

**BUCKINGHAMSHIRE COUNTY
COUNCIL**

**POLICY FOR THE CLASSIFICATION
AND MANAGEMENT OF
UNCLASSIFIED UNMETALLED
COUNTY ROADS**



SEPTEMBER 1999

INTRODUCTION

- 1 The County Council's Unclassified County Road Register (UCRR) was compiled under the provisions of the Local Government Act 1929 (LGA29).
- 2 The LGA29 defined 'County Roads' as every road for which the County Council became the highway authority. Section 30 LGA29 made the County Council the highway authority for all highways in rural districts. Section 134 LGA29 defined 'road' as a highway repairable by the inhabitants at large. 'Unclassified' means a road not classified by the Ministry of Transport under the Ministry of Transport Act 1919.
- 3 The UCRR comprises schedules, which were compiled from 1930 onwards of the roads giving numbers, name or description and measurements in yards and miles of metalled lengths and of greenway or unmetalled lengths.
- 4 There was no requirement under the LGA29 to compile maps of the routes. However, the County Council has a series of maps entitled "County Roads" showing the position of these routes. The maps are dated from 1942 to 1965 and appear to have been working maps that were amended as required. They do not appear to be "Handover" or "Take Over" maps dating from the time of transfer of responsibility of roads from the Rural Districts to the County Council following the LGA29.

THE DEFINITIVE MAP AND STATEMENT

- 5 The National Parks and Access to the Countryside Act 1949 (the 1949 Act) required every County Council to carry out a survey of all lands in their area over which a right of way was alleged to exist and to prepare and publish Definitive Maps and Statements. Definitive Maps were to show footpaths and bridleways that appeared to the County Council to be appropriate or wherever in their opinion such a right of way subsisted or was reasonably alleged to subsist. The maps were also to show any way which in the opinion of the surveying authority was or was reasonably alleged to be a Road Used as a Public Path (RUPP).
- 6 The definition of RUPP was a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used (section 27 (6)).
- 7 By virtue of section 32 (4)(b) of the 1949 Act designation of a way as a RUPP meant that the map was conclusive evidence only that the public had a right of way on foot and on horseback or leading a horse. It was "without prejudice to any question whether the public had at that date (the relevant date) any right of way other than the right aforesaid." This

meant that if vehicular rights could be shown to exist over a way designated as a RUPP the public were entitled to use vehicles on it.

- 8 In some counties the Unclassified County Roads (UCRs) were recorded on the Definitive Maps as RUPPs. In Buckinghamshire only a very few of the UCRs were recorded as RUPPs, many being recorded according to their usage as either bridleways or footpaths. It appears from the County Council's records that the UCRs were considered as public roads that did not fall into one of the categories of rights of way to be shown on the Definitive Map. In many instances footpaths and bridleways terminate on UCRs, which is indicative that at the time of the preparation of the Definitive Map they were considered to be roads.
- 9 Where UCRs are also shown on the Definitive Map as bridleways or footpaths this does not preclude the existence of higher rights. However, the UCRR, unlike the Definitive Map, is not conclusive as to the status of the routes it contains. Confusion therefore, arises over routes shown on the Definitive Map in any category of right of way which are also included in the UCRR as unclassified unmetalled roads. The status of those routes included in the UCRR but not shown on the Definitive Map is equally problematic. The recording of all these routes does not permit their vehicular status to be clearly defined.
- 10 This lack of clarity has always been recognised by the County Council as a problem. In January 1954 the Clerk of the County Council wrote that,

“With regard to the general question of green lanes etc. this is somewhat complicated. Some greenways are in fact county roads transferred from district councils in 1930 and others are Awarded as public carriageways. This is a matter which may have to be carefully gone into in due course, but I do suggest that it should be deferred until the time comes for the first review under section 33 of the Act, as the amount of additional work involved is likely to be considerable.”
- 11 The Countryside Act 1968 (CA68) contained an attempt to resolve the confusion caused by the definition of RUPP by making special provision for RUPPs to be reclassified at a special review, either as footpaths, bridleways or byways open to all traffic (BOATs). The process of reclassifying RUPPs was by no means complete nationally, nor in Buckinghamshire, by the time that the Wildlife and Countryside Act 1981 (WCA81) was passed. Accordingly section 54 of the WCA81 provided for all remaining RUPPs to be reclassified, following investigation, as byways, bridleways or footpaths solely on the legal status of the way concerned.

