

Suggested guidance to local highway authorities regarding the recording of minor highways on the Street Works Register

1.0 The Street Works Register (SWR)

- 1.1 The SWR is an electronic system intended to assist the coordination of highway authorities' own works and the street works of the statutory undertakings. The highway authorities upload data on their own works whilst the undertakers are required to give notice of proposed street works on all streets, including those that are not adopted, whether highways or not. Each local highway authority is responsible for the SWR for its area, again including all streets. This enables the various parties to check what others are proposing to do in each street, but the information is also open to public inspection.
- 1.2 Regulations made under the New Roads and Street Works Act 1991 require that the register must be maintained using a Geographic Information System (GIS) with a map base (1) and must be in compliance with BS7666. It must be such that the information in the register can be traced, which implies that it needs to show all streets as any street may be subject to a street works notice. In addition, the highway authority is required to provide data on all highways, whether adopted or not. It follows that the SWR needs to indicate all streets, whether highways or not, and where there are highways whether they are adopted.
- 1.3 The DfT code of practice (2) strongly recommends authorities to publish the information on a public website (see 3.6.1 of the code) but if this is not done then the public have the right to inspect the information on the GIS at the authority's premises. Thus members of the public have access to a highway authority map showing all highways, including those not adopted, plus streets that are not highways.
- 1.4 In practice, the street information in the SWR is automatically imported from the Local Street Gazetteer (LSG), which is the core database of streets maintained by highway authorities under strict standards laid down in BS7666. So the data that the public see in the SWR has been input by the authority to the LSG. From April 2016 the LSG will indicate a dedication code for each street which will show whether it is a highway or not, and this will supply the same information to the SWR.

2.0 Proposals of the Stakeholder Working Group (SWG)

- 2.1 The CROW Act 2000 proposes that pre-1949 footpaths and bridleways not recorded on the definitive map by 2026 should be extinguished, unless they are of a type specified in regulations as an exception.
- 2.2 There are a large number of pre-1949 surfaced footpaths in urban areas that have never been included on the definitive maps, presumably because it was thought obvious where they were. The CROW Act would require all these to be recorded as otherwise they would be extinguished. In addition, there is a possibility that unmade roads in the countryside that were excluded from the

definitive maps on the basis that they were vehicular roads, might prove to only have public path rights and also be extinguished, unless recorded on the definitive map.

2.3 To avoid a huge and unnecessary amount of red tape the SWG proposed (3):

Routes identified on the list of streets/local street gazetteer as publicly maintainable, or as private streets carrying public rights, should be exempted from the cut-off

2.4 The list of streets should correspond to the adopted streets in the LSG. As the SWR is a copy of the appropriate LSG data, the exemption effectively applies to all streets on the SWR that are identified as highways, whether adopted or not. The public need to access the SWR to be able to check that there are no omissions that might lead to routes being extinguished at the cut-off.

3.0 Unadopted highways

3.1 Streets that are not now recorded as adopted may nevertheless be highways. There are four main reasons for this:

- The street may actually be adopted but is not now recorded due to administrative error.
- The street may have once been adopted but been the subject of a court order allowing the cessation of maintenance but retaining highway status.
- The street may be a public highway required to be maintained by a private individual through tenure, enclosure or prescription.
- The street may have been dedicated as a vehicular highway after 1835 and never adopted.

3.2 An authority is required to record all unadopted highways of which it is aware. There obviously has to be evidence which shows on the balance of probability that highway rights exist, but there is no need for this to have been subject to any judicial or quasi-judicial process. If an authority becomes aware of evidence then it should immediately assess it and decide whether it supports the proposition that a highway exists. If so, the authority is aware of the highway and is obliged by the regulations to add it to the LSG and SWR without further ado.

3.3 It should be noted that the recording of a highway on the LSG or SWR is not conclusive evidence that rights exist, but represents the authority's assessment of the situation. It does not prejudice the rights of the land owner in the event that the rights do not exist, which is why there is no provision for the owner to make a formal objection. The position where an unadopted highway is recorded is exactly the same as with the recording of adopted highway on the list of streets – in neither case is this conclusive of highway rights nor subject to a right of objection.

- 3.4 In assessing the evidence, it would be perverse to require more cogent proof than already applies to adopted streets recorded on the SWR by virtue of being on the list of streets. In many cases, this is underpinned only by the street having historically been listed in the authority's own records. A similar approach should apply to unadopted streets. To give an example, a highway that has been the subject of a court order allowing the cessation of maintenance must previously have been recorded as an adopted highway. The evidence that it is now an unadopted highway is comparable with that for other highways that remain on the list of streets.
- 3.5 Depending on the rights believed to exist, a highway may also be eligible for recording on the definitive map. However, the whole basis of the SWG recommendation, and the emerging regulations based on it, is to cut red tape by not making definitive map orders where highways are already recorded. It is suggested that an order will only be appropriate in rare cases where the existence of any highway at all is disputed by the land owner.

