance or risk to pedestrians is minimal; or
  - Where a path is unlikely to attract such high levels of cycling that it will cause environmental damage (notably erosion); or
  - Where there is a reasonable belief that the footpath in question might already carry higher rights, for example:
    - where there is historic evidence (e.g. through enclosure award maps) demonstrating past use either by horses or by vehicles;
    - where the path is shown on OS maps as an 'Other Road with Public Access' (ORPA), indicating an assumption that higher rights may exist;
    - where there is regular use by equestrians, motor vehicles and/or by other cyclists
  - Where the relevant landowner is a public body or a charity and/or accepts or appears to accept use of the path by cyclists.
- Except where the landowner has expressly permitted cycle use, Cycling UK does not generally support the use of footpaths by larger groups of cyclists – particularly as part of an organised event – as this is more likely to generate complaints.
- In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.
- Councils should stringently assess the impact of 'gating orders' on cycling and prioritise alternatives where a public footpath forms a convenient through route.
- There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be seen as a reason not to permit cycle use of footpaths.



## BACKGROUND INFORMATION

### 1. Legality

Public footpaths are mostly rural rights of way specifically restricted to pedestrians and the right to walk along them is legally protected (s 329 *Highways Act 1980*). County and unitary councils have to maintain 'definitive maps', on which they mark all rights of way, including public footpaths. This makes them conclusive in law (although just because a path does not appear on the map, it does not necessarily mean that it is not a public path).

**Footways (pavements) are not footpaths:** The legal status of footways and footpaths differs: a footway runs alongside a carriageway (i.e. a road), whereas a footpath is located away from it (e.g. between buildings or through open countryside).

Unless the landowner permits it, cycling on a *footpath* normally constitutes trespass. This is a civil and not a criminal matter, i.e. neither the police nor a PCSO can take enforcement action. Instead, an aggrieved landowner can either ask someone cycling on a footpath over their land to leave, or they can seek a court injunction and/or damages against them.

**By-laws and Traffic Regulation Orders<sup>1</sup> (TROs):** The exception to the above is where the relevant authority has passed a by-law or TRO, made under the *Road Traffic Regulation Act 1984*, prohibiting or restricting cycling on a particular footpath. By-laws and TROs have the force of law and non-observance may be penalised by a fine.

### 2. Footpaths in the countryside

#### Cycling UK view:

- The public footpath network offers the only realistic option for providing significantly more off-road routes to meet current and future demands. The *Scottish Land Reform Act (2003)* gave cyclists lawful access to most countryside in Scotland. Its success suggests that public footpaths in England and Wales could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists and the fragmented nature of the available route network.
  - Rights of Way laws should be amended to permit cycling on footpaths with few limited exceptions only where there are clear location-specific reasons not to do so (e.g. where the increased use of the path would create significant environmental or safety hazards).
- Bicycling without permission on a footpath normally constitutes an act of civil trespass, although cyclists have a legal right to use bridleways.<sup>2</sup> As the status of many countryside paths is simply due to quirks of history, some footpaths are indistinguishable from bridleways, whilst others may actually be more suitable for cycling.<sup>3</sup>
  - Cyclists (and horseriders) have access to only 22% of the RoW network in England and Wales<sup>4</sup>. Opening up more of it to cycling would disperse the concentration of cycle use on the limited parts of the network where cycling is currently allowed, and help reduce congestion and any problems on routes that are also popular with pedestrians.
  - The *1968 Countryside Act* permits people to bicycle on bridleways as long as they give way to equestrians and pedestrians.

- The Natural England Stakeholder Working Group in their 2010 rights of way report *Stepping Forward* stated that there is a need to provide an integrated network for cyclists.<sup>5</sup>
- This was further supported by Defra (Dept for Environment, Food and Rural Affairs) in their subsequent public consultation, which confirmed that they propose to find ways of improving the network for cyclists and equestrians.<sup>6</sup>
- The Government's 'Red Tape Challenge' (which has been reviewing regulation of all kinds in England), led to an agreement to scrap the regulations that set out the procedures by which local authorities can convert footpaths into cycle paths (under the *Cycle Tracks Act 1984*), thus allowing for more local flexibility.<sup>7</sup>
- Notwithstanding, there are ecologically sensitive sites where there are valid reasons for maintaining restrictions on cycling to avoid environmental damage.

