

Management of Unsurfaced Roads



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1. INTRODUCTION

1.1. Background

1.1.1. It has long been recognised that in addition to enabling people to enjoy the countryside, the rights of way network provide sustainable options for commuting and access to local services. It also contributes to people being able to lead a healthy lifestyle as the physical and mental benefits of regular exercise and of visiting the countryside are well documented. Finally, the contribution that visits to the countryside make to the rural economy cannot be overlooked.

1.1.2. The purpose of this document is to consider the legislation and government guidance on the management, maintenance, and recreational use of unsurfaced highways.

The rights of way network is made up of footpaths, bridleways, restricted byways and byways open to all traffic. This policy will cover the following classifications of unsurfaced highways:

- Restricted byways - a highway over which the right of way is for pedestrians, horse riders and vehicles other than mechanically propelled vehicles (this includes a right of way for pedal cycles and horse drawn vehicles).
- A byway open to all traffic (BOAT) - a highway over which the public have a right of way for vehicular and all other kinds of traffic. BOAT's can also be used by the public for the purposes for which footpaths and bridleways are used. A BOAT must have more use by pedestrian or equestrian traffic than vehicles. If vehicular traffic is higher, it should not be classed a BOAT.
- Unsurfaced unclassified roads (UCR) recorded on the List of Streets.

1.1.3. The public rights of way team look after other forms of rights of way including public footpaths and bridleways and these are covered in the Staffordshire County Council Public Rights of Way Guide1.

1.2. The Need for a Policy

1.2.1. Although unsurfaced highways historically were used for transporting people and goods, it is widely accepted that they are now predominantly used for recreational purposes. They are also an important asset to the landscape, and often have a historic and wildlife interest.

1.2.2. Throughout the process of developing this policy we have been acutely aware of the need to consider the legal rights of passage for all types of use.

1.2.3. In Making the Best of Byways, DEFRA it states that 'in general, there is minimal direct conflict between byway user's'. This statement is, in the main, true in Staffordshire. However, conflict between users does on occasion arise. There is conflict not just between user groups but also adjacent

landowners, community groups and with the highway authority's statutory duties.

- 1.2.4. Conflict arises due to concerns over a number of reasons, notably privacy, safety, noise, condition and perhaps lack of clarity on the rights of the user or understanding of the other user's needs. It can be an emotive subject, and often gives rise to strong views from various interest groups.
- 1.2.5. DEFRA's Making the Best of Byways guidance recommends "that a clear policy is developed by Highway Authorities to manage byways and minimise conflict". This policy provides a framework for the authority to apply a robust and consistent approach in the management of its unsurfaced highways.

2. RECORDING OF PUBLIC RIGHTS OF WAY

2.1. Legal Requirement

- 2.1.1. The Definitive Map is the legal record of the extent of the public's rights of way in the County. The List of Streets, maintained by the Highway Authority, records only the Highway Authority's maintenance responsibility, and says nothing about the extent of the public rights that may exist over the route. A route can be recorded on both the List of Streets and the Definitive Map, and this is often inaccurately given the term 'dual status'. In fact, the relevance of inclusion in the List of Streets is simply that a way is highway maintainable at public expense (HMPE), it does not define its status.
- 2.1.2. The definitive map is a legal document and the inclusion of a right of way is conclusive evidence of the existence of that right of way, whatever its physical state may be. However, the reverse is not true. A way not shown on the Definitive Map can still be a right of way, although it would need to have come into existence before 1949 and its status would need to be proved. These routes are not publicly maintainable until such a time as they are recorded on the Definitive Map.
- 2.1.3. Staffordshire's Definitive Map and Statement of public rights of way includes footpaths, bridleways, byways open to all traffic (BOATs) and restricted byways. This information is available on the Council website, which includes depictions of the relevant streets in map form.
- 2.1.4. If any person has evidence to suggest that the Definitive Map is in error, they may submit an application under Section 53 of the Wildlife and Countryside Act, 1981, for the Map to be modified:

2.2. The Public Byway Network in Staffordshire

- 2.2.1. In Staffordshire there are 127 roads identified with the class of 'unsurfaced highway' in the Local Street Gazetteer (LSG) with a total length of 125km. Over one third of these routes are in Staffordshire Moorlands District.

