Evidence submitted by Brenda Maitland-Walker to the Joint Committee's call for written evidence on Rights of Way on the Draft Deregulation Bill

Introduction

My name is Brenda Maitland-Walker. I live at The Hideaway, Tanyard Lane, Carhampton. Minehead, Somerset. TA24 6NG. I was elected as the County Councillor for Minehead Division between 2009 and 2013. On election I was appointed to act as Vice-Chair of the Somerset County Council's Regulation Committee.

On appointment to the Regulation Committee members are required to attend training on Rights of Way. The training is given in-house by officers of the council's rights of way team after which members are considered eligible to make complicated quasi-legal decisions on Rights of Way applications. I have not been involved personally with any rights of way issues.

I understand local authorities around the country have different policies on how they process Rights of Way applications therefore my submission is based purely on my experience as a Regulation Committee member for the Somerset County Council.

Applications to Modify the Definitive Map & Statement
User Evidence

1. On appointment, the Regulation Chairman and I requested that all User Evidence Forms were made available to committee members, along with all other evidence relied upon. Applications put before the committee were invariably more than 10 or 12 years old, so application forms were often in different formats; making it difficult for officers (and committee members) to process and there were often discrepancies in the forms, for example:-

- The age or date of birth not supplied. On reading through user evidence I encountered more than once forms where someone under the legally accepted age of 14 years claimed to have used the route;
- No map of the route claimed was attached to the form, making it impossible to be sure they were claiming the same route.
- Questions left unanswered, such as whether the user had come across a notice, a gate or a stile;
- User evidence submitted was not within the 20 year challenge date, but still included as evidence of use;
- Forms not dated or witnessed;
- Lack of a clear understanding by applicants, some rights of way officers, committee members and even Inspectors of what is considered to be 'permissive' use,. (i.e., hunting over land should be considered permissive as it is usual practice for the Master of a Hunt (or his representative) to obtain permission from the landowner before

arranging to hunt over the farmer's land.) I attended an Appeal Hearing where the ex-Rights of Way officer residing over the Appeal accepted hunting over land 'as of right' use.

The time lapse between applications being submitted, verified, scored and processed means it is not always possible for officers to contact and verify all evidence submitted because people have died or moved away. However at present all unverified evidence is considered to be of equal evidential weight.

User evidence should be **sworn** evidence. This would deter user evidence being submitted that has been obtained under pressure or without a full understanding of the implications. User should be required to state their age, or date of birth; answer all the questions on the form, and include a plan showing the line of the route they are claiming. If any one of these requirements is not met, the evidence should be discarded as invalid. This would make it quicker and easier for officers to process user evidence. It would also substantially reduce the cost of checking and validating evidence.

Cost to Local Authorities.

2. Block applications on 'droves' by local interest groups are presently being received where the requirement to ensure proper notification to the landowners is being totally disregarded. The huge accumulating costs dealing with these applications is further working against a speedy resolution and increases costs to local authorities.

Currently local authorities are not permitted to charge for applications to modify the Definitive Map and Statement. In contrast, if a landowner, (this may be a person living in a property in a town or village, not just farmers or owners of acres of land) on whose land a right of way is claimed wishes to obtain copies of a claim they have to pay for every page of evidence submitted. They also have to pay all their own legal costs to defend a claim, as well any possible Appeal.

At the time of writing this submission the cost to the Somerset County Council (and therefore the taxpayer) of an average application to include officer time; processing; scoring; investigating, copying and producing the evidence to bring to Committee has recently been calculated to be approximately £6,000. At present the County Council has a backlog of more than 210 applications to process. Costs are further increased if officers have to attend or defend an Appeal or Hearing.

In order to carry out their statutory duty to keep the definitive map and statement under continuous review local authorities are being faced with an ever increasing, uncontrollable financial burden. They are also presently faced with having to find more and more spending cuts to mitigate the continuing reduction in local government funding. The only way local authorities can make these savings is to reduce officer numbers or officer time. This inevitably leads to an increase in the time it takes for applications to be processed and

heard. The proposal "*to enable applicants and landowners or occupiers affected by an application to apply to the magistrate's court if the authority has not decided an application within 12 months*" will further exacerbate the situation.

