

## **Discovering Lost Ways Report – March 2008**

### **Annex 1**

#### **Historical background to the Discovering Lost Ways Project**

England has a unique heritage of ancient ways and the National Parks and Access to the Countryside Act, 1949 required creation of definitive maps of public rights of way in order to record and protect them. These were based on the knowledge of relevant local authorities about the paths in their area - but instead of it being purely a legal exercise to record existing rights, it took on a political flavour. This, coupled with insufficient resources being made available for the task in certain areas, resulted in many routes being wrongly recorded or not recorded at all, so that the network was left seriously fragmented and often dangerous.

An attempt was made in the Countryside Act 1968 to improve the process for reviewing the definitive maps but again poor resourcing and the impact of local government reorganisation in 1974 led to a virtual breakdown of the system. This led to subsequent legislation, the Wildlife and Countryside Act 1981, which provided for continuous review by Highway Authorities of these maps to make them up to date and complete. But by then the backlog of claims for modification to the maps had reached such a level that it was unlikely to be resolved in the foreseeable future. The 1981 Act also opened the way to the claiming of additional public rights of way by third parties such as local inhabitants or volunteers representing user groups, based on either historic evidence or evidence of at least 20 years' modern use of a particular way.

The procedures for, and the increasing adversarial approach to, determining such claims has resulted in situations where it can be many years before a historic right is recorded on the definitive map.

In 1998 the Countryside Commission published *Rights of Way in the 21<sup>st</sup> Century* which stated

“The legacy of past neglect and piecemeal legislation is a management framework which is expensive and time consuming . . . . and which is perceived to generate conflict and uncertainty. . . . The condition of the network is likely to deteriorate again in the future unless a viable long term management system is now put in place. One of the obstacles to a viable overall system is the legal record, which is still far from up to date and on which progress is generally slow. . . .”

The Countryside Commission, therefore, recommended that Government should:

- ask it to advise on the scale and cost of researching and recording currently unrecorded public rights of way, and
- state its intention to enable the eventual closure of the definitive maps to further historically-based claims.

The Government picked up on this latter recommendation during the passage of the CROW Bill and enacted a 2026 cut-off after which any unrecorded historic rights of way would be extinguished.

Government hoped that introduction of the 2026 cut-off would act as a trigger to resolve all residual uncertainty about the existence of historic rights of way and encourage work to be done more quickly. The 2026 deadline was chosen so that there would be enough time to research forgotten rights and a commitment was given in the Rural White Paper to support the necessary research activity.

To promote this outcome, it:

- asked the Countryside Agency (the Commission's successor) to develop a programme to support capture of historic rights before the 2026 cut-off; and
- undertook to fund volunteer-based research and claiming activity at an average rate of £2m per year during this period.

To help scope this work, the Agency let a major exploratory contract, in 2001, to a consortium of experts led by the University of Gloucestershire. Their findings revealed the likely number of routes at risk from the cut-off date and the true extent of the inefficiencies in recording historic rights that had led to the backlogs within highway authorities, some of whom projected that up to 200 years would be required to process to completion all of the claims of historic rights of way that might be expected to result from existing methods of researching and claiming lost ways.

It seemed clear from these findings that the Government's plan simply to fund volunteer activity could not realise its objective of ensuring the completion of as much of the historic record of rights of way as was reasonably possible to achieve prior to the 2026 cut-off. The Agency concluded that a professional and systematised approach was required and an Archive Research Unit was established through a private sector contractor.

Having obtained approval from Defra and following competitive tendering, the Countryside Agency awarded a long-term £6 million service agreement contract to Mouchel Parkman to provide an Archive Research Unit (ARU) service. The function of the service was to systematically research relevant historic records, sifting information and producing dossiers of evidence where sound claims could be identified.

The first year of the service was to implement and pilot the service working at The National Archive and Cheshire & Wiltshire County Record

Offices. This was the first time a 'source-led' approach had been tried on this scale and the volume of information gathered far exceeded expectations and capacity to process. An integrated project team was established with Mouchel Parkman and Countryside Agency to review the ARU service. Key findings were the need for:

- greater involvement of local authorities and other stakeholders
- bringing in other external data
- development of research standards to enable the consistent interpretation of historic records.

Following on from the review of the lead phase activity the ARU contract was renegotiated (completed August 2006) and a revised method implemented, initially through a test for a part of Cheshire. The test identified further improvements and resulted refinements to the research standards and development of detailed descriptions for outputs.

The Natural Environment and Rural Communities Act 2006, as well as legislating for the formation of Natural England, included provisions to curtail the future scope for establishing and recording public rights of way for mechanically propelled vehicles where these are based on either evidence of historic use, or dedication of use, by vehicles that were not mechanically propelled. These provisions further addressed some of the concerns that had led to the introduction of the cut-off date.

By the time Natural England was vested the DLW project was at the point of being rolled out to the remaining first wave counties and further work undertaken to transform the research outputs into routes on the ground.

As with several other activities transferring from its founding bodies Natural England called for a fundamental review of DLW in February 2007. The aim of the review was:

- to review and evaluate the existing DLW delivery mechanisms

- to define Natural England's role in this work through analysis of evidence and through stakeholder engagement
- to define the optimal and most cost effective approach to enable delivery of identified public benefits.