### 3. Footpaths and cycling

#### a. Fear of conflict

**Cycling UK view:** Conflict between cyclists and walkers on off-road routes is often more perceived than real. It can be mitigated by good design.

- Research from the Countryside Agency suggests that conflict between non-motorised users on off-road routes is more perceived than real, and often 'talked up' after the event.<sup>8</sup> Cycling UK nevertheless accepts that where cyclists mix with pedestrians in an unsegregated shared-use environment, the onus is on the cyclist to respect pedestrians' safety by slowing down or dismounting as required. Codes and cycle training schemes should make this clear.
- The *Land Reform Act* in Scotland (see 'Policy Background' below), which provides access to much of the Scottish countryside for all non-motorised users, has demonstrated that shared routes lead to minimal conflict with either walkers or landowners.<sup>9</sup>
- This success could be reflected in England and Wales by providing access for cyclists under Part 1 of the *Countryside & Rights of Way Act 2000*.
- The DfT's guidance on shared use provision (Local Transport Note LTN 1/12, *Shared Use Paths for Pedestrians and Cyclists*<sup>10</sup>), stresses the importance of high-quality, inclusive design.
  - For further evidence showing that cyclists and walkers can use shared paths with minimal conflict, see Cycling UK's briefing *Cycling and Pedestrians* [www.cyclinguk.org/campaigning/views-and-briefings/pedestrians](http://www.cyclinguk.org/campaigning/views-and-briefings/pedestrians)





## b. Use of footpaths by cyclists

### Cycling UK view:

- Cycling UK believes that it is acceptable for cyclists to use footpaths, provided they do so in a manner which respects the safety of other path users and their peaceful enjoyment of the outdoors, and with regard for the environment and its ecology. These are the circumstances in which Cycling UK believes it is acceptable for cyclists to ride on footpaths:
  - Where the surface and width of the path make it eminently suitable for safe cycling without causing disturbance or risk to pedestrians; or
  - Where the path is lightly used, such that the likelihood of disturbance or risk to pedestrians is minimal; or
  - Where a path is unlikely to attract such high levels of cycling that it will cause environmental damage (notably erosion); or
  - Where there is a reasonable belief that the footpath in question might already carry higher rights – for example:
    - where there is historic evidence (e.g. through enclosure award maps) demonstrating past use either by horses or by vehicles;
    - where the path is shown on OS maps as an ‘Other Road with Public Access’ (ORPA), indicating an assumption that higher rights may exist;
    - where there is regular use by equestrians, motor vehicles and/or by other cyclists
  - Where the relevant landowner is a public body or a charity and/or accepts or appears to accept use of the path by cyclists.
- Except where the landowner has expressly permitted cycle use, Cycling UK does not generally support the use of footpaths by larger groups of cyclists – particularly as part of an organised event – as this is more likely to generate complaints.

The law allows a right of way to become established by (normally) 20 years of use, providing this is done openly, peaceably and without generating opposition from the landowner. It therefore makes no sense to argue that cyclists should never stray from the RoW open to them, given that regular, unauthorised but unopposed use – whether by cyclists or others – is precisely the means by which RoW become established in the first place. See also ‘Upgrading footpaths’ below.

Many footpaths are, in any case, entirely suitable for shared use, and there may be strong indications that some are not just for walking but carry ‘higher rights’ anyway, e.g. where a path is marked on an Ordnance Survey map as an ‘Other Road with Public Access’ (ORPA), and/or where there’s evidence to show that horses or vehicles have used it in the past.

As mentioned, in most circumstances cyclists and walkers are perfectly able to co-exist happily when they use the same routes. Mutual respect and consideration is a vital part of that, so cyclists need to use their discretion before deciding whether to ride along any route that is, for example, too narrow or too crowded and where there’s a risk that they will disturb or intimidate walkers. They should also guard against causing environmental damage, particularly in ecologically sensitive areas.

Events or activities that attract large groups of cyclists are, inevitably, much more likely to disturb walkers and generate complaints. For this reason, Cycling UK believes that footpaths are not appropriate for such use, unless express permission has been given by the landowner.

