

The Blue Book for Roads

Report by Senior Waterways and Recreation Officer

Summary: This report provides members with information on an issue regarding the recording of roads that has been raised through the Local Access Forum (LAF) Huddle web forum. LAFs have identified that there is a lack of advice available on the issue and a draft guidance document (Blue Book) has been produced for consultation of the Huddle Forum. Members' comments on the latest version of the document are welcomed.

Recommendation: That members note the contents of the report and comment on the draft Blue book for roads which is appended to this report.

1 Background

- 1.1 Members will be aware that the Deregulation Act received royal assent on 26 March 2015 and the sections relating to rights of way in the Act are expected to take effect on before the end of 2016.
- 1.2 One of the most important sections in the Act relates to the claiming of historic rights of way for addition to the definitive map of public rights of way. The Act will impose a cut-off date for the claim of historic paths which existed before 1949 based on historic documentary evidence (section 53 of the Countryside and Rights of Way Act 2000 (CROW Act)) with the aim of providing certainty to landowners about what highways exist on their land. There is an element of protection in the Act for applications for definitive map modification orders.
- 1.3 There are, however, other highway records which serve to prove the existence of highways such as the List of Streets and the Street works Register for unadopted roads. Applications to record unadopted roads do not have the same protection from the cut-off date. Whilst it is possible to seek to claim unadopted roads through the definitive map modification order process this is more costly than recording them on the Street works register. Also as there as the Department of Transport (DfT) has estimated that there are approximately 40,000 unrecorded roads in England and Wales there is a risk that some roads will remain unrecorded as people may presume that they are already on the Street Works Register or List of Streets.
- 1.4 From the posts on the Huddle web forum it is clear that there is a level of confusion amongst local access forums about this subject. However, the DfT has advised that they do not intend to publish any guidance about the identification and registration of unadopted roads and streets as they are not aware of any problems arising from a lack of published guidance. In light of this a draft guidance document addressing

road issues has been produced by LAF members for consultation. The latest version of this document is at appendix 1 to this report.

2 Conclusions

2.1 There is a need for clear guidance on the subject of recording roads if the provisions in the Deregulation Act 2015 regarding highways are to function in an effective manner. Unadopted roads and streets are important to the integrity of the rights of way network as they provide links between public paths and adopted highways in urban and rural areas. The draft guidance appended to this report is an important first step in this regard and members' comments on the document are welcomed.

Background papers:	Nil
Author:	Adrian Clarke
Date of Report:	29 November 2016
Broads Plan Objectives:	TR1, TR3
Appendices:	Appendix 1: Draft Blue Book for Roads

The Blue Book for Roads



An unrecorded road leading to a bridleway, with footpaths branching off it.

Local Access Forums are statutory advisors, and having identified a need for a Blue Book addressing road issues, this book has been raised for editing, etc., by Local Access Forum members making use of the NE Huddle LAF web page.

1. Our highway records comprise the Definitive Map for paths, List of Streets for publicly maintained roads, and Street Works Register for unadopted roads that are highways, plus all other highways.
2. Parliament legislated that our Local Highway Authorities should raise Street Works Registers, comprising a single digital Highway Record of all our highways under the 1991 New Roads and Street Works Act, section 53. This requires that a Street Works Register be raised, with section 4(5) of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 making the Highway Authority responsible for securing the registration of 'Every street, of which the local highway authority are aware, which is a highway but for which they are not the street authority'. These would be our 'white roads' they being highways for which the highway authority has not accepted liability to maintain, i.e., they are not the street authority. This duty is recognised by Department for Transport in chapter 3 of its 2012 Code of Practice.
3. A House of Commons Library Standard Note SN/BT/402 of 18 October 2010 says "A Department of Transport survey in 1972 found that there were then approximately 40,000 unadopted roads in England and Wales"
4. To undertake this duty Parliament clearly expects our authorities to assert authority, reference s.130 of 1980 Highway Act, and register our unadopted roads, also known as 'white roads', that is aware of, which should logically include any representations by parishes re unadopted roads unless satisfied that representation is incorrect, reference part (6) of that section of the act. Our Highway Authorities may be more comfortable doing this if they a) raise an evidence base setting out what has been recorded in the past, thereby identifying the type of road that was not recorded, justifying the recording of them now, and b) have protocols in place to facilitate the processing of those they are aware of themselves, representations from parishes, and for consideration of any representations / objections from the public. A protocol that comprises solely of provision for considering representations from the public would not conform with the legislation.
5. Section 53(3) of 1991 New Roads and Street Works Act provides that the authority should make the Street Works Register available for inspection, at all reasonable hours and free of charge, by any person.
6. This data, now raised in conformance with BS7666 that for various reasons such as addressing purposes requires some streets that are not highways to be included, is nowadays raised in national computer software format to raise the National Street Gazetteer, with the authorities contribution called the Local Street Gazetteer, a 'common' name for the 'statutory' Street Works Register. It should be recognised that all the Legislation, Regulations, DfT Code of Practice, etc., that reference the Street Works Register applies to the Local Street Gazetteer, including the 1991 New Roads and Street Works Act s.53(3) entitlement to view, the Street Works Register being the statutory name of the Local Street Gazetteer. (Note: Some have reasoned that the Street Works Register and Local Street Gazetteer are separate records, with

our authorities obliged to raise both, but we can see no justification for that.)

