Dear Sir/ Madam

Select Committee on the Natural Environment and Rural Communities Act 2006  Call for Evidence

I refer to the Select Committee on the Natural Environment and Rural Communities Act 2006 call for evidence, dead line 4pm Monday 11 September 2017. This reply is made by the Public Rights of Way and Access Service, Kent County Council.

In respect of the changing context since the introduction of the Act in 2006 and specifically question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

Sections 66 – 72 of the Act dealt with the extinguishment of unrecorded motor vehicle rights where not shown in a definitive map and statement or where shown as a footpath, bridleway or restricted byway.

A number of exceptions were set out including where a route was shown in a list required to be kept under section 36(6) of the Highways Act 1980 section 36(6) known as the List of Streets. This is a record of maintainable highways, not of highway rights. The additional scrutiny this record has been subject to as a result has exposed its limitations and the absence of a standard means of establishing, maintaining and amending it.

The provisions were narrow in their reach and unlikely to find universal approval with motor vehicle organisations or organisations dedicated to the protection of unsealed minor highways, in that:

- the provisions extinguished only unrecorded historic rights (subject to exceptions)
- the use of existing unsealed highways with motor vehicles was not addressed. It could be argued that this was the reason that the legislative change had been considered necessary.

Parliamentarians were lobbied at the consultation stages of the Deregulation Act 2015 on the subject of motor vehicle use of unsealed highways almost certainly as a consequence of failure to consider such use at the time of the Natural Environment and Rural Communities Act 2006.

The law of unintended consequences may apply. Anecdotally at least the extinguishment of un-recorded rights and the reclassification of Roads Used as Public Paths to Restricted Byway status (Countryside and Rights of Way Act 2000 section 47 – in force as from 2 May 2006) concentrated the recreational motor vehicle use of unsealed routes on a considerably shorter network. Even if the number of recreational motor vehicle users has not increased, what use there is, is now limited to a shorter network.
The outcome is greater use of the remaining unsealed motor vehicle network and inevitably greater levels of wear and tear as a result. While we believe that a blanket approach to the management of unsealed motor vehicle network is not appropriate and that existing powers and duties in respect maintenance and regulation provide a sufficient range of management options these must be properly resourced.

While not a National Park Authority we would also point out that the extension of powers to make Traffic Regulation Orders under section 72 of the Act it failed to extend the powers in section 92 of the Road Traffic Regulation Act 1984 section 92 and as a result limited the ability of National Parks Authorities to effectively enforce Traffic Regulation Orders should they be made.

Yours faithfully

Graham Rusling
Public Rights of Way and Access Service Manager

11 September 2017