Some landowners are happy for cyclists to use footpaths on their land. Where there are good grounds for believing that this is the case, it is entirely reasonable for cyclists to enjoy the facility. If a landowner objects, it is important to remember that they can take civil action against the cyclist for trespassing. Cycling on a footpath, however, is not a criminal offence, unless it is specifically prohibited by by-laws (more likely in an urban setting). See 'Legality' above.

**Codes of conduct** help reassure all users of a path and encourage courteous and consideration interaction. Cycling UK and British Cycling both endorse a code of conduct issued by Sustrans (2013) that recommends, for instance, that cyclists give way to pedestrians, slow down, use bells etc. See: [www.sustrans.org.uk/resources/in-the-news/code-of-conduct](http://www.sustrans.org.uk/resources/in-the-news/code-of-conduct)

### c. Upgrading process

Although there is no legal right to cycle on footpaths, some are regularly used by cyclists 'as of right' on the assumption of higher status. If enough cyclists use a footpath in this way without the landowner challenging them for (usually) 20 years, then a restricted byway may be claimed through 'presumed rights' under s31 of the *1980 Highways Act* (as amended by s68 of the *Natural Environment and Rural Communities Act 2006*).<sup>11</sup>

As mentioned above, many footpaths actually have the underlying higher status of a bridleway, restricted byway or byway. This is particularly the case in counties that classified 'carriage roads (footpaths)' and 'carriage roads (bridlepaths)' as footpaths during the development of the definitive map in the 1950s.

Where a highway authority becomes aware of evidence that the recorded status of a way is incorrect, it is required to make an order to rectify this. In reality, this is a slow and bureaucratic process that results in relatively few changes year on year.

Alternatively, or in cases where there is no evidence that a footpath has higher rights, there are a number of ways in which local authorities can update their status to bridleway or restricted byway. These include:

- provision of supporting documentary evidence under s53 of the *Wildlife & Countryside Act*<sup>12</sup>
  - by landowner agreement under s25 of the *1980 Highways Act* (see endnote (6))
  - by compulsory purchase under s26 of the *1980 Highways Act* (see endnote (6))
- For more, see Cycling UK's campaign's guide, *Developing new paths for cycling in the countryside*: [www.cyclinguk.org/article/campaigns-guide/developing-new-paths-for-cycling-in-countryside](http://www.cyclinguk.org/article/campaigns-guide/developing-new-paths-for-cycling-in-countryside)





#### d. Pushing cycles on public footpaths

**Cycling UK view:** There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be seen as a reason not to permit cycle use of footpaths.

Cycling UK believes that the following supports the view that it is not illegal to push a cycle on a footpath:

- **Crank v Brooks 1980:** In this case, a motorist was prosecuted for injuring a cyclist who was pushing a cycle on a zebra crossing. In his judgment Lord Waller said: *“the fact that the injured party had a bicycle in her hand did not mean that she was no longer a pedestrian”*.
- **The Department for Transport:** In a letter written in 1994, the DfT confirmed *“... that a cyclist pushing a bicycle on a pedestrian facility is regarded as a pedestrian”*.<sup>13</sup>

A footpath is, arguably, a pedestrian facility in the same way as a zebra crossing or footway, and there is no obvious reason to differentiate between pedestrian facilities that form part of a vehicular highway, and those which do not.

- **The Highway Code** illustrates a prohibitive ‘no vehicles’ sign with the words ‘no vehicles except cycles being pushed’ underneath to qualify the message.<sup>14</sup> The bicycle is defined in law as a vehicle, but the rationale behind this sign suggests that cycles being pushed are to be regarded as exempt from vehicular restrictions.



#### Alternative views:

- **Ramblers’/Open Spaces Society:** In *Rights of Way - a Guide to Law and Practice*, these organisations state: *“It is submitted that a bicycle is not a ‘natural accompaniment’ of a user of a footpath, and to push (or carry) one along a footpath is therefore to commit a trespass against the landowner”*.<sup>15</sup>

The term ‘natural accompaniment’ (or ‘usual’ accompaniment, as it is also termed), is thought to derive from the case of *R v Mathias* in 1861, before bicycles were invented. Here, the judge held that a perambulator being pushed by a pedestrian was a *“... usual accompaniment of a large class of foot passengers, being so small and light, as neither to be a nuisance to other passengers or injurious to the soil.”*<sup>16</sup>

It has been argued that, as a bicycle is “usually” ridden and only occasionally pushed (unlike a pram, golf caddy, shopping trolley or other such non-motorised machine with wheels), it is the usual accompaniment of a cyclist rather than that of a pedestrian. By following this logic, though, pushing a child’s scooter along a footpath would also be trespass.