7. All subject of being upgraded and combined with Ordnance Survey Integrated Transport Network map to raise the new £3 million project Department for Transport OS Mastermap Highway Network, which is without any person having a legal right to view, though may be viewed by members of Local Access Forums under terms of authorities PSMA licence.
8. Persons working on the Deregulation Act provisions seeking to fill in gaps and anomalies by 2026 would be aware that undetermined protocols raised by the public to record our unadopted roads on the Street Works Register are not protected from 2026 cut-off whilst applications to modify the Definitive Map are, and they could be expected to protect their interest by raising Definitive Map Modification Order Applications that applying to a legally conclusive record are costly to process for ways that would be more correctly addressed and at far lower cost by the recording of them on the Street Works Register as unadopted roads.
9. Some may reason that those that are now green lanes ought be recorded on Definitive Map as a Restricted Byway, but that could follow as and when resources are available should that be considered to be necessary.
10. The Department for Transport have advised, reference GT51/3/3/161672 of 25 April 2016, that they do not intend producing guidance and are not aware of any problems arising from a lack of published guidance regarding the identification and registration of our unadopted roads on the Street Works Register.



An unrecorded unadopted road with public street lights leading to a public footpath

Notes :

1. **Aware of** – The 1991 NRSWA requires Highway Authorities to register highways they are aware of, and the meaning of aware of has been questioned by a HA. This is not considered to mean those already recorded on a formal legal list, but a more literal meaning of those that by common sense they are aware of, such as
 - roads with authorities street furniture such a street name signs, public lighting, etc.
 - roads linking our public paths with our maintained roads and which may be mentioned on path written statements as being a road to which a path connects,

- roads leading to public places,
 - roads in regular public use that all are aware exist but are not yet recorded,
 - roads submitted by parishes in 1950s but not shown, as believed to be outside scope of DM, or shown on DM as winter paths, i.e., shown as a field-side path.
 - Some roads may have fallen out of use since records of public paths were raised back in 1950's, and our authorities may need to check against historical records, with further information regarding this is being raised reference Natural England Commissioned Report NECR035 'Stepping Forward' under improved proposals for registering public paths, since this information would also apply to roads.
2. **When is a road a highway ?** - Common law has established that a highway is a defined route over which "the public at large" can pass and re-pass as frequently as they wish, without hindrance and without charge. The use must be as of right and not on sufferance or by licence. There is no clear statutory definition of a highway. A highway can be established at common law or created by statute. A highway is open to everyone. This is the essence of highway. It means that technically it is unnecessary to refer to public highway. There is no such thing as a private highway. A highway can be privately maintainable, but the public's rights of passage over it are the same as if it were a publicly maintainable highway of the same class.
 3. **When is a road not a highway ?** – Typical examples would be a road within a property boundary where access by the public is restricted by physical (for example, gate) or administrative (for example, sign) means. Examples where public use is considered usual for at least some part of the day would comprise roads within a hospital, sports centre or school and examples where public use is not considered usual would comprise roads within a military base, an oil refinery, or within a private residential garden, or leading to two private properties. Establishing that a road is not a highway can be difficult.
 4. **When is a road that is a highway maintainable at public expense ?** - Prior to the 1835 Highway Act, only roads leading to / between Market Towns were maintainable at public expense under statute law, e.g. s.XV of 1773 Highway Act and earlier acts going as far back as the 1285 Statute of Winchester that required highwayman hiding places be cleared away, with those not leading to / between Market Towns often referenced as 'Cross Roads', they not being maintained at public expense under statute law. The 1835 Highway Act extended that duty to all roads, with roads created after 1835 needing to be brought up to adoption standard and adopted by HA to become maintainable at public expense. So to establish if a road is maintainable at public expense it needs to be shown that it existed prior to 1835, or has been adopted if created after 1835. Exceptions apply to this general rule, and s.37 and 38 of 1980 HA provide process for highways to become maintainable at public expense.
 5. **Cease to maintain orders** – Section 21 of the Highway Act 1864 provided for parishes to obtain an order enabling them to cease to maintain a road that is a highway, currently s.47 of 1980 Highway Act. The effect of the order is to cease maintenance responsibility, with no effect on public entitlement to use the road.