THE CURRENT SITUATION

- 12 The term “County Road” no longer has any significance as it was abolished by the Local Government Act 1972. However, the routes are included in the County Council’s List of Streets as publicly maintainable. The List of Streets has been drawn up under the Highways Act 1980 (HA 80) Section 36 (6). In Section 329 (1) HA 80 a street is defined as “any highway and any road, lane, footpath, square, court, alley or passage whether a thoroughfare or not and includes any part of a street.”
- 13 One hundred and thirty five routes, formerly defined as UCRs, were included in the UCRR as unclassified unmetalled county roads. Following local government reorganisation eleven of the routes are now in Milton Keynes Council’s area and are no longer under the County Council’s jurisdiction.
- 14 As stated above some of the UCRs are also shown on the Definitive Map and Statement as public rights of way. A number of them are included as public footpaths and bridleways; seven of them are recorded as Roads Used as Public Paths and three of them as Byways Open To All Traffic.
- 15 Where UCRs were recorded on the Definitive Map as RUPPs the reclassification procedures are to be applied. However, the WCA81 provisions relating to the reclassification of RUPPs cannot be applied either to the UCRs that are not recorded as RUPPs; or to those that are recorded as footpaths, bridleways, or BOATs; or to those not recorded on the Definitive Map.
- 16 Part III of the WCA81 places the County Council as the surveying authority under a duty to keep the Definitive Map and Statement under continuous review. Section 53 (3) sets out the events which give rise to the modification of the map and statement. Section 53 (3)(c) deals with evidence as follows:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: –

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”
- 17 Therefore, there is a duty on the surveying authority to modify the map and statement if evidence is discovered that the authority considers, in conjunction with all the other relevant evidence available, shows that this is necessary.
- 18 The WCA81 also makes provision for applications to the authority for an order to be made to modify the map and statement in consequence of the occurrence of one or more events falling within section 53 (3).
- 19 In August 1998 the Department of the Environment, Transport and the Regions (DETR) advised that “in relation to an application under the WCA81 to add a route to a definitive map of rights of way, the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.” The advice continues that it would “be possible for a way described as a UCR on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way, provided that route fulfils the criteria set out in Part III of the WCA81.” The DETR concludes that any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case by case basis.
- 20 The County Council considers that the same criteria apply when considering evidence relating to ways when no application has been received.

PUBLIC RIGHTS OF WAY MILESTONES STATEMENT – JANUARY 1999

- 21 The County Council produced its first Milestones Statement in February 1995. This document detailed the work that would be required locally to meet the Countryside Commission’s objectives of Recreation 2000 (that all rights of way in the country be legally defined, properly maintained and well publicised by the end of the century) and set out an action plan which would achieve this. In January 1999 Supplement No. 3 was produced detailing the progress that had been made in reaching the targets. In this the problem associated with the UCRs is outlined. It provides that these will not be addressed apart from where necessary on the basis of individual merits, in accordance with current advice from the DETR. In practice, with present staff levels, the logistics of investigating each of 124 routes at the rate of 1 or 2 per year cannot be contemplated.

The County Council recognises that *prima facie* vehicular rights may exist over its UCRs. However, investigation may reveal that there are no actual public vehicular rights. The County Council is presently in no position to investigate all its UCRs on a case by case basis.

MANAGEMENT

- 22 The DETR 'Making the Best of Byways: a Practical Guide on Managing the Use of Vehicles on Public Rights of Way' was published in July 1997. This was prepared to provide advice on the effective management of shared use of unsealed ways in the countryside which carry public vehicular rights. These unsealed ways include RUPPs, BOATS and UCRs. In the Guide the word 'byway' is used to cover all three types of ways.
- 23 Key issues identified in the Guide include conflicts between users largely focused on the alleged impact of some users on amenity and the physical deterioration of byways as a result of use and of the weather and growth of vegetation.
- 24 Section 41 HA80 imposes a duty on the highway authority to maintain highways maintainable at public expense (on the List of Streets) to the standard necessary to accommodate the ordinary traffic which passes, or may reasonably be expected to pass, along the highway. Therefore, the possibility of additional maintenance due to usage by vehicles in poor weather has to be considered.
- 25 The DETR guidance is useful and we will, as far as possible, follow its advice on management and maintenance techniques.