District	Length of 'Unsurfaced highway' (km)	Percentage of network
Cannock Chase	4.3	3.4%
East Staffordshire	17.5	14.0%
Lichfield	8.4	6.7%
Newcastle-under-Lyme	11.6	9.3%
South Staffordshire	18.7	14.9%
Stafford	17.7	14.1%
Staffordshire Moorlands	46.9	37.5%
Grand Total	125.1	

2.2.2. Around 33% (25 miles or 41km) of the unsurfaced highway network in Staffordshire is recorded as a byway open to all traffic. This network is relatively fragmented in terms of cohesive vehicular links. Geological conditions vary considerably across the county,

District	Byways Open to All Traffic (BOAT)		
	No.	Length (km)	Percentage of network (%)
Cannock Chase	8	1.5	4
East Staffordshire	2	1.2	3
Lichfield	8	3.4	8
Newcastle-under-Lyme	14	9.8	24
South Staffordshire	13	3.8	20
Stafford	21	8.3	20
Staffordshire Moorlands	39	12.8	31
Tamworth	1	0.5	1
Grand Total	106	41.3	

3. NATIONAL LEGISLATION AND GUIDANCE

3.1. Legal Requirement and Guidance

- 3.1.1. As the Highway Authority, Staffordshire County Council (SCC) has a statutory duty to assert and protect the rights of the public to use the County's highways which includes the rights of way network. This is primarily achieved through exercising the Council's maintenance and enforcement powers and duties.
- 3.1.2. The Highways Act 1980 imposes a duty on the Council to maintain the highway to the standard necessary to accommodate the ordinary traffic that passes, or may reasonably be expected to pass, along the highway.
- 3.1.3. The National Parks & Countryside Act 1949 (NP&CA 1949) imposed a duty on the County Council to prepare Definitive Maps showing public rights of way. Section 53 Wildlife & Countryside Act 1981 (W&CA 1981) places a duty on the Council to keep the Definitive map under continuous review.
- 3.1.4. In 2005 the Department for Rural Affairs (DEFRA) issued the guidance "Making the Best of Byways: A Practical Guide for Local Authorities Managing and Maintaining Byways which carry Motor Vehicles", to provide direction the management of byways in England and Wales which carry motor vehicles.

4. INSPECTION

4.1. Unsurfaced Highway with no Propelled Vehicle Rights

- 4.1.1. The Inspection should be carried out in the context of what would be the likely 'ordinary traffic of the neighbourhood' which may include walkers and horse riders. The surface should be usable/accessible by users wearing appropriate footwear, and they should expect to encounter some obstacles and alterations/unevenness in the surface regularity.
- 4.1.2. When assessing a surface defect and whether it's to be recorded the inspector will consider the severity and if there is an easy alternative route for the 'ordinary traffic of the neighbourhood'.
- 4.1.3. Some examples of what could be classed as surface defects are listed below:
 - Significant trip hazards
 - Severely deteriorated surface
 - Severely deteriorated stile/gate
 - Severely deteriorated/damaged bridge