Section 48 of 1980 Highway Act provides for reinstatement of maintenance.

6. **CRF's recorded as footpaths** – The guidance raised in 1950's was incorrect and rather than seeking submissions from parishes for Roads used as public paths, it sought information regarding CRF's and CRB's, with them defined as 'Highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways, should be marked on the map "C.R.F." or "C.R.B.", with a note in the schedule also that their main use is as a footpath or bridleway as the case may be'. Some HA's, such as West Riding of Yorkshire, Dorset and Herefordshire did not show these as Roads used as public paths, but as Footpath or Bridleway. This has resulted in many ways being recorded as footpath that have higher rights over them, to detriment of equestrians, cyclists, etc., and also landowners, it limiting equestrians to bridleways over fields rather than using green lanes shown as footpath, and has yet to be addressed. Consideration will need to be given to whether this matter is best approached by way of a survey of roads, rather than limited to the original parish submissions, should they still be available.

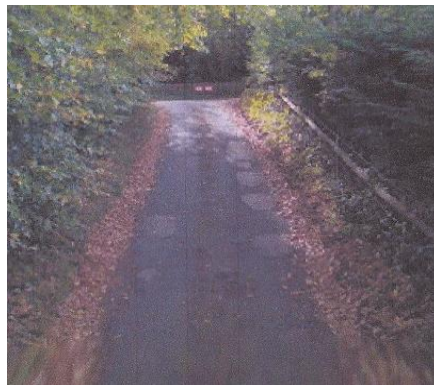


A CRF recorded as a footpath

7. **Meaning of prefixes 'Public' and 'Private'** – The prefix 'Public' or 'Private' before a 'right of way' is often used to define who may use, but is also often used to define how maintained, particularly when prefixes a 'road' or 'street', for example s.232 of 1980 Highway Act says *'to be a private street, and thereupon the land is to be deemed to have been dedicated to the use of the public as a highway and to be a private street'*. However this generalisation does not always apply and one should be aware of need to consider which meaning of prefix 'public' and 'private' applies.
8. **Inclosure Award Private Carriage Roads and the Dunlop High Court Case** - The 1801 General Inclosure Act was drafted when statute law only required roads leading to / between market towns to be maintained, i.e., prior to the 1835 Highway Act that extended that statute duty to all roads, so many minor roads were set out by legal event as private carriage roads to be made and maintained as directed in the award, i.e., similar as private street in 1980 Highway Act, with s.232 saying *"to be a private street, and thereupon the land is to be deemed to have been dedicated to the use of the public as a highway and to be a private street"*. The high court has considered the meaning of this term, but was very poorly argued, it being reasoned that private

meant lowest status, as private in army, or a road for private carriages as in our royal parks, or some other unknown meaning, with it not considered if meaning was same as private street as used in 1980 Highway Act, which it clearly is, and with that understood the act, and associated awards, say what they could be expected to say. The Dunlop decision that private means not open to public use remains unchallenged but clearly incorrect. Some awards say after private road whose use and benefit they are for, that being legal way of saying who could take court action to enforce those liable to repair to carry out the work, and also the standard required, it to be suitable for those persons use, without limiting the use to those persons, the act containing no power to do that. (The 1800 judgement re The King v J Richards and 5 others ruled that the King had no power to enforce maintenance of a private road, not that he had no right to use it, and the presumption at that time was that highway land was owned by the parish, s.17 of 1773 Highway Act) Section 38 of the 1980 Highway Act provides for transfer of maintenance responsibilities to HA's. Section XXXVI of a later 1845 Inclosure Act introduced the term occupation road for private use roads. The associated Andrews case regarding footpaths has been corrected on appeal but Dunlop remains. However the failure to recognise the need to consider whether the meaning of the prefix 'public' and 'private' was to define who may use or how maintained is an elementary error of judgement, that ought be recognised and accepted as such.

9. **Dual recording as road and prow** – For various historical reasons some identifiable roads are presently recorded as prow's without prejudice to higher rights, with no known procedure for deleting the prow record. Dual recording is therefore considered to be normal and acceptable. Some inclosure awards set out 'Private Carriage Road and Public footpath' with examination of before and after plans showing this occurred when a private carriage road was set out over a public footpath, i.e., an early example of dual recording.
10. **Survey of roads** – A survey of roads has never been undertaken, and whilst the 1923 Ministry of Transport Road Maps viewable via [http://www.sabre-roads.org.uk/wiki/index.php?title=OS Ministry of Transport Road Map](http://www.sabre-roads.org.uk/wiki/index.php?title=OS_Ministry_of_Transport_Road_Map) provide a good basis, research has identified that they are not comprehensive, and other historical documents need to be researched also, best practice yet to be established.



