

Overview, Scrutiny and Policy Development Report

Public Rights of Way



March 2015



1. Executive Summary

- 1.1 The Rights of Way Sub-group was established by the Environment Sub-committee in September 2014 with the aim of examining the current situation in relation to the recording of Public Rights of Ways (PRoW) on the Definitive Map and Statement in light of the cut off date contained in the Countryside and Rights of Way Act 2000 for all Public Rights of Way to be recorded on the Definitive Map and Statement otherwise they would be lost forever.
- 1.2 As part of the review, the Sub-group consulted with a range of local authority officers and partners and looked widely at examples of good practice in relation to the publicity of the network in the area. In addition an examination of the appropriate legislation in relation to Public Rights of Way was undertaken. The Sub-group also consulted with a number of representatives of user groups of the network.
- 1.3 During the course of the review it was noted that there is a statutory obligation on the Highway Authority to maintain an up-to-date record of the various footpaths, bridleways and byways in the area on a Definitive Map and Statement. There was also a requirement to ensure that PRoWs are maintained. It was estimated that there were approximately 130 miles of unrecorded rights of ways in North Tyneside which needed to be added to the Definitive Map and Statement. In addition any member of the public can request that a new route be added to the network and the Highway Authority was under a duty to process the application.
- 1.4 It was also apparent that there was a need to encourage more people to make use of the network and for landowners to ensure that they met their responsibilities to keep the network open and free from blockages.
- 1.5 The Sub-group identified 6 recommendations for Cabinet which are aimed at assisting the Authority to fulfil its statutory duties in relation to the Definitive Map and Statement and to establish the public rights of way network as a resource for residents and visitors to the area. A summary of the recommendations is attached as Appendix 1

2. Reason for the Study

- 2.1 The Definitive Map and Statement is the legal record of the position and status of Public Rights of Way. Currently there are four Definitive Maps which cover the Borough of North Tyneside and which are based on former local authority boundaries. The Countryside and Rights of Way Act 2000 introduced a cut off date of 1 January 2026 by which time all rights of way over footpaths and bridleways which existed prior to 1949 and were not recorded on the Definitive Map and Statement would be extinguished. Within the North Tyneside area there are approximately 130 miles of footpath and bridleways in existence which have not yet been recorded on the Definitive Map and Statement.

2.2 The Sub-committee wanted to examine the systems in place to ensure that all routes were recorded in advance of the 2026 cut off date. In addition the Sub-committee wanted to examine options for the maintenance of the rights of way network.

2.3 Members of the Environment Sub-committee felt that it was an important issue to address and made it a priority topic for its 2014/15 work programme.

3. Method and Remit

3.1 The Environment Sub-committee agreed that establishing a Sub-group would be the most appropriate means of undertaking this piece of work.

3.2 The following members of the Environment Sub-committee volunteered to serve on the group:

Councillor Brian Burdis (Chair)
Councillor Gary Bell
Councillor Linda Bell
Councillor David Ord

3.3 The Sub-group met on 3 occasions to complete its work.

3.4 At its first meeting the Sub-group agreed a scope for the study which identified the following objectives:

- To review the current situation in relation to the recording of Public Rights of Way on the Definitive Map and Statement and to assess the implications of the Countryside and Rights of Way Act 2000;
- To examine options for the maintenance and future maintenance of Public Rights of Way

3.5 In order to obtain the relevant evidence to complete the study, the group undertook desk based research and met with officers from Environment and Leisure, Law and Governance, and the Council's technical partner Capita.

3.6 In addition the Sub-group met with representatives of Bridleway and Riders Action Group, British Horse Society, Living Streets, The Ramblers Association and Sustrans.

4. Findings and Evidence

4.1 The Public Rights of Way (PRoW) network is an important part of everyday life. These paths give people access to schools, jobs, homes and local services. They also allow people to see the parts of North Tyneside and the surrounding area that can't be visited by roads. People use these paths every day to visit friends, to get to the shops and to enjoy the outdoors and the link they create

between North Tyneside's communities, its history and landscape make Public Rights of Way important recreational and transportational resources.

