

Minor Roads – restricted access for motor vehicles

03 December 2008

To save the casual reader from an excess frowning of the brow I offer a brief précis of what follows. Many of the roads that we may have lawfully used as motorists a few years ago, including some with a tarmac surface, are now closed to motor vehicles. Unfortunately, a process that Parliament said would introduce certainty into which roads motorists can use has not exactly gone to plan. **Be warned, to read further could bring on a headache, so, cut to the chase and skip to the last paragraph now.**

Outside the weird and whacky world of public rights of way few will have heard of the Natural England and Rural Communities Act of 2006 (NERC). It was one of those Acts of Parliament that contained the space to fit in little bits of legislation that were not convenient to have as stand-alone legislation. Part 6 of the Act dealt with a creature called a RUPP (Road Used as a Public Path). This RUPP was born in the National Parks and Access to the Countryside Act 1949. The 1949 Act attempted to record the rights of access the public traditionally had to the countryside on minor highways, such as footpaths (for walkers), bridleways (for horse riders) and those little used carriageways that would be ideal for walkers and horse riders. The latter class of highway was to be called the RUPP. The documents created for this recording of public rights of way were to be called (and still are called) the Definitive Map and the Definitive Statement (DM&S).

Over the years these documents have caused a lot of bother, largely because the vast majority of highway authorities didn't do the job properly back in the 1950s, with many routes not being recorded or being recorded at a status lower than might have been appropriate. There was also the small issue of the term 'definitive', as neither the map or the statement were 'definitive' but they are conclusive, thereby allowing higher rights to be recorded as evidence comes to light.

At the time of the 1949 Act the bicycle was a vehicle (Local Government Act 1888 s.85(1)) and could not lawfully use a bridleway until the Countryside Act of 1968 gave such a dispensation. The 1968 Act also placed a duty on all highway authorities to reclassify every RUPP to either a footpath, bridleway or Byway Open to All Traffic, depending on the evidence available. Clearly, most of those RUPPs were roads, but unless historic documents could be found to demonstrate that they were carriageways, these old roads became bridleways. After some thirty years of the Definitive Map and Statement there were still a significant number of people trying to have old roads properly recorded in the DM&S and some highway authorities had a twenty year backlog of such claims. Despite the phenomenal tardiness on the part of some highway authorities to carry out this Statutory Duty, Parliament stepped in with a quick fix.

Despite starting out with a reasonable proposal for new legislation to relieve the burden on highway authorities (albeit a self-imposed burden brought on by failure to comply with earlier statute), the Bill was hijacked by the anti-motoring

Minor Roads – restricted access for motor vehicles

03 December 2008

lobby and we have ended up with section 67 (1) NERC that extinguished, at a stroke, all public rights to drive a mechanically propelled vehicle *on all roads*. Subsequent sub-sections then went on to set out provisions that saved motoring rights under certain circumstances.

It was NERC that finally killed the RUPP. Well, it was actually the Countryside & Rights of Way Act 2000 that signed the death warrant by making all RUPPs into Restricted Byways (that are not open to motorists), with NERC carrying out the sentence by extinguishing all rights for the motorist that might have survived over those RBs and hundreds of miles of other roads.

The problem we have, as recreational motorists is this: How do we know which of those minor roads are now legally closed to us. The exemptions to s.67(1) of NERC are so woolly as to be all but useless. For example – motoring rights remain where a route is recorded on the List of Streets [LoS] (Highways Act 1980 s.36(6)). Now, despite it being a statutory requirement for all highway authorities to have an LoS there is no prescribed form of ‘list’, so many highway authorities have a scruffy map with coloured lines on it, whilst others have a list that is unintelligible to all except the guys who have been working in the highways section for the last hundred years. Further, routes get ‘tipexed’ (as the saying goes) from the map/list. If that wasn’t confusing enough, the List of Streets is not a record of status, but a record of maintainable highways and that could be a footpath, or flight of steps, or a back ally.

For any reader who has got this far – well done.

To summarise: In 1949 Parliament legislated to protect the recreational interests of walkers and horse riders; the job wasn’t done properly and many roads were not properly recorded. In 1968 and 1981 Parliament passed further legislation that resulted in fewer roads for the motorists. In 2000 and 2006 further legislation reduced the number of roads available to the motorist to the point that there are roads in the Hampshire countryside which have had the right to drive a motor vehicle on them removed, but for which it might be difficult to say that any of the ‘saving’ sub-sections apply. With the motorist in retreat the anti-motor lobby are now starting to attack the unclassified roads, with some highway authorities eagerly responding to that lobby.

To demonstrate the absurdity I offer two images. One shows a road that is open to the motorist and one that is (probably) closed. Yes, the grassy route *definitely* has motoring rights – the tarmac one is closed to motors (unless you can prove otherwise).

Minor Roads – restricted access for motor vehicles
03 December 2008



Dave Tilbury
30 November 2008