An unrecorded unadopted 'white road' leading to a public place with parking spaces

Appendix

1. Geoplace LLP have advised that updated DTF8.1 software adds Highway Dedication Codes enabling the current issue of differentiating between 'Streets, of which the local highway authority are aware, which is a highway but for which they are not the street authority' and 'Streets that are not highways' to be clarified due to use of a combination of 'Maintenance Responsibility' and 'Highway Dedication' Code, and that local authorities should only use the hHghway Dedication Code 12 where there is no evidence to suggest that the street is a highway. It should not be used where the dedication is simply unknown. This will be made clear in the Data Entry Conventions version 3.7 scheduled to be released in July, with a 1st October deadline for its implementation. This DEC is expected to include advice that Highway Dedication Code 8 does not literally mean all vehicles, but to be more comprehensive taking into account the character of the highway, and the traffic which is reasonably to be expected to use it; the standard of maintenance appropriate for a highway of that character and used by such traffic; and the state of repair in which a reasonable person would expect to find the highway, reference section 58 of the 1980 Highway Act. Also some words stating that the term 'Metalled' is not limited to surfaces sealed with tarmac, but includes other surfaces such as stoned.
2. The Department for Transport have advised regarding the October deadline and whether this gives sufficient time for local highway authorities to determine what highway code applies that the time allowed for the transition was not determined by the Department for Transport. It has been determined by Geoplace working in conjunction with local highway authority representatives and it seems fair to assume that these authorities are therefore content with the time-scale involved.
3. Rt Hon Anna Soubry MP, the responsible Minister of State for Small Business, Industry and Enterprise has advised regarding the 'Descriptive Term' of 'Restricted Local Access Road' which is 'A road intended for the start or end of a journey, not intended for through traffic and will have restrictions on who can use it' in the PSMM Highway Network OS Mapping viewable by LAF members under authorities licence terms, reference OS web-page <https://www.ordnancesurvey.co.uk/business-and-government/products/os-mastermap-highways-network.html> that whilst the restriction will not be defined it will only be referring to access restrictions for motorised vehicles and is not a reflection on use by pedestrians or equestrians. OS have been asked to add a statement to this effect, none being found on this web-page, since for pedestrians and equestrians use of such streets connecting with public paths may not be confined to the start or end of a journey. However OS have declined to do so, they considering that the product web-page clearly states that Highways is a definitive Road Network, which they consider to be sufficiently clear.
4. Defra have advised that they are working with the Stakeholder Working Group on implementing the proposals in the 'Stepping Forward' report and are now in the process of drafting the appropriate Regulations. Regarding proposal 25 Defra cannot

disclose the contents of any draft regulations but Defra and the Stakeholder Working Group are aware of the different terminology of Street Works Register and the Local Street Gazetteer. With it being the Street Works Register that is the statutory term referenced in 1991 New Roads and Street Works Act, the associated Regulations, and Department for Transport Code of Practice, it may well be the Street Works Register that these Regulations make reference to when implementing proposal 25, though would also apply to the Local Street Gazetteer.

5. Department for Transport have advised regarding guidance for the identification and registration of unadopted highways on the Street Works Register that Department for Transport does not intend producing guidance and are not aware of any problems arising from a lack of published guidance. If a local highway authority has a query in this regard, they can contact Geoplace LLP. Also the Minister responsible for this issue, Andrew Jones MP, has advised that should anyone have concerns about the Street Works Register that they may exercise their rights under the authorities complaints procedure.
6. Geoplace LLP have advised that they do not provide the local highway authorities with guidance regarding the identification and registration of our unadopted roads on the Street Works Register. All guidance created is within the Data Entry Conventions (3.6) currently available on the GeoPlace website and will also form part of the next release (3.7). Within that guidance they specify that all highways should be recorded, but do not specify the process of identification as this does not fall within their expertise.
7. For the Deregulation Act provisions to function economically, efficiently and effectively we surely need a base map viewable online showing all presently recorded highways, i.e., the Street Works Register since this ought show all paths, maintainable roads plus all streets of which local highway authority are aware, which are highways, but for which they are not the street authority, in-conformance with part 3.6.1 of the Department for Transport October 2012 Code of Practice, but Defra have advised that there has been no survey carried out by Defra to establish a base map in relation to the Deregulation Act 2015 rights of way provisions. Specifically, no work has been undertaken to check the online availability of the Street Works Register, or whether or not local authorities have shown all streets of which they are aware, that are highways.
8. The Department for Transport have advised that no follow up of the 1972 survey that identified 40,000 unadopted roads to monitor whether or not the highway authority has recorded them on the Street Works Register has been undertaken, and Andrew Jones MP, Parliamentary Under Secretary of State has advised that the Department for Transport does not monitor how local authorities carry out their statutory duty, and that there is no separate body that a complaint regarding non compliance can be made to. They are accountable to local people for their decisions and performance, who may exercise their rights under the local authorities complaints procedure. (Issues may also be referred to local authorities scrutiny committee).

