Yorkshire Dales Green Lanes Alliance (NER0002)

To the clerk to the select committee on the NERC Act

Dear Sir or Madam

As chairman of the Yorkshire Dales Green Lanes Alliance, I am submitting the following comments on the rights of way aspects of the NERC Act (part six). Information about our organisation may be found on our website, ydgla.co.uk.

A. General comments on questions 6 and 11 in the call for evidence paper.

Qu 6. The arrangements and provisions of the act, insofar as they cover rights of way, have, in one very important respect, been effective. With the few exceptions provided for in the act, the hitherto unstoppable expansion of the network of unsealed tracks legally open to recreational motor vehicles has been halted. This is a major achievement, vitiated only by an omission that needs to be made good. See the comment immediately below, on qu 11.

Qu 11. In section 67 (2) (b) NERC deliberately excepted the extensive, 3,000 mile network of unsealed tracks that are entered on local authorities’ ‘List of Streets’, and which are often termed ‘unsealed, unclassified county roads’ (UUCRs) or ‘green lanes’. The Act needs amending, so as to remove motor-vehicular rights from unsealed unclassified county roads on the List of Streets that are not part of what DEFRA calls ‘the ordinary road network.’ This would save about two thirds of the 3,000 miles of green lanes’ from the damage and nuisance inflicted by recreational motors. This could be achieved via an amendment which re-classifies UUCRs that are not part of the ordinary road network, as Restricted Byways. (See expanded comments below on para 117 of DEFRA’s document)

B. Comments on DEFRA’s post-legislative scrutiny document

Our comments follow the DEFRA document’s paragraph numbers.

17. The purpose of Natural England, as set out in this paragraph, is ‘to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.’ Our view is that non-essential, recreational motors (chiefly 4x4s and motorbikes) severely damage those ancient, unsealed lanes along which the law still allows them to travel. Their activities are unsustainable. Many routes are already beyond repair and have lost their historic character. Natural England, therefore, in furthering its declared aims, could be more energetic in advising local and national park authorities to impose the restrictions – traffic regulation orders – that are legally available to them. Natural England should also help authorities to frame their traffic regulation orders in ways that can withstand the legal challenges that vehicle users commonly present. A complete overhaul of the various Government documents that offer advice on green lane management to local and national park authorities is required. The present range of guidance documents is often obsolete and incomplete. The Motor Vehicle Stakeholder Working Group, presently convened under the chairmanship of Natural
England, should be encouraged to produce a draft of a consolidated, up-to-date guidance document on green lane management.

117. DEFRA gives no evidence in this paragraph to support its contention that ‘the majority of stakeholders and the public broadly support the measures in the Act’. We think that the contention is mistaken. Up-to-date surveys of public opinion on the matter are overdue, but in 2004 a survey by ICM found that 87% of the public wanted rights of way to be free from recreational vehicles. (8% didn’t. 5% didn’t know.) We doubt if these figures would be different today.

DEFRA assert in para 117 that the Act ‘has been successful in achieving its primary aims’. This is true only if we set aside the 3000 miles of unsealed, unclassified roads that the Act itself sets aside, leaving their rights of way status unclear, and thereby tacitly leaving them open to recreational motors. This, we believe, is contrary to what Parliament intended in the CROW Act, which set severe limits on the addition of new Byways Open To All Traffic (BOATs) to the Definitive Map. At present, and if the law is not amended, it is entirely possible that about two thirds of the 3000 miles of UUCRs will indeed eventually have to be added to the Definitive Map as BOATS. This cannot be right. The exception of UUCRs from the NERC Act, was intended to protect from having its vehicular rights removed, those UUCRs that are part of the ordinary road network, used regularly by the public as it goes about its business. But it is entirely feasible to distinguish between the ordinary road network, and routes that are unsealed ‘green lanes’. Here is how:

(a) The distinction between sealed and unsealed ways. The Road Traffic Regulation Act (1984) defines an unsealed way as one whose ‘surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material.’ (s22BB (1)(b)(ii).) In particular cases this definition may be open to divergent interpretations. Furthermore, the definition comes in the section of the Act relating to national parks. None the less, the definition is there in law. It could easily be extended to apply to ways beyond national parks. Most importantly, it provides the basis for the development of a vital distinction between green lanes (UUCRs) and ‘the ordinary roads network’.

(b) ‘The ordinary roads network.’ This phrase comes from DEFRA’s guidelines on the operation of NERC (para 27. The quotation marks are DEFRA’s.) The quotation marks that DEFRA set around it perhaps indicate that they don’t quite know what they mean by it. However, it is plain that the paragraph in which it appears, and the subsequent paragraph, are attempting to make a distinction between, on one hand, those roads upon which the use of motors is both essential, uncontentious, and taken-for-granted, and, on the other, those unsealed ways we know as green lanes.

Building on these two definitions, UUCRs that fall into category (a) should be re-classified, by an amendment to NERC, as Restricted Byways. This would give about two thousand miles of ancient green lanes the protection they need.

We have a final point, relating to the use by National Park Authorities of the powers, conferred by NERC, to impose traffic regulation orders. The Yorkshire Dales, and the Peak District national park authorities have used these powers, and have learned the hard way,
after successful challenges to their orders in the High Court by vehicle user groups, how to frame litigation-proof TROs. Other authorities are reluctant to exercise their TRO-making powers, lest they incur substantial costs following legal challenges in the High Court. Natural England should be more supportive of national park authorities that are trying, in accordance with national park statutory purposes, to protect their green lanes. Guidance, drawing on the experience of authorities that have successfully imposed TROs, should be supplied by Natural England. The Motor Vehicle Stakeholder Forum could be useful here in drafting such advice – which could also, with little change, be made available to local authorities that are devising green lane management plans.

Yours sincerely

Michael Bartholomew (Chairman, Yorkshire Dales Green Lanes Alliance)

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