The County Council will carry out practical management techniques as required under the legislation in line with published practices, where this is considered necessary for the safe passage of the public.

- 26 Legal and administrative management measures are also available to deal with management problems such as conflict between users and environmental problems such as surface degradation, habitat loss and disturbance and these will be used where appropriate.
- 27 These management measures include the use of voluntary restraint agreements, Traffic Regulation Orders (TROs), and Stopping Up Orders through the Magistrates Court.

Voluntary Restraint Agreements, Codes of Conduct and User Groups

- 28 Voluntary restraint agreements have no legal status but they can be effective. DOE Circular 2/93 paragraph 13 recommends that authorities should look to solve conflicts over the type of use on some public rights of way where possible by management measures based on co-operation and agreement. By definition such agreements are dependent upon support from users and Circular 2/93 paragraph 13 recognises that user groups will often agree to measures involving voluntary restraint, which they themselves will help monitor.
- 29 Voluntary restraint agreements linked to a programme of maintenance work may be used to restrict access during, for example, particularly wet weather conditions.

Traffic Regulation Orders

- 30 TROs may be made under Section 1 of the Road Traffic Regulation Act 1984 and can be used to prohibit, restrict, or regulate traffic. Government advice on the use of TROs is given in DOE Circular 2/93 paragraph 13. The Secretaries of State commend the use of such orders to prevent inappropriate use and to protect the countryside where this is necessary and other management measures have failed or are considered inadequate.

Temporary, Emergency and Experimental TROs

- 31 The above measures are also available, but are intended to be temporary for the purposes of dealing with severe problems or particular management issues.

Stopping Up Orders

- 32 Stopping Up Orders through the Magistrates' Courts may be made under section 116 of the Highways act 1980. This enables a highway authority to apply to a Magistrates' Court for an order to stop up or divert a highway of any description, other than a trunk or special road. It is possible to apply for an order to extinguish all rights over a route, or to do so subject to the reservation of part of the stopped up highway as a footpath or bridleway. This would extinguish all vehicular rights, including those of carriage drivers.
- 33 The highway authority making such an application must provide evidence that the highway is "unnecessary". Even though a highway is

not currently used it may still be deemed necessary and it would be difficult to demonstrate, in the absence of an obvious and convenient alternative, that a highway that was used should be regarded as unnecessary.

- 34 The advice in the DOE Circular 2/93 paragraph 35 is “Whilst it is recognised that there may be circumstances where it is appropriate to use the Magistrates’ Court procedure.....the Secretaries of State consider that authorities should make use of the other powers available unless there are good reasons for not doing so”.

In the event of problems occurring with vehicular usage the County Council will:-

- a) seek practical measures to alleviate the problem**
- b) if necessary, seek voluntary restraint agreements**
- c) if a and b above fail, or are considered inappropriate, consider the necessity for a Traffic Regulation Order**

The County Council will only seek a Stopping Up Order in appropriate circumstances as a last resort where all other measures have failed.

SUMMARY OF KEY POINTS

- ◆ The Unclassified County Road Register (UCRR) is not conclusive as to the status of the routes it contains.
- ◆ The UCRR includes ways that are also included on the Definitive Map. The Definitive Map does not preclude the existence of higher rights.
- ◆ UCRs are included in the County Council’s List of Streets as publicly maintainable.
- ◆ Some UCRs are supported by documentary evidence, some are not.
- ◆ The inclusion of a highway on the list of publicly maintained highways may provide evidence of vehicular rights. This must be considered with all other evidence to determine the nature and extent of those rights.
- ◆ UCRs will only be investigated on the basis of individual merit when it is considered necessary.
- ◆ Practical management techniques will be carried out as required.
- ◆ Traffic Regulation Orders and Stopping Up Orders will only be sought where practical measures to alleviate problems and voluntary restraint agreements have failed.