In any case, Cycling UK’s reading of this judgement suggests that the distinction being made was not between machines that people usually ride and those they usually push, but between inoffensive “small and light” machines and large and heavy carts. The latter could potentially be a nuisance to other path users, and injure the soil. On this basis, had cycles been in existence and widespread use in 1861, the judge would surely have said that cycles (like prams) were small and light enough not to be out of place if pushed along a footpath.

**Note:** In 1931, a judge in a case in Scotland concluded that, in his view: *“a pedal cycle is only an aid to pedestrianism”*. While this phrase could helpfully be said to equate to ‘natural accompaniment’, it is irrelevant as far as English statute is concerned.<sup>17</sup>

- Others have attempted to use **s72 1835 Highways Act (+ s85 of the 1888 Local Government Act<sup>18</sup>)**, which stated that it was an offence to “lead or drive” any animals, horse drawn carriage (or bicycle) on “any footpath or causeway by the side of any road alongside the road.”

Clearly, “lead or drive” does not apply to pushing bicycles, although it could apply to a ridden cycle. Moreover, the inapplicability of this Act to footpaths (i.e. highways not adjacent to roads), was confirmed in two cases:

- *R v Pratt* (1867) in which the judgment stated that the Act ONLY applies to footways alongside roads.
- *Selby v DPP* (1994) where a judgment found that an alleyway joining two roads did not constitute a footpath as defined by the 1835 Act.

It can therefore be assumed that the use of any public footpath in a field would receive a similar verdict, and this is also the conclusion in *An Introduction to Highway Law* by Michael Orlik.<sup>19</sup>

#### 4. Urban footpaths

**Cycling UK view:** In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.

If opened up for cycling, many urban footpaths could provide convenient, cut-through links for local cyclists. Although many are subject to by-laws that restrict or prohibit cycling, it is possible to revoke them.

#### 5. Gating orders

**Cycling UK view:** Councils should stringently assess the impact of ‘gating orders’ on cyclists and prioritise alternatives where a public footpath forms a convenient through route.

- Under Section 2 of the *Clean Neighbourhoods and Environment Act 2005* councils have the power to make, vary or revoke ‘gating orders’ to restrict public access to any public highway (including footpaths, bridleways or cycleways) within their area, without removing its underlying highway status. These orders are intended to deal with anti-social behaviour (ASB) and crime.
- Home Office guidance<sup>20</sup> already stresses:
  - the need to make sure that the desire to prevent ASB/crime by gating is weighed up against any inappropriate inconvenience that residents and the public might experience as a result;
  - that councils should assess the measure’s impact on health if it is likely to encourage more people to drive (i.e. because alternative walking routes are too long, for example);
  - that “Gating orders are not the only solution to tackling crime and anti-social behaviour on certain thoroughfares.”
- Cycling UK believes that the impact on cyclists of a gating proposal should be stringently considered before an order is made and, if it is made, during its annual review process; and that alternatives (e.g. better lighting, more police patrols by foot or cycle) should be prioritised where the route in question is valuable to cyclists and closing it off would be a longer detour.

## POLICY BACKGROUND

- **Land Reform Act (Scotland) Act 2003<sup>21</sup>**

This breakthrough legislation came into effect on February 9, 2005 and gives Scotland the most progressive access arrangements in the UK. Under the Act, cyclists have lawful access to almost all open areas under an Access Code that sets out responsibilities for all parties from landowners to visitors. While cyclists are free to roam over most of Scotland's countryside, so long as they abide by the Code, they (and the public) are not permitted to enter buildings, private gardens, or to cross fields with growing crops in them. Key points of the Code include:

- Acting responsibly, with care for the landowner, environment and other trail users;
- Being careful not to disturb any work taking place;
- Closing gates and looking for alternative routes around fields with animals.