9. By way of example of conforming with the above Ministers guidance, though making use of scrutiny rather than complaints procedure, one local authorities Scrutiny Committee has resolved to raise a working party set up with officers, representatives of parish councils, and interested parties to look into and discuss the details of completing its highway records using an alleged more cost effective way of achieving this than presently promulgated by the council, the suggestion being to focus on those records that are not legally conclusive, with self-registration in-conformance with the Legislation, Regulations, DfT Code of Practice and this LAF Blue Book for Roads in-conformance with an Evidence Base setting out what has been recorded in the past, thereby identifying the type of road that was not recorded, justifying the recording of them now, ought be least cost first option, raising a protocol whereby parishes may undertake a survey following an approved procedure to provide the authority with the information, i.e., based upon s.130(6) of 1980 Highway Act, ought be the second option, with the most costly option being the already adopted protocol for use by public seeking amendment of highway records other than the Definitive Map, this requiring consideration of evidence, consultation and determination, use of which could then be expected to be limited to locations where parishes had not participated and by any persons aggrieved by above decisions.

10. A table listing the various highway records, what they record, and who may view them has been raised thus :-

Feature	Definitive Map	List of Streets	Street Works Register (Also termed Local Street Gazetteer)	National Street Gazetteer	OS Mastermap Highway Network
Paths	X	X	X	X	
Plus roads maintained at public expense		X	X	X	X
Plus streets of which local highway authority are aware, which are highways, but for which they are not the street authority, and streets to two or more properties in-conformance with BS7666 that are not highways and shown for addressing purposes, etc.			X	X	X
Plus undefined 'Restricted Local Access Roads' being streets identified by OS surveyor as in vehicular use					X
May be viewed by any person	X	X	X		
May be viewed by LAF members under terms of authorities PSMA licence					X

11. The Street Works Register / Local Street Gazetteer clearly provides a single digital map based highway record upon upon which economical application of the

Deregulation Act provisions will depend.

12. All ought monitor the online availability of the Street Works Register / Local Street Gazetteer, its completeness showing paths, cycleways, etc., and not only roads, and that it is presented in its latest format, i.e., in conformance with DTF 8.1 software and DEC 3.7 input information, i.e., no longer showing roads and paths with same colour line, and no longer showing our unadopted roads as 'Other' or some other meaningless term.
13. Should it be found that authority has defaulted to use of Highway Dedication code 12 for our unadopted roads resulting in them being shown as not being highways strong complaint ought be raised, as advised by the Minister, the time-scale for addressing this having been determined by themselves reference Appendix item 2.
14. Should the authority not have made its Street Works Register / Local Street Gazetteer viewable online, the data may be viewed on the Elgin web-page at <http://www.elgin.org.uk/en/> clicking on Roadworks.org, then top left 'Map layers' and 'Operational info, scrolling down to 'NSG (Road Status)' which shows when map at large scale. However authorities could be expected to present this data themselves in a more user friendly format on a better base map.

Links

s.53 of 1991 New Roads and Street Works Act

<http://www.legislation.gov.uk/ukpga/1991/22/section/53>

s.4 of Street Works Regulations 2007

<http://www.legislation.gov.uk/uksi/2007/1951/regulation/4/made>

Chapter 3 of the 2012 DfT Code of Practice

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43578/street-works-code-of-practice.pdf

s.130 of 1980 Highway Act

<http://www.legislation.gov.uk/ukpga/1980/66/section/130>

Ramblers advice on use of s.130A with link to the Defra guidance

<http://www.ramblers.org.uk/advice/improve-the-path-network/how-to-get-an-obstruction-removed.aspx>

Matters for consideration

It is becoming apparent that there are a few issues regarding our unadopted roads deserving of consideration, e.g., are matters concerning our unrecorded unadopted roads a widespread issue or a local matter, where are the good examples that could be followed, what further guidance or protocol would be helpful, etc., with these summarised below :-

1) Ought a survey asking the below be undertaken :-

1. Does your authority make its Street Works Register / Local Street Gazetteer viewable?
2. Does it show 'Streets which are highways but for which they are not the street authority', use the equivalent term of 'Private streets carrying public rights' or a term considered would be better understood by public such as 'Highways not maintained at public expense' , or are they not shown ?