4.2 Public Rights of Way are also important as they offer users the choice between cars and public transport which causes pollution and healthier, more sustainable options such as walking and cycling.

4.3 Many people walk on a daily basis from walking to the shops and work or for recreation out in the countryside. According to the Ordnance Survey walking in the countryside has been voted as Britain's best loved pastime in a recent survey. There are many health benefits of walking. NHS Choices claims that walking on a regular basis has been shown to reduce the risk of chronic illnesses, such as heart disease, type 2 diabetes, asthma, stroke and some cancers.

4.4 Public Rights of Way

4.5 The Sub-group was advised that a Public Right of Way is a right possessed by the public to pass along linear routes at all times regardless of private or public land ownership. There are four types of way:

- Footpath – used for walking only;
- Bridleway – used for walking, riding or leading a horse. Cycling is permitted but cyclists must give way to walkers or riders;
- Byways open to all traffic (BOAT) – used for walking, riding or leading a horse, cycling and by all kind of wheeled vehicle;
- Restricted byways – used for walking, riding or leading a horse, cycling and non motorised wheeled vehicles.

4.6 Current position in North Tyneside

4.7 North Tyneside has an extensive network of footpaths and bridleways, some of which are hundreds of years old and are still used on a regular basis. In addition many new footpaths and cycle routes have been created, including those which made use of the former Waggonways. There are currently 68 miles of Public Rights of Way recorded on the various Definitive Maps and Statements in North Tyneside. The Highway Authority has also recognised another 130 miles of routes, most of which have been in existence for decades and which need to be added to the Definitive Maps and Statements. Many of the unrecorded routes are across fields and which the public have had access to without the need for force, permission or notice for over 20 years. In addition a number of the unrecorded routes were created by the Council including those created as part of the Waggonways programme in the early part of the century which converted the routes of the network of old industrial Waggonways into equestrian, walking and cycling routes.

4.8 Duty of the Highway Authority

4.9 North Tyneside Council, as the Highway Authority, has a statutory duty under the Highways Act 1980, as amended by the Countryside and Rights of Way Act 2000, to assert and protect the rights of the public to the use and enjoyment of any highway, including a duty to prevent, as far as possible, the stopping up or obstruction of all highways including Public Rights of Way. This duty extends to ensuring that landowners do not allow crops to make any right of way inconvenient to use and ensuring that paths over cultivated land are properly restored after they have been disturbed.

4.10 The Highway Authority is responsible for the following:

- Maintaining the surface of Public Rights of Way and controlling vegetation growing from the surface of paths;
- Authorising new gates or stiles;
- Maintaining bridges over natural water courses and farm ditches;
- Providing signposts where footpaths leave metalled roads;
- Providing way markers; and
- Securing the removal of path obstructions.

4.11 In addition to its statutory duties a Highway Authority also has a number of discretionary powers which allow it to create new paths by agreement with the landowner, make orders to create, divert and extinguish rights of way and improve rights of way by, for example, the provision of street lighting or seating.

4.12 List of Streets

4.13 Under the Highways Act 1980 the Council as Highway Authority is required to maintain an up to date list of streets/highways that are maintainable at public expense. Under the Highways Act a street can be defined as any highway. As well as maintaining a formal “list of streets” the Highway Authority is also responsible for maintaining those streets/highways. Rights of Way are public highways, although not all are maintainable at public expense. Those that are should be included on the list of streets even though they will also be shown on the Definitive Map and Statement.

4.14 Definitive Map and Statement

4.15 The Highway Authority is also required to keep the Definitive Map and Statement up to date. The concept of the Definitive Map and Statement was introduced under the Parks and Access to the Countryside Act 1949. The Definitive Map and accompanying Statement is the legal record of the position and status of Public Rights of Way in England and Wales. It provides details of the route of the right of way along with information about the width of the route or any furniture such as styles or gates. It also describes the type of route such as footpath, where pedestrians are allowed, or bridleway where horse riders, cyclists or walkers are allowed to travel.

