

Wildlife and Countryside Link's response to DEFRA's consultation
"Use of mechanically propelled vehicles on rights of way"
March 19th 2004

Wildlife and Countryside Link brings together 33 voluntary organisations concerned with conservation and protection of wildlife and the countryside. Our members recognise that recreational off-road vehicle activity has an effect on biodiversity, the tranquillity of the countryside and other users' experience of the countryside. We welcome the opportunity to comment upon the present Government consultation. We agree with the Government that it is time to take a fresh look at the issue, and offer the following views on the specific proposals in the consultation document.

Proposal 1:

We agree with Proposal 1, which recognises that legal use in sensitive areas and illegal or antisocial use of mechanically propelled vehicles is an increasing problem. This has been borne out in independent surveys¹ and from evidence within member organisations².

For Proposal 1 to be effective there must be proper funding and resourcing for the appropriate mechanisms and enforcement action to be put in place. Those mechanisms could include special police units to tackle "hotspot" activity, as with the Killingbeck police force example within the consultation document and "zero tolerance" policies within sensitive areas, as trialled in the Brecon Beacons and Northumberland National Parks. The strategy should encourage the greater use of police powers, but should also recognise that physical barriers can achieve round the clock enforcement cost-effectively. As physical barriers may impact upon access for lawful users, we suggest that DEFRA undertakes some work into which techniques are the most effective in eliminating illegal use.

Off road vehicles reduce the opportunities for understanding the special qualities, including tranquillity, both within National Parks, where it is of great importance, and in Areas of Outstanding Natural Beauty. It is essential to recognise the importance of the tranquillity of the wider countryside and the role of green spaces close to settlements which provide vital opportunities for people to gain respite from sources of noise. In light of this, action is required throughout the countryside, otherwise the activity may be displaced from one area to another.

Where footpaths and bridleways are subject to illegal vehicular use, we would welcome clarification within the strategy that it is open for a highways authority to use a TRO to prevent that use.

Proposal 2:

We note that together with Proposal 1, the revision of *Making the Best of Byways* will guide the relevant agencies' management of existing and lawful use of rights of way. Link intends to provide DEFRA with more detailed views on *Making the Best of Byways* after members have had an opportunity to gather further evidence on this subject. We agree in principle that it is in urgent need of review, and should be more robust given that the use and impact of off-roading, or "green laning" is on the increase. The argument that byways should be maintained to withstand the increasing use of mechanically propelled vehicles appears to be self-defeating to both sides, as this would generally require a tarmac surface which detracts from the character of these ways and the enjoyment for the off-road driver derived from the challenge of driving on muddy or rutted surfaces.

Where there are problems, the emphasis within *Making the Best of Byways* is one of voluntary restraint, yet there has been mixed success where this approach has been trialled. Link believes that trials of voluntary restraint codes should be reviewed every few months, and replaced by TROs where voluntary restraint has been unsuccessful.

¹ Countryside Council for Wales, *Unauthorised off-road motorcycling in Wales* (2004)

² A Ramblers' Association survey of National Trail officers found 33% of those responding had a significant problem with off-road activity on National Trails.

The current guidance encourages TROs only as a last resort, rather than as a tool of primary use where there is obvious potential for off road vehicle damage to protected sites or where damage to the surface of the route is imminent, or public safety is at stake. In sensitive areas (including Sites of Special Scientific Interest, Special Protection Areas and Special Areas of Conservation) however, concern arises from the harmful effect of opening up access to vehicles through byway claims. This is especially true of those claims for routes of a significant width (e.g. 60 feet). New procedures need to be introduced to ensure highway authorities comply with their legal duties to protect designated wildlife sites under international (Birds and Habitats Directives, Habitats Regulations) and national (s28g etc of the Wildlife and Countryside Act 1981) legislation.

Current procedures for identifying vehicular rights over sensitive sites bypass the relevant conservation bodies. Clear procedures need to be put in place to ensure formal advice on the implications of a claim on wildlife is sought at its outset so that appropriate action can be identified and taken in a timely manner. As part of this, we would welcome clarification of whether “pre-emptive” TROs can be used to avoid damage to designated sites where there are strong habitat and/or species conservation grounds to do so. We suggest that linkages need to be made between the claim and TRO procedures, so both claims and the appropriateness of TROs are considered and, if necessary, heard simultaneously

Proposals 3, 4, and 5:

Link strongly supports the introduction of legislation to control recreational motorised vehicular activity and we would like to see the new legislation introduced as soon as possible.

We support the principle of Proposal 4 whereby it will no longer be possible to establish the existence of a byway open to all traffic by reference to historic use by, or evidence relating to use by non-mechanically propelled vehicles.

However Link does not believe the introduction of a one year cut-off date, by which unrecorded rights of way for vehicles shall be recorded as restricted byways, is necessary. Local authorities will inevitably be inundated with poorly researched claims for byways before the deadline. Although local authorities can refuse to make an order to register a byway if the evidence is poor, there is a right for the applicant to appeal to the Secretary of State for Environment, Food and Rural Affairs, and there will be an inevitable increase in appeal casework at DEFRA.

In our view DEFRA should be consistent and if the evidential base relies solely on usage by non-mechanically propelled vehicles then the principle in Proposal 4 should be applied as and when the legislation is introduced.

Proposals 6 and 7:

We welcome the recognition of retention of private rights and easements in Proposal 6 although it is unclear what process an owner/occupier will have to go through in order to establish those rights, or how owner/occupiers will be made aware of the need to do so.

We do not see an overriding reason for bringing forward the date in respect of claims for byways which may have been expressly dedicated for vehicles (Proposal 7), as we feel these are likely to be few and far between.

This statement is supported by the following organisations:

Herpetological Conservation Trust

CPRE

Council for National Parks

National Trust

RSPB

Ramblers' Association

Woodland Trust