2) Should this identify a lack of progress with this aspect of our highway records, to consider the need for a 'Protocol' to address this, such as :

Local authorities to raise a protocol that provides for them to state why they consider a road to be a highway (this need not be a lengthy investigative type report but a simple statement), with option to seek confirmation from parish council or to be advised by parish council why it is not a highway, for the authority to consider the data and register as a highway not maintained at public expense or to state why they are satisfied that it is not a highway, with a statement of options open to anyone wishing to dispute the outcome.

This protocol to include provision for completion by a parish council, with option for parish council to seek confirmation from a parish meeting (or indeed to be requested by a parish meeting), and for the authority to consider the data and register as a highway not maintained at public expense or to state why they are satisfied that the representation is incorrect and that it is not a highway, with a statement of options open to anyone wishing to dispute the outcome.

This protocol to also include provision for completion by any other person, with the authority to seek confirmation from parish council or to be advised by parish council why it is not a highway, for the authority to consider the data and register as a highway not maintained at public expense or to state why they are satisfied that it is not a highway, with a statement of options open to anyone wishing to dispute the outcome.

The above is based upon procedures followed in 1950's when raising the Definitive Map, s.130(6) of 1980 Highway Act, and procedures followed determining planning applications, with it more likely that the legislation would function better if a properly worded protocol was filled in, providing a focused approach with better progress of this issue ?

Another protocol could then address the issue of whether or not the identified highway is in fact maintainable at public expense.

3) To review the Dunlop Decision.

4) To review the available legislation to tackle obstructions, see following pages.

Dealing with obstructions – Second Draft

(Compiled due to Natural England asking for this guidance to be provided to person who had enquired)



1. First check that local authority makes its Street Works Register readily viewable by the public, and that it shows both a) streets for which the local highway authority are the street authority, i.e., those authority accepts as being publicly maintainable, and b) streets, of which the local highway authority are aware, which are highways but for which they are not the street authority, i.e., streets for which the authority does not accept liability to maintain.
2. Check that the local authority has protocols in place for amending the Street Works Register, by way of a) the local authority asserting its authority and self registering any required amendments it becomes aware of, b) for acceptance and recording of information provided by parishes raised under approved procedures, e.g., based upon s.130(6) of 1980 Highway Act, and c) for determination of evidence provided by members of the public or anyone wishing to question above a) or b) determinations.
3. Should above not be the case follow Ministers advice and raise formal complaint under authorities complaints procedure.

When parishes support desire for obstruction to be cleared

4. In event that the way is not recorded consider seeking parish meeting confirmation that the way is considered to be a highway to strengthen the evidence.
5. Parish to raise representation in-conformance with s.130(6) of 1980 Highway Act placing a duty on authority to take proper proceedings accordingly, with suggested form for use on page 15 making this clear. (Note that s.130(7) says "Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.", i.e., Parliaments legislation gives priority to clearance of alleged obstruction over determining what public rights exist.)
6. Should representation be raised in-conformance with s.130(6) and authority does not take proper proceedings accordingly, depending up on the reason given either raise formal complaint, or ask MP to seek advice from the Minister as to how parish ought proceed.

When without parish support for obstruction to be cleared, and recognising that Magistrates Courts are unlikely to make an order before any serious dispute about whether the path in question is a highway to which this law applies is resolved, and it may be necessary to go to a

higher court, consider :

7. Raising a) a Street Works Register amendment application or b) a Definitive Map Modification Order Application.
8. Should determination of application be prolonged check that the authority has in-house procedures in place to consider appeals to bring determination of any application forward to an agreed date, and if not to raise formal complaint seeking this.
9. When Definitive Map Modification Order Application has been raised Schedule 7 of the Deregulation Act 2015 provides that application may be made to Magistrates Court for an order requiring the authority to take such steps as specified, but contrary to Natural England's Stepping Forward Report proposal 17 providing this if DMMOA has not been determined within a reasonable period of time, the Act limits this to after 12 months from date of the application, and perhaps Defra ought review this time restraint when the application has been raised to address this issue, in conformance with Natural England Stepping Forward Report para 5.51 due to below cost implications ?
10. To keep cost implications to the minimum raise simultaneous S.130A Notice of obstruction, in-conformance with Defra Guidance in "Removal of obstructions from highways: enforcement of local authorities duty to prevent obstructions on rights of way (Notes to accompany Statutory instrument 2004 No. 370)" and a Notice requiring the application to be determined within a reasonable period of time under 9 above, giving the Magistrates the option to enforce both, or one or the other.
11. Both these entail taking the issue to Magistrates Court, with costs involved, and if application is dismissed you may be liable to further costs, so it is recommended that you take legal advice. However it may also be considered reasonable that should it be shown that the authority has not complied with the legislation regarding the Street Works Register with no appropriate protocols in place, and that had this 1991 legislation been complied with that this issue may not have arisen, that the authority has both rejected an in-house appeal to determine application to register by an agreed date, and has rejected a request under s.130(6) to clear the obstruction prior to determination, that it is liable for the costs.