- 4.16 There are four Definitive Maps and Statements which currently cover the North Tyneside area:
- Newcastle City
 - Northumberland
 - Tynemouth (Inner)
 - Tynemouth (Outer)
- 4.17 Each of the Definitive Maps is required to be kept under constant review. In the main changes to the Definitive Map and Statement come about as a result of public path creation orders, common law dedication, public path extinguishment orders and public path diversion orders.
- 4.18 Anyone may apply to the Authority for a Definitive Map Modification Order to add a new right of way to or delete an existing right of way from the Definitive Map and Statement. They may also apply to upgrade or downgrade a route which is currently shown on the Definitive Map and Statement. Applications must be supported by evidence, which may be documentary or evidence provided by users of the claimed right of way or a mixture of both. Such evidence may include Ordnance Survey maps, old maps and photographs, enclosure awards/tithe apportionments, extracts from parish records, statements/affidavits from users of the route etc. Once a correctly completed application has been received the Highway Authority has 12 months to decide whether or not to make an order. If the Authority does not meet this deadline the applicant may appeal to the Secretary of State against the Authority's failure to determine the application.
- 4.19 **Countryside and Rights of Way Act 2000**
- 4.20 The Countryside and Rights of Way Act 2000 created a formal cut off point when all footpaths and bridleways that were in existence prior to 1949 and are not recorded on the Definitive Map and Statement will be extinguished and have all public rights removed. (Section 53 applies). At the moment there are around 130 miles of footpath, bridleway and byway in North Tyneside which are not yet recorded on one or other of the Definitive Maps and Statements. This means that unless steps are taken to add the routes to one or other of the maps then the public's right to walk, cycle or ride horses on those routes will be taken away.
- 4.21 As previously mentioned the Highways Authority has a statutory duty to keep the Definitive Map and Statement or Statements up to date and under continuous review.
- 4.22 The Sub-group considered that having 4 separate Definitive Maps and Statements for an area as compact as North Tyneside was unhelpful for a number of reasons including the difficulty for members of the public and landowners to identify formal Rights of Way and the additional work involved in maintaining 4 separate Maps and Statements. The group also noted that the

same route could be labelled in different ways when it crossed from one Map to the next. It would therefore be helpful to all parties for the Maps and Statements to be combined into one single Map and Statement and at the same time updated to have a consistent naming and numbering system for Rights of Way in North Tyneside.

4.23 Having identified that there are many routes which are not formerly recorded on the Definitive Map and Statement and that the Highway Authority has a duty to keep the Definitive Map and Statement under constant review and up to date the Sub-group considers that a programme of work be developed to ensure that all the routes which existed prior to 1949 are added to the Definitive Map and Statement and that regular reports on the progress made against the programme be submitted to elected members. It was suggested that a sub group of elected members be set up monitor the recording of the Rights of Way on the Definitive Map and Statement and to engage with representative of users of the network and landowners.

1. Recommended that a Rights of Way Sub-group be set up to engage with residents and user groups and to monitor the recording of the Rights of Way on the Definitive Map and Statement.

4.24 **The Legal Process for Adding Routes to the Definitive Map and Statement**

4.25 There are a number of methods for dedicating and recording public paths. The most simple being Express Dedication at Common Law which could be used to add public paths and bridleways which existed on Council owned land to the Definitive Map and Statement. This would be a quick win as it would allow around 30 miles of existing ways to be added to the Definitive Map and Statement in a short period of time.

4.26 The process for adding the routes via this method is as follows:

- Identify possible paths for inclusion on the Definitive Map and Statement;
- Consult with the asset management section, other Council departments and adjoining landowners;
- Agree the status and future maintenance of the way and a timetable of agreement;
- Utilise Express Dedication at Common Law for each route;
- Make a formal dedication declaration and advertise on site;
- Gather evidence of public acceptance of the route; and
- Add the route/s to the Definitive Map and Statement using an Event Modification Order.