<sup>1</sup> For more on TROs, see <http://www.parliament.uk/briefing-papers/SN06013.pdf> (Parliamentary note, June 2013)

<sup>2</sup> Bicycling on bridleways has been legal since the *Countryside Act 1968*.

<sup>3</sup> See presentation to campaigners' conference (Cheltenham), April 2006; and paper to the National Countryside Access Forum (NCAF) 2004, both by former Cycling UK councillor, David Moxon.

[www.cyclinguk.org/article/campaigns-guide/rights-of-way-incoherent-network](http://www.cyclinguk.org/article/campaigns-guide/rights-of-way-incoherent-network)

<sup>4</sup> Cyclists are allowed to use bridleways, restricted byways and byways open to all traffic (BOATS). Until recently, Natural England published the composition of the RoW network, but these figures are not yet available on its new website.

<sup>5</sup> Natural England. *Stepping Forward - The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England* (NECR035). March 2010. <http://publications.naturalengland.org.uk/publication/40012>

<sup>6</sup> <https://www.gov.uk/government/consultations/improvements-to-the-policy-and-legal-framework-for-public-rights-of-way> (Improvements to the policy and legal framework of public rights of way).

<sup>7</sup> DfT. *Red Tape Challenge - road transportation*. Dec. 2011. (p38)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/2492/rtc-road-transport-summary.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2492/rtc-road-transport-summary.pdf)

<sup>8</sup> Countryside Agency. *How people interact on off-road routes*. Research Note CRN 32. March 2001. The Summary says: "In the main, route users accommodate others by changing their speed and pattern of travel: cyclists slow down, while walkers move in more of a straight line and speed up. / The research found that, when people gather together to talk about conflict, they talk it up and their recollection of how many others they met while on the route escalates. Their perceptions of conflict were much higher than that actually experienced." <http://publications.naturalengland.org.uk/publication/50065>

<sup>9</sup> Scottish Natural Heritage. *Monitoring responsible behaviour - recreation users and land owners/managers 2005-2007*. (Report 314). 2009. [www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=1390](http://www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=1390); *Commissioned Monitoring responsible behaviour among recreational users and land managers*. (Report 424). 2011. [www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/?q=424&cat=](http://www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/?q=424&cat=)

<sup>10</sup> DfT. *Shared Use Paths for Pedestrians and Cyclists* (LTN 1/12). Sep 2012.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9179/shared-use-routes-for-pedestrians-and-cyclists.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9179/shared-use-routes-for-pedestrians-and-cyclists.pdf)

<sup>11</sup> *Highways Act 1980*. <http://www.legislation.gov.uk/ukpga/1980/66>

<sup>12</sup> *Wildlife and Countryside Act 1981*. <http://www.legislation.gov.uk/ukpga/1981/69>

<sup>13</sup> Quoted in *Byways and Bridleways* (newsletter of the Byways and Bridleways Trust). 1995/4/19.

<sup>14</sup> DfT. *Highway Code Revised edition 2007*. 'Signs Giving Orders'. [www.gov.uk/guidance/the-highway-code/traffic-signs](http://www.gov.uk/guidance/the-highway-code/traffic-signs)

<sup>15</sup> Riddall, J; Trevelyan, J. *Rights of Way: A Guide to Law and Practice*. 4<sup>th</sup> Edition. Ramblers' Association and Open Spaces Society. 2007. P 26.

<sup>16</sup> For more on R v Mathias, see Alan Kind's *Notes and materials on cycling in the countryside*.

[https://dl.dropboxusercontent.com/u/55092210/Notes\\_Materials\\_Law\\_Cycling.pdf](https://dl.dropboxusercontent.com/u/55092210/Notes_Materials_Law_Cycling.pdf)

<sup>17</sup> *Aberdeenshire Council v Lord Glentnair Case Report: 1999 SLT 1456* as reported in *Access to the Outdoors in Scotland: A summary of relevant court decisions*. Scotways 2010. Page 62.

[www.scotways.com/scotways\\_assets/files/045\\_ScotWays%20Case%20Law%20Publication%2014-09-2010.pdf](http://www.scotways.com/scotways_assets/files/045_ScotWays%20Case%20Law%20Publication%2014-09-2010.pdf)

<sup>18</sup> The 1888 Act added bicycles to the 1835 Act.

