Written Evidence Submitted

by

Catherine Law & Bevis Hughes

Mill Cottage, Lydford, Devon, EX20 4AJ

to The Joint Committee appointed to discuss the July 2013 Draft Deregulation Bill

specifically regarding Land Use and Public Rights of Way

Saturday 14th September, 2013

Our Experience/ Submission of Evidence:

We are users and supporters of the Public Rights of Way (PRoW) network and are particularly interested in the sections within the Draft Deregulation Bill related to this.

We have a PRoW at our family home where we live with 3 small children. We have had personal experience of being on the receiving end of PRoW legislation, policy and procedure and we make our submission as evidence of this.

We are the lives of the people who live under the "*lines*" on the Definitive Map that are so wantonly and recklessly marked down and amended. History books are clear, it is the drawing of lines on maps that has the most serious of consequences for peoples lives and society's wellbeing. The task of marking lines on a map should not be undertaken lightly or encouraged to be done unfairly. Unfortunately this is exactly what is happening.

The current PRoW system is dangerously out of control, and tighter control of the existing regulation must be undertaken. We strongly urge the Committee to heed the warnings from our evidence as we were not consulted with or represented in the drafting of the recommendations in this Draft Deregulation Bill.

Being users and supporters of PRoW we positively purchased a property with a *Public Footpath* in 2007.

The Footpath was confirmed to be recorded on the Definitive Map, and although the seller of our property also legally declared a Public Footpath in the property sales conveyance, she later fell into dispute with us and set about canvassing to change the path to a Bridleway. She filled in the first evidence forms for herself and on behalf of other people and submitted them for the application. The Authority ignored our property deeds and legal conveyance and made a legal Order to amend the Definitive Map and change the Footpath at our property to a Bridleway. This would result in bringing dangerous traffic to the garden and front door of our family home that we would be unable to avoid. We were Statutory Objectors to the Order, as were the Parish Council, along with six other longstanding local members of the community also formally objecting.

This resulted in a *4 day public inquiry* with the Inspector finally concluding *not* to confirm the Authority's Order and that the claimed use of the path was *"riding with permission"*. The wasted public and personal costs for this is a shameful scandal.

Since the application entered the public domain we have faced regular anonymous horse and bike riders thundering through our property with zeal and knowledge of their wrongdoing, but with relish knowing that we cannot stop them. Often with comment to us of what *fun* they are having - just for added provocation.

On a national scale Authorities are happily condoning this trespass and anti-social behaviour as it aids the claiming of new routes by "*use*", providing themselves with desk jobs. The situation is quite sickening and utterly shameful.

It does not sit in British Society that we should have our public office being nourished by their own encouragement of aggravation and discord in our otherwise peaceful and civil society.

Claims for use of the path by the public have to be without secret and unchallenged, so if the owner of the land does not confront and challenge the user then this is considered to be dedication by acquiescence. *Damed if you do and damned if you don't*. There is no way out of the hell.

We have been vilified for for our good intention of investing in a property with a PRoW. For the PRoW Network to prosper people should not be dissuaded to live amongst it, but should be supported, otherwise PRoW and its surrounding landscape will be full of conflict resulting in further bureaucracy.

The current PRoW legislation and policy is undemocratic, and unfairly balanced against the homeowners and owners of property. Our submission is given as evidence to highlight that it does not work, and the situation will be exacerbated if the proposals set out in this Bill are implemented, and measures are not taken to correct the current failings.

We would like to make a verbal contribution to the committee and hope that we are invited to do so to expand on our evidence on being at the receiving end of the current legislation regarding PRoW.

Summary of Issues and Recommendations:

1] The existing Public Rights of Way (PROW) system is currently confusing and extremely complicated.

It is a gross waste of public money which is administered to unfairly disadvantage home and property owners.

2] Legislation requires Authorities to have PRoW Improvement Plans which has caused policy and decisions to be weighted by Pro-access campaign groups who have infiltrated *Local Access Forums* and all the way up through Public Office.

Pro-Access Campaign Groups are fervent "*lobbyists*" in favour of as many PRoW as possible, and have helped draft and support the recommendations in this Bill. It has therefore presented an unbalanced view.

3] Alarm bells should be ringing by the fact that these proposals have come from *Defra via the "Stepping Forward Report" compiled by their own funded Quango "Natural England".*

With the associated access campaigners, these are the very people who wish to preserve the workload and consequential paycheque that their departmental way of life depends on, and who are attempting to smokescreen their practices that this Bill should rightly scrutinise.

4] The current legislation is being used by PRoW Access Campaigners to encourage trespass and anti-social behaviour at peoples homes and private property so as to aid a claim for a PRoW.

