

EXTRACT – STEPPING FORWARD – STAKEHOLDER WORKING GROUP REPORT

Natural England Commissioned Report NECR035 (2010)

THE LIST OF STREETS AND LOCAL STREET GAZETTEER

6.12 The definitive map and statement is an official record of the public's legal rights. The impetus for establishing it was concern about the rate at which public rights of way were being lost, and the need to ensure their legal protection. There is no equivalent record of rights of way for motor vehicles (carriageways). Instead, local authorities must keep a list of streetsⁱ and a local street gazetteerⁱⁱ, and must also upload information to the national street gazetteerⁱⁱⁱ. Both the list of streets and local street gazetteer are open to public inspection; access to the national street gazetteer is limited. None of these records is definitive as to the legal status of a public right of way, and entries do not normally expressly distinguish between carriageways and other types of route. The list of streets is the oldest of these and came about as a result of the mid-nineteenth century drive to pave and install sewers to urban streets. The local and national street gazetteers are much more recent and were instigated to help utility companies identify whom to contact when carrying out works. There are more rigorous standards governing the creation and maintenance of these two records.

6.13 Conventional wisdom holds that each of these records fulfils different requirements and that they can, theoretically at least, co-exist quite happily. There is nothing to preclude overlap. For example the legal status of an alleyway can be recorded as a public footpath on the definitive map and statement, with details of who is responsible for maintaining it entered into the local street gazetteer. In practice there is a lack of consistency over which routes are included in the different records. The separation between the definitive map and statement and list of streets/local street gazetteer is often compounded by their being the responsibility of different local authority departments.

6.14 A common assumption is that there is no need to record a public right of way on the definitive map and statement if it is shown on the list of streets/local street gazetteer. In reality, this approach fails to offer due protection to these public routes. As things stand, it means that they would be 'unrecorded' as rights of way at the cut-off, and any that could be shown to have existed in 1949 would be extinguished. This is particularly true for pedestrian routes in an urban context, which are often of great antiquity but without any clear documentary evidence as to their status. Yet such routes are typically well used and an integral part of the local streets network. Hence an

obvious exemption from the effect of the cut-off is public highways identified within the list of streets/local street gazetteer. This would encompass both routes that are publicly maintainable and private streets carrying public rights.

6.15 It is assumed that by doing this the so-called 'other routes with public access' (ORPAs) shown on modern Ordnance Survey maps would effectively be protected, since this information is derived from the list of streets.

EXTRACT FROM THE PROPOSALS

DEALING WITH INCOMPLETE RECORDS

Proposal 25: Routes identified on the list of streets/local street gazetteer as publicly maintainable, or as private streets carrying public rights, should be exempted from the cut-off.

6.16 The lists of streets/ local street gazetteer are not always fully correct, complete and up to date. So the protective effect of such an exemption would be partial rather than comprehensive. Where all or part of a route is no longer maintainable by the highway authority, it may have been removed from the list of streets without any corresponding move to record the status of the route on the definitive map and statement.

6.17 Another cause for concern is the difficulty of locating records where there have been boundary changes following local government reorganisation. In this situation the list of streets for some areas may be incomplete or missing altogether, so these records cannot be relied upon to provide the necessary breadth of exemption. The stakeholder review panel we have recommended (proposal 19) will need to receive evidence about the extent of such gaps, and advise on whether further types of exemption are required to protect routes that are in regular public use.

6.18 Granting exemptions of this type would not create any new public rights where they do not already exist along routes shown on the records in question. It would merely protect against the loss of any public rights that do exist at the cut-off, so long as they are shown on the relevant record. This distinction would help to allay any concerns as to whether particular routes might have been wrongly added to such a document as public highways.

6.19 Case studies from pioneering authorities demonstrate how a common sense approach can be taken to addressing the recording of routes that are in public use in a predominantly urban context. 'Omnibus orders' or the 'York procedure' generally result in a single modification order recording without objection a significant number of paths in a given area. The Group recognises the value of such initiatives and would like to see them applied more widely where the circumstances allow.

ⁱ Highway authorities have a duty, under section 36 of the Highways Act 1980, to keep a list of streets, being the highways that they maintain at public expense – so military roads, for example, would not be included.

ⁱⁱ Part III of the New Roads and Street Works Act 1991 includes a provision for highway authorities to maintain a street works register. Among other things, the register includes a local street gazetteer to help utility companies identify who to inform when carrying out works. Each street within the register is allocated a unique reference number. The definition of "street" is a very broad one (section 48), and the register includes both highways maintained at public expense and also streets

ⁱⁱⁱ The national street gazetteer is a national database system hosted by IDEA, a subsidiary of the Local Government Association. Highway authorities are required to upload prescribed information regularly to a password-protected website that provides a means by which utility companies can interrogate all the information in one place using automated routines.