<sup>19</sup> Orlik, Michael. *An Introduction to Highway Law*. Shaw & Sons. First published 1993 (revised 2007). Page 10.

<sup>20</sup> Home Office. *Clean Neighbourhoods and Environment Act 2005: Guidance Relating to the Making of Gating Orders*. March 2006.

<http://webarchive.nationalarchives.gov.uk/20100405140447/asb.homeoffice.gov.uk/members/article.aspx?id=7924>

<sup>21</sup> See <http://www.snh.gov.uk/land-and-sea/managing-recreation-and-access/access-rights/>



# Level-crossing closures will derail footpaths

**Ben Webster**, Environment Editor

Gill Baker has used an ancient footpath twice a day for more than 20 years to visit her elderly parents and feed her horses at a farm near her home. Now, however, she faces being forced to walk with her two dogs along a road that has no pavements and is used as a rat run.

Ms Baker, 54, from Essex, is one of thousands of people threatened with loss of potentially dangerous diversions from footpaths under Network Rail's plans to close 130 level crossings. The closures will sever footpaths that were in use hundreds of years before the railways were built. Long-distance

paths through scenic areas, including St Edmund Way and Stour Valley path through Constable country in Essex and Suffolk, will be affected.

Network Rail says it wants to close as many crossings as possible to reduce the risk of accidents and save money on maintaining them. In some cases it wants to close crossings to allow trains to travel faster and more frequently.

The 130 crossings earmarked for closure are all in East Anglia but Network Rail is expected to seek closures in other regions.

Residents and conservation groups opposing the closures say that many are on branch lines used by a handful of

trains an hour where there is no significant risk to pedestrians. They accuse Network Rail of ignoring the much greater risk that pedestrians will face when forced to walk on busy roads.

Ms Baker said that Network Rail had proposed alternative routes between Great Bentley and Thorrington but they were up to three times longer.

Richard Harvey, another local resident opposing the closure, said he had measured cars at 60mph on the narrow road on to which walkers could be diverted. Trains using the line travelled more slowly and were far less frequent.

Rebecca Bearn is opposing the closure of another crossing in Essex

that would deprive her village, Lamarsh, of the most convenient route to the nearest shop in the neighbouring village of Bures.

She said: "It is completely unnecessary because there has not even been a near miss. The path predates the railway and it connects two communities."

She said an alternative route proposed by Network Rail would force walkers through muddy fields and rob them of views of the Stour Valley.

A Network Rail spokeswoman admitted that the footpath crossings were "not high risk", unlike many of the road crossings it has closed in recent years. She added, however, that "risk

exists even though accidents haven't happened," and claimed that "the safest crossing is a closed one".

She said that Network Rail was consulting on the proposed closures and seeking alternatives that would not increase the risk to pedestrians.

Darren Cottrill, head of level crossing safety at Network Rail, said: "Level crossings are a historic legacy from a bygone age when there were far fewer and slower trains, no cars and a slower pace of life. Railways built today are constructed without level crossings."

Three people were killed at crossings in the past 12 months, the lowest number ever recorded.



## Update report – Ann Sharkey

Definitive map update;

As you are aware, the HCA own some strips of land at the Town Park and at Halesfield, land which carries sections of the bridleways which are also the subject of the Council's bridleway dedications.

You are also aware the HCA have been difficult to pin down to enter into creation agreements. To progress matters Andrew approached the local HCA area representative with a number of options, and HCA have indicated if the Council makes a creation order they will not object. I hope that others do not. This solution means increased work, but at least it also completes the job.

The Legal Event Modification Order work is close to completion, I am picking up stray orders for inclusion into the LEMO's.

Meetings have been held with the Council's ICT department regarding improving the on-line register. ICT have now gone away with Andrew's and my requirements, these are mainly to allow more information to be shown on the register and for the register itself to be searchable. ICT have also suggested linking up with other Council systems, in order that the end user can gather up all they need when researching the applications on the register. Interesting stuff, but all in the early stages.

3 new applications made since July LAF meeting.

Kind regards,

Ann



**Provisional Meeting Dates for 2017**

Wednesday 18<sup>th</sup> January 2017

Wednesday 12<sup>th</sup> April 2017