Note : It ought be recognised that this is limited to ways not mainly used by public with motorised vehicles, i.e., Restricted Byways, and it may be necessary to show that the authority could be expected to raise a DMMOA for Restricted Byway as and when it has the resources available, i.e., that it is within scope of the legislation. Should the way be for motorised vehicles, maybe unsurfaced and shown by OS as an ORPA, ask MP to raise a parliamentary question as to process to be followed, i.e., why has parliament not simply raised s.130(A) and Deregulation Act schedule 7 with same scope as s.130(6) to support that ?

Conclusion : NE Stepping Forward Report para 5.51 says "In implementing this proposal, Defra should keep in mind that court fees, which have recently been increased substantially, represent a significant constraint on the usefulness of such sanctions." and we seem to have miss-jointed legislation that does not enable communities to address all disputed highway issues, as defined in s.130(6), without waiting 12 months, in an affordable economical manner, with multiple representations to Magistrates Courts likely unaffordable, with no identified redress for issues such as highway verge encroachment, and these matters deserve attention.

HIGHWAYS ACT 1980, SECTION 130(6)
NOTICE REQUESTING A LOCAL HIGHWAY AUTHORITY TO SECURE THE REMOVAL
OF AN OBSTRUCTION

To [name and address of local highway authority].....
.....

We the council of a parish or community ofor, in the case
of a parish or community which does not have a separate parish or community council, the
.....parish meeting or a
.....community meeting, represent to yourselves being our
local highway authority— *(delete as appropriate)*

(a) that a highway as to which yourselves being the local highway authority have the duty
imposed by subsection (3) has been unlawfully stopped up or obstructed, or

(b) that an unlawful encroachment has taken place on a roadside waste comprised in a
highway for which you are the highway authority,

as detailed below or attached, with it being the duty of the local highway authority, unless
satisfied that the representations are incorrect, to take proper proceedings accordingly
with your able to do so in your own name, with any proceedings or steps taken by
yourselves in relation to this alleged right of way should not be treated as unauthorised by
reason only that the alleged right is found not to exist (reference subsection (7)).

Details
.....
.....

Kindly respond to this notice within one calendar month, to

.....
.....
.....

Signed

Parish or Community Council secretariat
or Chair of Parish Meeting
or Chair of Community meeting

Date

With unrecorded Roads, basic factual errors, and ways in current use not at risk of 2026 cut-off, research could be focused on unrecorded footpaths and bridleways that are at risk thus :-

11. To do this an online base map showing what is presently recorded could be expected to clearly show what is and is not recorded, with this being the 'Street Works Register', which DfT strongly recommend be published online, reference DfT 2012 Code of Practice. Note: Should this not be viewable online any request that it be published online should reference this using its name of 'Street Works Register'.
12. This could be expected to show all ways that are on the Definitive Map, the List of Streets (which may include footways not on DM), plus every street, of which the local highway authority is aware, which is a highway, but for which it is not the street authority, i.e., our unadopted 'white' roads.
13. Be aware that these roads (nor any that may have had motorised vehicular rights extinguished and now likely to be RB's) are not subject of 2026 cut-off, that some HA's may not yet have recorded these on the Street Works Register, and progress regarding this could be monitored, including identifying any problems, the Minister for DfT not being aware of any problems.
14. 2 & 3) above could be expected to fill many connectivity gaps in the highway records, and being roads are outside the scope of DMMOA's, with the process for recording roads that HA's are aware of being of significantly less cost than researching and processing DMMOA's, due to the Street Works Register not being raised to legally conclusive standards, so the raising of more costly to process DMMOA's ought be avoided.
15. Ordnance Survey has work in hand, see <https://www.ordnancesurvey.co.uk/business-and-government/products/os-mastermap-highways-network.html> to raise the OS MasterMap Highway Network, with this also expected to identify and include any otherwise unrecorded roads.
16. Another situation where costs could be avoided is for paths across village greens, commons with public access, open access land, where this is not necessary, with these greenspaces plotted on layer viewable at same time being beneficial, and also highlighting any connectivity gaps with them.
17. With that established research could then be focused on unrecorded footpaths and bridleways at risk of 2026 cut-off. This could be defined as those that have fallen out of use, with the evidence being pre 1949, they being subject of 2026 cut-off, but could also usefully include those presently in use for which the user evidence could be supported by pre 1949 evidence, in conformance with guidance published elsewhere. (Those in current use, not considered to be historic pre 1949 ways, would not be at risk of 2026 cut-off.)
18. The other ways subject of 2026 cut-off are ways presently under-recorded as footpath or bridleway, that are suspected as possibly having unrecorded higher rights that would be subject of 2026 cut-off, again to be researched in conformance with guidance published elsewhere. Should any of these also be shown by OS on

the OS MasterMap Highway Network with them being expected to be shown as roads these could be left as is for time being.