This obviously needs to be stopped. Landowners are expected to manually/verbally challenge users of a claimed path or be considered to have dedicated it by acquiescing its use. This causes conflict and discord within communities and great stress for individuals whose homes are effected by these claims. The legislation needs to prevent this need for confrontation, and trespass should not be encouraged by the legislation.

5] This Draft Deregulation Bill does not simplify the present PROW procedure.

The proposals are contrary to its title, attempting to legislate *additional* Regulation, which will further disadvantage owners of property against claims for PRoW. e.g. Reducing advertising of Orders, allowing Authorities to select which objections should be passed on to the Secretary of State, and allowing authorities to *chose* what they consider to be *"administrative errors"* to amend as they desire. These proposals are undemocratic.

6] To cut administration this Bill proposes to *"reduce the number of applications that are opposed".*

Instead, this Bill should be looking at reducing the number of applications being *made* and *accepted*, before they are objected to, thus reducing the burden on the taxpayer.

7] The Draft Bill mixes the issues of *"Public Rights"* and *"Private Rights"* which is completely incompatible with PRoW legislation.

Neighbour disputes are commonplace and it would be injudicious to provide legislation for public office to engage taxpayers resources on private disputes. A rush of vexatious and spurious RoW applications would be sure to follow if this were allowed; and therefore objections to Orders.
Clearly this should be discouraged and the legislation should *only* allow claims that can show a genuine use by the "*public*" - not *neighbours* or those *"with an interest in the land"*.

8] *All* of the "*Evidence*" relevant to a claimed PRoW should be included with the application at time of submission.

Applications should not be allowed to evolve *piecemeal*, and they should not subject the Authority to research evidence at public expense. Ever expanding the PRoW departmental workload has been their practice for many years, and now reducing it should be the central focus of this Bill.

The application process for PRoW is ridiculously slack, it is far too easy to be made on a whim. Applications must be made with conviction and submission of all the relevant and "proper" evidence. And there should certainly not be any encouragement to *"reduce the burden on the applicant"* as this Bill proposes.

As applications are too easy Authorities at present find themselves with a backlog of which they are unable to process. Once accepted the responsibility of investigation is at present picked up by the Authority. This is how the PRoW departments have managed to grow to near breaking point, straining under the weight of the applications they and the legislation has encouraged. Clearly this is the centre of attention for the matter of deregulation.

It should certainly not be the purpose of the Bill to recommend applicants take the Authority to the magistrate if there is a delay in processing an application, but this shows the disingenuous motives of its authors to *up* their departmental workload and pay-grade.

9] More stringent measures are needed for Applications to dissuade vexatious, frivolous and unnecessary PROW claims being submitted and accepted.

One such way to do this:

10] Property legal sales conveyances should be accepted as a *"Statutory Declaration"* to show that a landowner did not *"intended to dedicate"* any PRoW if none is legally declared at point of sale.

At present this is not the case and it undermines every house purchase in the country. We along with many other people are evidence to this.

All property sales in the UK are subject to legal conveyance which passes through the two parties solicitors (seller and purchaser) and legally records the knowledge by the seller of any PRoW at the property.

Section 31 Highways Act 1980 (HA1980) should include a subsection inserted in regards to dedication of a PRoW to ensure legally recorded declarations made within property sales conveyance are taken into account. This would clarify that the seller *"had no intention during that period to dedicate it"* as stipulated s.31(1) HA1980, thus saving administration on countless, unjustified claims.

11] Legal sales conveyance is regulation already taking place in the private sector which should be utilised to drastically reduce the need for public office administration in regards to investigating claims for PRoW.

If applications continue to be allowed to be claimed on a period of 20 years crossing over different owners of the property in question, then all purchasers continue to be compromised by the prospect of being held to ransom from an untrustworthy seller who would be willing to support/instigate an application should the purchaser not meet their demands.

The situation is such that claimants for PRoW are being encouraged to lie in wait for a property to be sold before they apply for it, as this will aid their application, as the onus of proof will be on the new landowner to show that there was an intention *not* to dedicate in a time before their knowledge.

This is what has happened to us and many others, and is increasing by the day; encouraging trespass to homes, discord to communities and much wasted public administration.

12] <u>Applications for PRoW which are based on a claimed period of 20 year use under s.31 1980HA, should *not* be accepted if they pass through the point of sale of the property.</u>

Point of sale effectively being a *"prescribed event"* or *"trigger event"* which would allow sellers to declare unrecorded PRoW, and encourage claimants to apply before change of ownership. If the claim has not been made, then the Public have effectively acquiesced to there being any: ie none exist.

13] <u>Town and Village Greens applications (TVGs) also follow the same principle of 20 years *"as of right use"* by the public as stipulated in s.31 HA1980 and are subject to refusal if a *"trigger event"* has occurred on the land effected by the application.</u>

The Growth and Infrastructure Act 2013 (GIA2013), which received Royal Assent 25 April, made a number of significant changes to the law on registering new TVGs under the Commons Act 2006 (CA2006). Section 16 of the GIA2013 inserted new Section 15C and Schedule 1A into the CA2006 which took effect 25 April 2013 and excludes applications for TVGs on land where a prescribed event or *"trigger event"* has occurred in relation to the land ie a planning application.