4.27 As Event Modification Orders simply record events that have already taken place, they do not have to be advertised, are not subject to objections and take effect as soon as they are made.

4.28 The process for formal dedication and recording of public paths on private land is as follows

- Identify paths and gather evidence
- Record public use of the route
- Liaise with landowner
- If agreement can be reached make formal dedication declaration
- Gather evidence of public acceptance of the route
- Add the route to the Definitive Map and Statement through an Event Modification Order

4.29 If agreement cannot be reached with the landowner the Highways Authority would have to make use of a formal path creation order which is a more complex and time consuming process.

2. Recommended that Cabinet be requested to arrange for the 4 Definitive Maps and Statements which cover North Tyneside to be reviewed, updated and combined into one North Tyneside Definitive Map and Statement within 18 months.

3. Recommended that Cabinet be requested to arrange for the inclusion of the existing unrecorded rights of way on Council owned land on to the Definitive Map and Statement within 24 months.

4. Recommended that Cabinet be requested to develop a timetable and work programme that will ensure that all existing unrecorded Rights of Way are added to the Definitive Map and Statement before the 31 December 2025.

4.30 Provision of Information for Landowners and Users

4.31 Many local authorities publish information on Public Rights of Ways in their area on their websites to facilitate easy access for members of the public and for landowners.

4.32 The Sub-group examined the Council's website to see how easy it was to obtain information on Public Rights of Way and to examine the Definitive Map and Statement. It proved very difficult to actually find any information relating to Public Rights of Way via a general search or via a scroll through the pages of the website.

4.33 The Sub-group then went on to examine a number of local authority websites to determine how easy it was for a resident or land owner to find out information about Public Rights of Way in the area and their individual responsibilities and rights:

- On the Durham County Council Website <http://www.durham.gov.uk/article/3318> it was possible to obtain access to an interactive copy of the Definitive Map which allows users to identify

individual routes in a particular area or to see an overview of the various routes across the County. In addition to the Definitive Map the site also provided links to information for users of the ways and information for developers and landowners on their responsibilities.

- The Northumberland County Council website <http://www.northumberland.gov.uk/default.aspx?page=719> again provides access to an interactive copy of the Definitive Map and Statement. There were also links to information for users of the various ways and a section to allow residents to report issues with the Ways in the area.
 - Leeds City Council also provides access to an interactive Definitive Map and Statement on their website, <https://cms.esriuk.com/leedscs/Sites/LCCPROW/> .
 - Plymouth City Council provides access to the definitive map and information for landowners, developers and users of the rights of way network - <http://www.plymouth.gov.uk/homepage/transportandroads/walkingandcycling/prow.htm>.
 - Herefordshire Council also provided comprehensive information on Public Rights of Way for residents and landowners and included reference to the responsibilities of the authority at <https://www.herefordshire.gov.uk/public-rights-of-way>.
- 4.34 The Ramblers Association has commented that “no convenient way exists currently for the general public to view the extent of NTC’s Rights of Way network as access is limited by its current format.” They go on to say “as Ramblers we would like to see the transfer of the Definitive Map to the NTC website so that it can be viewed by the general public” and this “should include a detailed Question and Answer type guide to the rights and responsibilities of the Highway Authority, users and landowners, on all aspects of Rights of Way use, management and upkeep”.
- 4.35 The Sub-group considered that it would be beneficial for the Definitive Map to be made available on the Council’s website along with information for walkers, riders, cyclists and landowners. It was noted that there was a refresh of the Council’s website currently taking place which was designed to provide more information to residents and allow them to do more things online. The provision of the Definitive Map and Statements along with supporting information would make it easier for residents to make use of the network of footpaths, bridleways and byways in North Tyneside for recreation and commuting. It would also make it easier for them to act as the eyes and ears of the Council and report damage or blockages to individual routes which could then be investigated and appropriate action taken at an early stage. The provision of the information on

the website would reduce the amount of officer time spent producing the Definitive Map and Statement at the Council's offices and dealing with queries.

