

# 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.**

Version 8, 1 June 2016

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, plus for various reasons data of some streets that are not highways, is then converted into the Local Street Gazetteer in national computer software format to raise the National Street Gazetteer, with this presently 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, all of 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.
7. Failure to raise and keep the Street Works Register complete and up to date is likely to result in omission of street from the Local Street Gazetteer or its conversion into street with no public access. 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.

8. 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.
9. 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 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 local authorities should only use the Local Street Gazetteer Highway 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 1<sup>st</sup> 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 has 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.
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 differences between the Street Works Register and the Local Street Gazetteer. With it being the Street Works Register that is referenced in 1991 New Roads and Street Works Act, the associated Regulations, and DfT Codes of Practice, and with it being the Street Works Register rather than the Local Street Gazetteer that is publicly viewable, it may well be the Street Works

Register that these Regulations make reference to when implementing proposal 25.

5. DfT have advised regarding guidance for the identification and registration of unadopted highways on the Street Works Register that DfT 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.
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. This falls outside of their remit and they only provide and create guidance for the Local Street Gazetteer. 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.

Feature	Definitive Map	List of Streets	Street Works Register	Local Street Gazetteer	National Street Gazetteer	OS Mastermap Highway Network
Paths	X	X	X	X	X	X
Plus roads maintained at public expense		X	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			X	X	X	X
Plus 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		X