- Obstructions of a natural and unnatural occurrence (e.g., overgrown hedges/trees or concrete blocks/farm equipment) that block access/use of the lane
 - Significant standing water
- 4.1.4. The SCC Highway Safety Inspection Code of Practice should be followed when assessing defects such as –
- Ironwork
 - Signs
 - Dead/dying/diseased trees.
 - Overgrown trees/hedges. Whether they be in the lane or form part of the boundary
- 4.1.5. Unsurfaced highways will be a driven inspection if accessible but otherwise walked.
- 4.2. Byway Open to All Traffic (BOAT)**
- 4.2.1. The Inspection of BOATs should be carried out in the context of what would be the likely ordinary traffic that might be reasonably expected to use it. for the length or feature being inspected, which in the case of a BOAT may also include horses and vehicular traffic in addition to walkers.
- 4.2.2. If the surface of the BOAT is substantially metalled, the inspection should be carried out along that length or feature as per what that feature appears to serve as i.e., considering what would be the reasonable expectation of its use. If the route was handed over in 1929 as a metalled surface there is no obligation for the authority to maintain as such.
- 4.2.3. For other lengths or features the BOAT surface should be usable/accessible by users that are suitably equipped and competent. Users should be aware of the variable character of the route, and they should expect to encounter some obstacles and alterations/unevenness in the surface regularity.
- 4.2.4. When assessing a surface defect and whether it's to be recorded you should consider the severity and if there is an easy alternative route for the reasonably expected use.
- 4.2.5. Some examples of what could be classed as surface defects are listed below:
- Significant trip hazards
 - Significant rutting where horses, farmers and 4x4 vehicles will find it impossible to navigate
 - Severely deteriorated surface
 - Severely deteriorated/damaged bridge

- Obstructions of a natural and unnatural occurrence (e.g., overgrown hedges/trees or concrete blocks/farm equipment) that block access/use of the lane
 - Significant standing water
- 4.2.6. The Highway Safety Inspection Code of Practice should be followed when assessing defects such as –
- Signs
 - Dead/dying/diseased trees.
 - Overgrown trees/hedges. Whether they be in the lane or form part of the boundary
- 4.2.7. For all other non-surface defects, the relevant guidance in the Highway Safety Inspection code of Practice should provide guidance.
- 4.2.8. It is common for edges of the lane to form into a natural open drainage channel. These channels will not be recorded as a safety defect unless their presence reduces the available width of running surface below that required for an agricultural vehicle to use the lane.
- 4.2.9. Following inspection, the relevant officer may recommend that regular monitoring of the byway is carried out. It may also be possible for these inspections to be undertaken by volunteers, parish councils or user groups.

5. MANAGEMENT OPTIONS

5.1. Background

- 5.1.1. The management approach detailed in this policy is based on and guided by the recommendations contained in Making the Best of Byways and the SCC risk-based approach. There will, however, inevitably be a need for any recommendations to be set in the context of Staffordshire County Council's available resources.
- 5.1.2. There are a number of options available to the authority for the management of our unsurfaced highways are:

5.2. Voluntary Restraint

- 5.2.1. Voluntary restraint is a potential method for seeking to reduce impact on particular routes. The practice involves liaison with user groups to ensure that conditions stipulated within voluntary restraint agreements are respected.
- 5.2.2. In 'Making the Best of Byways' (2005) (section 3.1) it is stated that:
 "Discussions with authorities when drafting this guide indicate that voluntary restraint is widely seen as ineffective in managing mechanically propelled

vehicle use of byways". The document goes on to conclude that, "voluntary restraint can be a useful tool for management of byways where reductions in mechanically propelled vehicle traffic is desirable, but not where the prohibition of mechanically propelled vehicles is agreed to be necessary".

- 5.2.3. These agreements are not legally binding however their adoption may cause sensitive routes to be used in a way so as to minimise impact on the surface; for example, during periods of adverse weather, a voluntary one-way system may counteract damage caused by up-hill acceleration. Where a voluntary restraint agreement is reached but does not succeed in changing the use of the way, it may be necessary to introduce more robust management measures.
- 5.2.4. Voluntary Agreement can be a useful tool where a reduction in mechanically propelled vehicle traffic is desirable but not where it is agreed that prohibition of such use is needed.
- 5.2.5. The use of voluntary agreements on highways will be agreed on a case-by-case basis. SCC will monitor the effectiveness of each agreement each year and review the route's long-term management.
- 5.2.6. SCC will seek to provide on the website a list of all the Voluntary restraints and Traffic Regulation Orders that are current on unsurfaced roads.
- 5.2.7. SCC will support voluntary restraint wherever it considers this to be appropriate and workable temporary solution. This will usually be when maintenance has proven inadequate, or the route is not deemed to be sustainable.
- 5.2.8. Voluntary restraint will not over-ride or preclude any form of management the Council may wish to implement.