- 4.36 The provision of this information on the Council's website was a common theme from the various interest groups who provided evidence to the Sub-group.

"Work towards a better mapping system of identification for the different rights of way before putting the Definitive Map online" - British Horse Society

"No convenient way exists currently for the general public to view the extent of NTC's rights of way network, as access is limited by its current format" – The Ramblers Association

"Rights of way need to be known about" – Living Streets

- 4.37 The Sub-group acknowledges that the publication of the Definitive Map and Statement on the Authority's website would put more information in the hands of the public and would be likely to lead to an increase in the number of claims for Public Rights of Way to be added to the Definitive Map and Statement. There could therefore be financial implications for the Authority in relation to the legal process of adding additional ways to the Definitive Map and also in additional future maintenance costs. It would also place an additional burden on the Highway Authority at the same time that it was attempting to clear the backlog of unrecorded routes on the Definitive Map and Statement.

5. Recommended that Cabinet be requested to ensure that, in line with best practice, the current and up to date Definitive Map and Statement is made available on the Authority's website along with information for walkers, horse riders, and cyclists, landowners and developers. The website should also include a facility for claiming new or modifying existing rights of way and for users to report issues on the rights of way network.

4.38 Maintenance of the network

- 4.39 The duty to maintain the network falls to both the Highway Authority and to landowners. The duties of the Highways Authority are set out in paragraph 4.09 above. Landowners have a duty to:

- Ensure that any Public Rights of Way are not obstructed;
- Cut back overhanging and encroaching vegetation that affects any Public Right of Way;
- Provide and maintain stiles and gates in a safe and convenient condition for public use;
- Ensure that paths across fields are kept free from crops;
- Ensure that Byways and country roads are not cultivated or disturbed

- Ensure that footpaths and bridleways across fields are reinstated and marked on the ground to the correct width after ploughing or other authorised works.
- 4.40 If a landowner does not maintain the vegetation adjacent to or on the actual right of way the Authority can by notice require him to do so and if he does not comply with the notice the Authority can carry out the works required and recover the expenses reasonably incurred in doing so from the person in default (Section 154 (1) of the Highways Act 1980). It was also noted that any person could go to the magistrates' court to obtain an order to require the Authority to deal with a damaged surface of an obstruction to any part of the network.
- 4.41 The Sub-group was advised by representatives of the British Horse Society and the Bridleway and Riders Action Group that a major hindrance to their members' use of the bridleways in the area was overhanging vegetation and hedges encroaching over the side of bridleways, especially those containing dog roses. People riding horses on bridleways needed height and width especially when bridleways are also used by cyclists and walkers. A further issue was the need to maintain sightlines, particularly at road junctions. Examples given included signage which obstructed vision, siting of dog waste bins and wheelie bins on or near bridleways and vehicles being parked at bridleway entrances. It was suggested that more concerted action needed to be taken with landowners to remind them of their responsibilities.
- 4.42 The Sub-group was advised that following a series of route inspections it had become apparent that utility companies had over a number of years accessed the network without giving the proper notice and obtaining the appropriate permissions. This unauthorised access had resulted in extensive damage being done to the network and had left many ways impassable due to heavy vehicles being driven over and along footpaths and bridleways or by the ways being damaged through being dug up to install pipes and cables.
- 4.43 It was explained that where a company wished to carry out works on or adjacent to a Public Right of Way they needed to obtain appropriate permissions such as a temporary legal diversion order and to make good any damage caused. The Sub-group was advised that a charge had recently been introduced for companies who wished to access the Public Rights of Way network to carry out works either on the network or at adjacent properties. This charge covered the cost of administering the scheme, including the legal notices which needed to be published. In addition the network had to be restored to its original state or even improved.
- 4.44 The five Tyne and Wear authorities (Gateshead, Newcastle, North Tyneside, Northumberland South Tyneside and Sunderland) have jointly published guidance for developers in relation to applications which may impact on the rights of way network. This guidance was produced to advise developers, designers and their agents that they needed to give appropriate consideration

to Public Rights of Way at an early stage in the process and avoid problems at a later date.