If there was a requirement for applicants to include all the evidence on which their application relies (historical and user) would it substantially reduce the time taken and therefore the cost to local authorities who would then only have to investigate the evidence submitted, and it would afford landowners a level playing field (legally and financially) should they wish to defend an application.

It is also essential local authorities be afforded the opportunity of making reasonable charges to applicants to cover the cost of processing and investigating applications.

Time limiting applications

3. When people purchase land or property they invariably rely on local and land registry searches to inform them of any rights of way, but these searches do **not** include 'pending' rights of way applications. Unfortunately few solicitors who undertake conveyancing are aware of the need to make a further search to find out if there are any 'pending' applications on the land. Purchasers are therefore invariably unaware of pending applications until they receive notification from the local authority, often many years after they have purchased the land or property.

Defending a claim can be extremely difficult especially if landowners are unable to contact the previous owner or owners to find out whether they had ever challenged a user either because they have died, or because they have moved away from the area. Also registered land means the new owner does not readily have access to old deeds and documents that might help them with their defence.

I therefore support the NFU's proposal to include some form of time limit on applications. This would give both the public and property owners clarity and certainty at the same time ensuring a right of way is in keeping with the land's more recent use and function.

Safety and Security

4. Section 25 of the Highway Act 1981 affords the local authority the opportunity to refuse a request to 'create' a right of way by agreement on the grounds of safety. However local authorities are not permitted to take into account issues such as safety or security on modification applications; for instance if a route crosses a busy working farmyard or someone's house or garden, or it exits onto a busy highway, at a road junction or blind bend. There were several times over my four years as a committee member when concern

was expressed regarding safety issues, but we were informed **issues of safety cannot be taken into account.**

5. At present an application to modify or re-route a right of way around a field or through a building will not be sanctioned if there is an objection from User on grounds the route is historical, or slightly longer, or less convenient. The right to object on these grounds should be removed, allowing landowners the opportunity to re-route paths around buildings, farmyards, and across gardens and fields rather than through them.

6. Section 31 (6) of the Highways Act 1980 enables landowners to protect their land from gaining public rights of way through 'use' by the public. The provisions require landowners to deposit a map, statement and statutory declaration every 10 years with their local authority showing which rights of way they acknowledge over their land to protect their interest, and to provide greater certainty for users. It is difficult for landowners to remember to renew this every 10 years. Consideration should be given to extending the time period to 20 years making it the same time period as that used in user evidence.

Conclusion

Whilst I am supportive of measures within the draft Deregulation Bill regarding rights of way, particularly the proposed provision for the implementation of a Basic Evidence Test, and the removal of the wording "*reasonably alleged to subsist",* I respectfully request the issues and concerns mentioned above be given due consideration, as they would help speed up decision making, reduce costs, and create a fairer and more balanced process for all.

In summary the main points submitted for the committee's consideration are:-

1. **Provision for the local authority to charge a fee to cover the reasonable costs of processing, scoring and investigating applications. [see para. 3]**

2. **Provision of a time period for 'user' based claims to a right of way. [see para. 4]**

3. **A recommendation that local searches and land registry searches include, or recommend a search should also be made with the local authority to establish whether there are any 'pending' rights of way applications. [see para. 4]**

4. **A presumption against routing unrecorded rights of way through farmyards, buildings and gardens, and the removal of the right to object to an application to re-route a right of way on the grounds that the route is historical, or that the new route is slightly longer or less convenient [see para.6]**

5. **Provision to allow local authorities to refuse to add a right of way if there are issues around safety or security similar to those in Section 25 of the Highway Act 1981. [see para. 5]**

6. **A requirement for User evidence to be given on Oath. This would give clarity and improve the quality of user evidence, and it would reduce costs to the local authority in verifying user evidence [see para. 2]**

7. **A requirement that applicants should submit all the evidence on which their application relies (historical and user evidence). [see para. 2]**

8. **Inspectors presiding over Hearings and Appeals should be independent and legally trained, not ex-Rights of Way officers. [see para. 2]**