5.3. Signage

- 5.3.1. Section 27 of the Countryside Act 1968 requires highway authorities to place signs along a path 'as may in the opinion of the authority be required to assist persons unfamiliar with the locality' to follow the route. The authority will ensure clear signage is installed and legible on relevant routes. A highway authority need not erect a signpost if after consultation with the Parish Council it is considered to be unnecessary.
- 5.3.2. Ensure clear signage is installed and legible on relevant routes. Ensure signage is maintained to make the situation clear.

5.4. Physical Restraint

- 5.4.1. It may be necessary to instigate physical restraint on a byway to protect its condition, users or the local environment. This needs to be installed in conjunction with a traffic regulation order.
- 5.4.2. The nature of the physical restraint applied will often be informed by the nature of the order (e.g., seasonal, experimental, permanent etc.) and the

category of user restrained will be based on proven existence of a problem. The effectiveness and suitability of any restraint will also be monitored or reviewed at appropriate times. (e.g., In the spring following a winter/seasonal closure).

- 5.4.3. Physical restraint will also take account of any private rights of access along a byway.

5.5. Traffic Regulation orders

- 5.5.1. In some instances, it may be necessary to introduce a TRO. This may be to preserve the character of the route or to ensure that the route is not damaged when at its most vulnerable.

- 5.5.2. The Road Traffic Regulation Act 1984 empowers the Council to restrict, prohibit or regulate the use of roads open to the public, including rights of way. The Council has used these Traffic Regulation Order powers effectively to manage routes. These are legal orders that suspend the rights of all, or some users, either temporarily or permanently.

- 5.5.3. Traffic Regulation Orders will be considered when the following considerations apply:

- No other reasonable solution exists to resolve conflict between types of use.
- There is a clear danger to users.
- The safety of other users is compromised through continued use by vehicles.
- Any other relevant legal criterion is satisfied. There are three types:

Temporary TROs

- 5.5.4. These may be imposed for periods up to 18 months, with the possibility of further extensions of up to 18 months. Temporary TROs on unsurfaced highways are imposed usually when there is damage that can and will be repaired within the 18-month closure. The expectation of both the Authority and users of the route is that it will be repaired and re-opened to all users.

Experimental TROs

- 5.5.5. These are designed to test the likely efficacy of particular, targeted prohibitions: e.g. What might be the effect of prohibiting non-essential motors during the winter?

- 5.5.6. 'Making the Best of Byways' (2005) explains the use of experimental traffic regulation orders as follows: "Experimental traffic regulation orders are used in situations that call for monitoring and reviewing, such as monitoring byway condition to evaluate the cause of deterioration. These orders last no more than eighteen months before they are abandoned, amended or made permanent."

- 5.5.7. Will only be considered where there is a genuine need for monitoring and review of a situation to inform the management of a particular route. They remain a tool that the Authority could decide is appropriate for a given circumstance.

Permanent TROs

- 5.5.8. These can be total prohibitions, 24 hours a day, 365 days a year, on all non-essential vehicles. Equally, they may be targeted at particular users or may apply to all vehicles during certain months of the year or may specify the direction of travel for vehicles – i.e., make the route one-way only.
- 5.5.9. There are a number of symptoms that often simulate requests for a permanent TRO that can also be used as evidence of the imposition. These include:
- The avoidance of danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising.
 - The prevention of damage to the road or any structure or building on or near the road.
 - The facilitation of the passage of any kind of traffic (including pedestrians) on the road or any other road.
 - The prevention of the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property.
 - The preservation of the character of the road in the case where it is particularly suitable for use on horseback or on foot.
 - The preservation or improvement of the amenities of the area through which the road runs.
 - The conservation or enhancement of the natural beauty of an area. This includes conserving flora and fauna, and geological or physiographical features.
 - Motor vehicles are considered to be causing a public nuisance which may not have been envisaged when the route was created/dedicated.
- 5.5.10. If the proposed TRO is for a green lane that runs through protected countryside (e.g. national parks, AONBs, SSSIs, National Trails) an additional consideration applies:
- Affording better opportunities for the public to enjoy the amenities of the area, or recreation, or the study of nature in the area.
- 5.5.11. The County Council will not unreasonably impose a TRO. The County Council will consider every case on its merits.