- 4.45 The Sub-group noted that there were well established guidelines in relation to planning applications which were likely to have an impact on the rights of way network. It was considered important that developers and householders were aware of the need to protect the network whilst works were ongoing. It was suggested that there was a need to ensure that all relevant sections of the council were involved in agreeing conditions and legal agreements to protect and enhance the network as a result of development. Reference had also been made from network users for steps to be taken to ensure that where routes had had to be closed as a result of development they were closed for as little time as possible. It had been suggested that due to the wording of the conditions some of the network could be closed or diverted for a number of years. It was suggested that a more robust approach be adopted to minimise the disruption to the network's users.
- 4.46 Reference had been made to the type of signage used on the network and it was suggested that in order to facilitate the use of the rights of way network for travel to work or places of education as well as for recreation the signage provided should be appropriate and informative. For example, signage should provide an indication of where the route actually goes to and from and how far in each direction so that people can make an informed choice to use the routes such as the Waggonways to get to transport hubs such as Metro Stations and bus stops. Appropriate and helpful signage can assist in creating links between the various ways and the various communities of the Borough and between the transport hubs in the area.
- 4.47 Having identified the variety of uses the network is put to and the knock on effects of decisions taken in the various departments of the Authority it was suggested that it would be helpful for a more corporate approach to the rights of way network to be taken. This would include as a minimum, representatives of planning, highways, tourism and public health.

6 Recommended that Cabinet be requested to ensure that a corporate approach (including Planning, Highways, Tourism and Public Health) to the maintenance, preservation and promotion of the Public Rights of Way is adopted.

4 Background Information

The Parks and Access to the Countryside Act 1949
The Countryside Act 1968
The Highways Act 1980
The Wildlife and Countryside Act 1981
The Countryside and Rights of Way Act 2000
Newcastle City Definitive Map and Statement
Northumberland Definitive Map and Statement
Tynemouth (Inner) Definitive Map and Statement
Tynemouth (Outer) Definitive Map and Statement

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Mrs Sue McIntosh - Bridleway Action Group (BRAG)
Mrs Kathleen Atkinson - British Horse Society (BHS)
Dr Steve Germain - The Ramblers Association
Alan Mitcham – The Ramblers Association
Graeme Clark – Public Rights of Way, Definitive Map and Cycle Network Officer (Capita)
Andrew Flynn – Integrated Transport Manager
Paul Fleming – Traffic Safety and Networks Business Manager (Capita)
Sarah Heslop – Manager Commercial Team
Dave Parkin – Democratic Services Officer

Summary of Recommendations

- 1. Recommended** that a Rights of Way Sub-group be set up to engage with residents and user groups and to monitor the recording of the Rights of Way on the Definitive Map and Statement.
- 2. Recommended** that Cabinet be requested to arrange for the 4 Definitive Maps and Statements which cover North Tyneside to be reviewed, updated and combined into one North Tyneside Definitive Map and Statement within 18 months.
- 3. Recommended** that Cabinet be requested to arrange for the inclusion of the existing unrecorded rights of way on Council owned land on to the Definitive Map and Statement within 24 months
- 4. Recommended** that Cabinet be requested to develop a timetable and work programme that will ensure that all existing unrecorded Rights of Way are added to the Definitive Map and Statement before the 31 December 2025
- 5. Recommended** that Cabinet be requested to ensure that, in line with best practice, the current and up to date Definitive Map and Statement is made available on the Authority's website along with information for walkers, horse riders, and cyclists, landowners and developers. The website should also include a facility for claiming new or modifying existing rights of way and for users to report issues on the rights of way network.
- 6. Recommended** that Cabinet be requested to ensure that a corporate approach (including Planning, Highways, Tourism and Public Health) to the maintenance, preservation and promotion of the Public Rights of Way is adopted.