A similar approach needs to be taken and amendments to the legislation made so as to stem the epidemic of PRoW applications that are being made across the country on peoples homes and peaceful private property.

Due to the increasing number of TVG applications and the significant costs impacted on Authorities, leading to delays due to lack of resources, the GIA2013 also contained a provision for claimants contributing to the cost for determining applications. Authorities should also subject applications for new PRoW to a similar cost. Landowners are subject to costs for applications to divert paths, so why not applicants for new paths?

14] <u>A "Set-fee" charge would serve to encourage more genuine applications;</u>

This would act as a deterrent to the many frivolous applications, as well as covering administration costs relieving the taxpayer from the burden of paying for it all.

15] <u>Legislation for Deregulation already exist in regards to the *"2026 cut-off"* date in the CROW Act 2000 which is the deadline for the *masquerade* that is applications for supposedly "*lost routes*"; paths not recorded on the Definitive Map prior to 1949.</u>

This cut-off date is deregulation legislation already in place and it is contrary to this Bills purpose to remove or amend it.

The 2026 cut-off date will help prevent public office from continuing the administrative madness that results in the very real living nightmare of those who face such claims.

Recommendation to rewrite the 2026 cut-off date so as to only effect applications to stop-up/delete (and therefore also divert PRoW), <u>*and yet*</u> to continue to allow the recording of *new* "lost" routes on the Definitive Map past 2026, would only offer a one-way door.

This would be utter folly. Routes would be claimed indefinitely, spreading like a cancer until every inch of land in the country would be coloured in by the lines drawn on the Definitive Map. With no *cut-off* point it would have to be renamed *"The Indefinite Map".*

By 2026 there will have been 77 years for any PRoW overlooked to have been claimed. This is more than ample time. Or is it suggested that the job of 1949 Definitive Map recording was done incorrectly? If so then some paths will need to be deleted because they have been put on in error.

There should not be *any* amendment made to the 2026 cut off date.

16] The foreword to the draft Bill suggests that its intention is for, *"Making life easier for individuals and civil society".*

However it will not.

17] Rather than *"devolving decisions on PRoW to a local level"* as proposed it would be far more efficient to move PRoW to a central legal arena, as in other aspects of land use, such as the Land Registry where proper legally trained staff could be deployed.

This would bring consistency to the administration process, where currently Authorities across the country use various approaches to the legislation.

By administrating through the Land Registry this would facilitate the *"appropriate fee"* to be charged for applications for amending the Definitive Map.

If applications were administered through the Land Registry only formal applications in the prescribed form would be accepted, with applications being cross referenced with property deeds and involvement with the landowner thus clearing up any issues from the onset.

There is no need for unprocessed applications or informal claims sitting on file. It is only fair that potential property owners should be aware of exactly what they are legitimately purchasing, this could be highlighted when Land Registry searches are made at time of property conveyance.

The existing PRoW legislation and procedure is already confusing and complicated. It requires the need to understand and cross reference 3 existing legislations: The Countryside and Rights of Way Act 2000 (CROW Act 2000), The Wildlife and Countryside Act 2001 (WCA 2001) & The Highways Act 1980 (HA 1980).These legislations are already abused and misinterpreted due to the confusion of having 3 legislations partially crossing over each other.

18] Evidence should be submitted on oath.

The making of Orders should be determined by a proper court under a legally qualified PRoW Judge and witnesses and evidence should be under oath. At present so called "*evidence*" is submitted and not tested under the proper legal scrutiny, and yet it is considered acceptable for the making of a legal Order. This is wrong. It is encouraging the worst kind of standard in public life and office.

The land owner and the public should be notified of all applications which are accepted and the criteria fully explained in writing prior to a court hearing. All witnesses should be declared to any opposing party and have provided a statutory declaration of their alleged

use prior to the hearing if they are to be called as witnesses. This is presently not a requirement and is undemocratic.

19] <u>Applications being processed and decided through a proper legal court would save huge amounts of public money and needless bureaucracy.</u>

At present once a PRoW application is submitted to an Authority it stays there on file; even after passing through Committee, Public Inquiry and through the Courts. When a claim goes into the public domain it remains there waiting to resurface, to return again and again and again, building up "piecemeal" until the landowner and opposition are fatigued, financially drained and are finally defeated. Meanwhile communities and lives are pulled apart whilst public office use resources and taxpayer's money pursuing and assisting claimed paths.

PRoW applications are *"Zombie Orders";* waiting for the time to rise again from the dead.

Bevis Hughes & Catherine Law