Permissive Use

- 5.5.12. The County Council will support efficiently organised Motor Trial events where organisers can demonstrate that liaison with the Police, local communities, landowners and conservation bodies has been carried out, propelled vehicle rights are proven, and it complies with the law.
- 5.5.13. Each application will be judged on its merit with a risk assessment and a sensitivity assessment carried out which includes consideration of public nuisance implications.
- 5.5.14. Organisers must restore or meet the cost of any repairs to damage to the route or infrastructure caused by the event. The County Council reserves the right to repair any damage to a route which occurs as a consequence of the trial and recharge the organisers for the cost of these works.

Enforcement.

- 5.5.15. Enforcement operations with the Police Authority when appropriate.
- 5.5.16. All unsealed routes with public vehicular access are subject to the same laws as surfaced roads, so all vehicles must be road-legal, that is, taxed and insured, with MOT's if appropriate, and with visible and correctly sized number plates.
- 5.5.17. It is a criminal offence to drive or ride a motor-vehicle on any other land or public right of way (footpath, bridleway, restricted byway) without permission from the landowner. A landowner cannot grant right of usage if it could create public nuisance.

6. DECISION MAKING PROCESS FOR MANAGEMENT OPTIONS

6.1. Assessment of Sensitivity

- 6.1.1. The first factor to be considered when making decisions about management options for unsurfaced highways is the status of the route. Once the status of the route has been ascertained an assessment of the sensitivity of the route is undertaken. This will include an assessment of cross boundary arrangements if the route borders another authority or national park.
- 6.1.2. Where the status or public rights of a highway are unknown and the rights to propelled vehicles unproven, in the absence of any evidence that proves otherwise, they will be assumed to have no right of propelled vehicle passage and will be considered as historically a bridle road.
- 6.1.3. The selection of a particular management approach to deal with an identified issue needs to be based on sound evidence and evaluation. The evidence collected needs to relate to the options discussed in Section 7 and will provide a comprehensive portfolio of information about a particular route.

- 6.1.4. The collection of good quality and objective data underpins the Authority's decision-making process regarding the management of a particular route. By making such a process as clear as possible and involving users where restraint or regulation are proposed, it is believed that such measures will be more effective and receive greater support.

6.2. Evidence Collection

- 6.2.1. Factors that officers may consider are:

- Public safety.
- How the route fits into the wider public rights of way network.
- Whether private access is also being affected.
- The priority of the route.
- Whether it is part of a County Council or connects promoted route.
- The ecological sensitivity associated with the route.
- The heritage of the route and its surroundings.
- Conflict between recreational user groups.
- Concerns of local residents and landowners/managers.
- The durability of the route.
- The condition of the route.
- Does the route cross boundary into a neighbouring authority.
- The location of the route.
- a general description of its topography.
- any ecologically sensitive sites along, or close to it.
- any archaeological sites on the route or close to it.
- details of comments and complaints received.
- levels of use of the route by motor vehicles and other users.
- condition surveys of the route.
- an assessment of the risk of deterioration from the use of recreational motor vehicles.
- the importance of the route as part of the rights of way network; and
- the effect of current use on the special qualities of the National Park particularly the landscape and peace and tranquility.