4.0 Administrative errors in the authority records

- 4.1 Apart from boroughs and urban districts, there was no requirement for lists of streets before 1974. However, a variety of records of adopted highways were kept before that, some dating back to the nineteenth century highway boards. Many counties appear to have prepared records of their highways around 1930, following the transfer of responsibilities from rural districts. This probably arose from moves to make up previously unmade streets. This was at the expense of frontagers where the street was unadopted, and so it was important for authorities to have good adoption records, irrespective of any legal requirement. Modern records are normally derived from earlier records, but some drafting errors may have occurred, particularly in areas where local government changes led to transfer of roads between authorities.
- 4.2 When rural roads were improved with tarred surfaces, some authorities appear to have taken the line that public funds should not be used to improve roads leading to a single property that were thus quasi-drives, even though maintainable at public expense. The Government took the same line in allocating grants under the Agriculture (Improvement of Roads Act) 1955 – there is a reference to this in Hansard. The result was that many dead-end roads were tarred as far as the last property but one leaving a short section of unsurfaced road beyond. Over the years maintenance staff may have confused the end of the tarred road with the end of the adopted road. A significant number of such instances were identified in the “Lost Ways” pilot projects.
- 4.3 Where a comparison of current maintenance records with earlier records shows that a highway previously maintainable at public expense is now omitted and there is no record to show that it was stopped up, then it should be presumed that an error has occurred and that on the balance of probability an adopted highway still exists.

5.0 Roads subject to cessation of maintenance court orders

- 5.1 Where an adopted highway became through changing circumstances of little value to the public, it was open to the highway authority to apply to the courts for an order allowing the cessation of the requirement to maintain. Such roads remained as public highways, but maintainable by nobody.
- 5.2 Where records indicate that such an order was made, both the highway authority and the courts must have been convinced that a highway existed. In the absence of any subsequent stopping up order, on the balance of probability there will still be a public highway.

6.0 Roads maintainable by private individuals

- 6.1 In former time many roads were required to be maintained by private individuals – a few still remain. Highway authorities often kept records of these roads for two reasons: firstly, they had a default responsibility if the person responsible was unable to repair the road, for example due to bankruptcy, and secondly because in many instances a liability to repair a road gave an exemption from highway rates.
- 6.2 Where the highway authority has records of such roads, then there must be cogent evidence that a public highway exists.

7.0 Public paths ending on unadopted roads

- 7.1 In some cases an authority's records of public paths may indicate that the path apparently comes to a dead end on an unadopted road. This must raise the possibility that the road carries highway rights at least of the same type as those on the public path.
- 7.2 A comparison of the definitive map and written statement with the list of streets data often identifies small gaps where a public path stops short of the network of roads maintainable at public expense. Significant number of these were identified in the "Lost Ways" pilot projects. Typically, the paths terminated on lanes depicted on OS mapping as vehicular tracks, but not now recognised as maintainable highways.
- 7.3 The definitive map process started by path surveys at a parish level followed by special parish meetings to approve the draft of public paths believed to exist. It seems unlikely that the meetings would have approved paths to nowhere – the obvious implication is that the meetings believed that the lanes in question were public vehicular highways that were not required to be recorded on the map. The fact that the county as surveying authority took these proposals forward as they stood indicates that it too believed the lanes to be public highways. In other instances it appears that parish meetings claimed the lanes as public paths, but these were subsequently deleted by the county, because they were thought to be public roads.
- 7.4 Gaps of this sort clearly beg the question of whether routes have been lost from the list of streets in the period since 1950. Some may well result from the

confusion described in 4.2 between a tarred road and an adopted road where only part of a dead-end road was improved. Where it is found that there was an administrative error of this sort, then the authority should proceed as in 4.0 above.

- 7.5 Even where there are no records of gaps of this type being adopted highways, the definitive map process itself must represent a balance of probability that a highway of some description exists.

Notes

- (1) The New Roads and Street Works Act 1991 can be seen here:

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

The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 can be seen here:

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

- (2) The DfT Code of Practice can be seen here:

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

- (3) The final report of the Stakeholder Group can be seen here:

<http://publications.naturalengland.org.uk/publication/40012>

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