19. This research may identify mistake or lack of clarity in how a pre-1949 right of way is shown on the definitive map and statement, with basic factual corrections not subject of 2026 cut-off not. Should any of these be identified to monitor HA's progress in correcting these matters.

20. As work progresses, with roads recorded, etc., it could be predicted that any remaining gaps, anomalies, etc., along with recording identified unrecorded footpaths and bridleways in current use, would be addressed by HA's, some during the post 2026 period provided for this purpose, and others at a later date.

Conclusion

A clear distinction is required between a) completing and correcting highway records, and b) unrecorded footpaths and bridleways subject of 2026 cut-off.

As the viewing of our highways improves, with they all becoming viewable on same data base, whatever that may be called, connectivity gaps between roads and paths, obvious basic factual errors, whether unmaintained roads ought be maintainable, unrecorded roads, be they metalled with street lights, stoned lanes, or even green lanes, paths in current use not dependant upon pre 1949 documentary evidence, etc., become clear to see yet draw attention away from the 2026 issue of unrecorded footpaths and bridleways with registration dependant upon pre 1949 documentary evidence.

Guidance is readily available, with some further expected, regarding the 2026 issues, with the Deregulation Act addressing issues regarding the registration of public rights of way. But little guidance has been found addressing the issue of completing and correcting our highway records not subject of 2026, or even making it clear that some of our most beneficial ways, such as our greenlanes, due to being vehicular and not limited to footpath or bridleway rights, are not at risk of 2026 extinction, with pre 1949 evidence of being roads still applicable, though use may be at risk due it being assumed that being unrecorded rights had been extinguished. Likewise determining whether or not a road ought be maintainable could depend upon pre 1949 evidence with that evidence still applicable.

For many, checking that our highway records are complete and correct, conform with the situation on the ground as they see it, would be the obvious objective, yet many identified issues are not subject of 2026, and without any clear guidance and procedures to follow, leading to needless disputes.

Which highways are and are not at risk and who could best do what

Highway		HA's	Parishes	Volunteers
Unregistered roads mainly used by vehicles, which could often be those 'white road' cul-de-sacs linking public maintained roads with public paths.	Not subject of 2026	Register on SWR as a street they are aware of that is highway, for which they are not street authority. Note the definition of 'street' is wide, and not being Street Authority does not entail establishment of precise definition of street. (See note below)	Monitor and bring any unregistered to attention of HA's	
Roads mainly used by vehicles, regeistered on DM as footpath, bridleway, RB or Byway	Not subject of 2026	Dual register on SWR as a street they are aware of that is highway, for which they are not street authority. Note the definition of 'street' is wide, and not being SA does not entail establishment of precise definition of street.	Monitor and bring any unregistered to attention of HA'	
Unregistered public maintenance liability dependant upon pre 1949 evidence	Not subject of 2026		Raise evidence that ought be publicly maintainable, likely that is pre 1835, and could be expected to entail establishment of which definition of street applies..	
Unregistered roads mainly used as footpath or bridleway, whose rgistration of higher rights would be that it is a pre 1949 right of way	Not subject of 2026	Register on SWR as a street they are aware of that is highway, for which they are not street authority. Note the definition of 'street' is wide, and not being Street		Monitor, and undertake reseach to lodge DMMOA as RB for any remaining unregistered after 2026, due to misconception that right of use has

		Authority does not entail establishment of precise definition of street.		been extinguished which may lead to obstructions, etc.
Roads mainly used as footpaths or bridleway, registered on DM as footpath or bridleway	Higher rights subject of 2026			Undertake research and lodge DMMOA for RB
Unregistered footpaths and bridleways in regular use for 20 years or more	Not subject of 2026, unless evidence would be that it is a pre 1949 right of way		Bring to notice of HA, as with public right of use not having been brought into question is outside scope of DMMOA's ?	
Unregistered footpaths and bridleways that have fallen out of use, or at least not in regular use, whose registration would be that it is a pre 1949 right of way	Subject of 2026			Undertake research and lodge DMMOA for footpath of bridleway
Basic factual corrections and clarifications, for example the line on the map may never have matched the one on the ground or recorded on the written statement, etc.,	Not subject of 2026 (SWG proposal 29)		Bring to notice of HA's for correction.	

Notes :

1991 NRSWA s.48 1) In this Part a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare— (a) any highway, road, lane, footway, alley or passage, (b) any square or court, and (c) any land laid out as a way whether it is for the time being formed as a way or not.