7. VOLUNTEER ENGAGEMENT

7.1. Use of Volunteers

- 7.1.1. The use of volunteers has many benefits such as partnership working with user groups, social inclusion and health and well-being to the volunteers in what is a rural geographical area.
- 7.1.2. A key benefit is the minimising of maintenance costs, but there are others such as improving user group relationships. Where beneficial, the Council will work actively with key user groups on a volunteer programme in relation to byway management. The above approach is supported by the Department of Environment's Circular 2/1993 in paragraph 18, which states that "Authorities should also seek to use any assistance which may be available from landowners or voluntary groups, in carrying out their work".
- 7.1.3. Volunteers can be used in reinstatement work, and this approach could be developed further to establish a skilled volunteer base, particularly in relation to surface, drainage and vegetation clearance.
- 7.1.4. The Council has a duty to ensure the safety of its volunteer workforce. Generally speaking, volunteers are supervised unless a risk assessment deems otherwise. Volunteers will need to be insured so that they are covered in the event of an accident. A minimum public liability insurance cover of £5 million, proof of which shall be required.
- 7.1.5. Once insured, residents/landowners will not be liable whilst work is taking place, but SCC must agree to the work being undertaken then inspect and certify the work on completion, in order to avoid any future liabilities resting on residents/landowners. Works will generally be restricted to temporary filling of potholes, unblocking ditches and cutting back overgrowth because residents /landowners would rarely possess the machinery required to do more extensive work such as incorporate and compact material across the whole surface.

8. MAINTENANCE PRIORITISATION

8.1. Prioritising Maintenance

- 8.1.1. Should a complaint be received about the condition of the, SCC will inspect the surface and assess its safety and suitability for the public users. Should the assessment deem that work is required, then basic repairs will take place, for instance, basic regrading of the surface or filling of potholes.
- 8.1.2. Byway maintenance may involve major or minor works (e.g. surfacing, ditching, grading, signage, vegetation clearance etc.). Due to the varying local conditions on the byway network, maintenance works will be specified on a case-by-case basis. The level and type of public use over the byway in question will be taken into account when undertaking maintenance

improvements. Staffordshire County Council will prioritise maintenance to benefit non-motorised users.

- 8.1.3. Where practicable, thought should be given to routes where timely intervention will halt further deterioration, for example drainage repairs where water erosion has occurred as a result of blocked drains/ broken culverts for example.
- 8.1.4. Such repairs might also cater for the vagrancies of the opportunities for repair. At certain times of the year, it is not only difficult but impracticable to carry out any maintenance and repair.
- 8.1.5. Maintenance will be prioritised on routes that are in relatively good condition as prevention is better than cure. It is not uncommon for any public right of way, including byways to also be used as private access to residential properties. If this is the case, then these byways should be given prioritisation to ensure that the maintenance of the route is not severely disrupting access to their property.
- 8.1.6. When questioning the standard of maintenance, it will be a question of defining whether the repairs are fit for the ordinary traffic of the neighbourhood with diminishing resources, the Council has to prioritise its liabilities to ensure that resources are expended proportionately in relation to demand, and other issues regarded as a priority on the public rights of way network.
- 8.1.7. In contrast to other carriageways, BOATs are not generally maintained so as to promote ease of use by vehicles.

9. NOTES ON SUITABLE MATERIALS AND SPECIFICATION

9.1. Material Specification

- 9.1.1. SCC will only authorise a surface which is consistent with its duty under Section 130 of the Highways Act 1980: "it is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which it is highway authority".
- 9.1.2. In practice, this means that the Council will need to consider both the amenity value and the ease of use the public right of way. A hard-sealed surface such a tarmacadam is usually considered inappropriate in all circumstances, especially where there are public equestrian rights of way. Such sealed surfaces are also very costly to maintain once they begin to break up and may produce hazardous hard edges when deteriorating; this is another reason why sealed surfaced are to be avoided.
- 9.1.3. The best alternative would be a graded aggregate, suitably shaped to shed water, and compacted, because this is much more easily re-worked to

restore a suitable surface. Sometimes, all that is needed to restore an old potholed aggregate surface is a redistribution of the surface material.

- 9.1.4. Where the existing surface of the lane is un-metalled, there will be no requirement to effect repairs with a bound material.
- 9.1.5. The provision of a granular material to correct areas of washout, subsidence or potholes will be appropriate to match the existing surface.