

## Written Evidence submitted by Charles and Anne Just to The Joint Committee on the Draft Deregulation Bill

### Land Usage

**1.** We are Charles and Anne Just and we have a small farm in South Derbyshire. We are one of the '**Alternative Stakeholders**' who have contributed to '**The Lost Ways Scam**' document and our case is fully detailed there. We respectfully encourage you to read our case, along with all the others, to appreciate how ordinary, hard working families, who the applicants insist on calling 'landowners,' can have their lives turned upside down and be caused unimaginable distress and financial hardship by a group of individuals who are motivated by a 'wish list' of routes which they make claim to, irrespective of veracity.

We are submitting this document hoping that the wrongs in the present system are acknowledged and this thoroughly unfair, unjust and disreputable system is amended.

### **2.** Summary of main issues

- New Countryside Bill is urgently required.
- There should be a cost to the applicant in the claim of a right of way.
- Councils should not research claims.
- Training for councillors dealing with rights of way matters.
- Overturning of unlawful decisions by unqualified Inspectors.
- Court/ Tribunal for cases. Presided over by a judge.
- Witnesses to be on oath. Penalties for perjury.
- Limit to the number of appeals.
- 'New Evidence' should only be considered if it is substantial – too often it is not.
- Safety, security, privacy and wildlife should be considered.
- Curfew on rights of way.
- Copy the Netherlands in their ruling on control of dogs in spring.

### **3.** Our Experience

The claimant in our case is the British Horse Society (BHS) an organisation with charitable status, royal patronage and significant funds. We are the 'David' in this battle. The claim was to create a bridleway literally through our private yard/garden. There is no right of way of any kind there nor has there ever been one. There is nothing on the Definitive map.

**4.** Fortunately, in our case we have had the consistent support of our Parish Council, Borough Councillors, our Elected Member(s) at Derbyshire County Council, Council Officers,(who researched the claim,) Derbyshire County Council itself and both our recent MPs (Mrs. Liz Blackman and latterly Mrs. Pauline Latham- who has objected to the claim). We also had the support of some local walkers groups, among many others.

**5.** Unfortunately, this meant little, as despite all we hear about Local Democracy and Localism, the applicant was able to appeal and appeal again until it exhausted the system and found someone who would support this claim for a route where one has never been and which is not and never has been, on the Definitive Map. This person was a single Government Inspector, a former footpaths officer, an unelected an unaccountable individual, who overruled and disregarded the decisions of our democratically elected Council and the Local Government office for the East Midlands, and rubber stamped the route which will literally go through our private yard and garden and make our business and our lives untenable. The law which allowed this travesty of justice to happen has to be a bad law.

**6.** It is hard to believe that this happened but it did and it continues. We await a Public Inquiry which will cost us many thousands; money we do not have; a Public Inquiry to investigate a claim which has been consistently and thoroughly investigated and rejected by our elected representatives and the Local Government Office for The East Midlands.

**7.** If ours was an exceptional case it would be bad enough but it is not. Once again may we respectfully urge you to read the '**Lost Ways Scam**' document presented to Oliver Letwin MP by Richard Connaughton which details twelve typical cases from across the country. Case after case makes harrowing reading for any fair- minded person. We also encourage you to read, **Rights of Way - The Hobhouse Report 2011.**

**8.** A brief summary of our case....imagine the cost!! (Full details in the Lost Ways Scam)

Application made by the BHS 1997

Investigated at length and considerable expense by Derbyshire County council – officers recommend rejection of claim.

Consultative meeting – all parties 'around a table' – putting their case.

Site visit by Councillors – a bus trip.

Claim rejected by Derbyshire County Council.

Applicant appealed.

Case sent to the Local Government Office for the East Midlands

Case rejected

Applicant appealed – again.

Local Government Office looked at it again

Rejected claim – again.

Applicant appealed –again.

Case sent to DEFRA – one individual who proudly states he has not walked the route – rubber stamped it.

Derbyshire County Council has to make an Order they have consistently rejected.

*Derbyshire County Council decides to object to the Order themselves (quite an unusual stance) as they feel that this situation has undermined their integrity, the integrity of their officers and the integrity of the democratic system.*

**9.** We await a Public Inquiry which we fear may ruin us. However, there is also more cost to our Council which has to host the Inquiry and staff it with, we understand, the County legal team in attendance. (All this when the Council has rejected this claim throughout.)

The real cost is not only to us but also to the people of Derbyshire. Not a day goes by when we do not hear of some essential service being cut. All while Local Authorities have to spend many thousands of pounds investigating many hundreds of flimsy cases. The system which allows this is short-changing the people of this country.

**10.** Recommendations

We respectfully request that the Committee consider the following;

**11.** A new Countryside Bill should be put before Parliament. The whole idea of ‘Lost Ways’ should be put aside. These ‘ways’ if they were ‘ways’ at all are lost and gone forever. They belong, if they ever existed at all, to another time. They are lost for a reason; any so called ‘re-establishment’ is much more to do with a hidden political agenda, often by unelected Council officials, than anything to do with improved access. We should make good the considerable access which exists.

**12.** To prevent the present ‘grapeshot’ approach by applicants there should be a cost to the applicant for each application. After all, if an individual wishes to build a garage he has to pay a fee to submit a planning application – why not for these applications? At present who can blame any organisation for abusing the system when all an application costs is a stamp? Charging a fee would put an end to the situation whereby applicants put in many applications at once on the grounds that they cost nothing and ‘it’s worth a gamble and we have nothing to lose’. Indeed in 1997 we had two applications on our small farm for bridleways – one led onto a steep sandstone escarpment which would have necessitated horses sprouting wings to negotiate successfully. I hear of one farmer in Somerset who has seven applications for bridleways – one crossing a main railway line. These organisations are simply ‘chancing their arm,’ aided and abetted by this dreadful Act. Some Councils have literally hundreds of applications pending most from only a few organisations and mostly without substance but they are duty bound to investigate them. The cost to the tax payer is huge.

**13.** The Council should not be expected to research claims made to them – that should be the responsibility of the Applicant. If anyone puts a planning application in for an extension to a home they do not expect the Council to design it for them.

**14.** Councillors who deal with rights of way matters should have training in these complicated issues. Too often they are advised by Rights of Way Officers who are politically motivated. For instance, a local Rights Of Way Officer was a speaker at a meeting which a friend of ours attended; in answer to the question ‘what made you become a ROW officer?’ The unelected individual rummaged in his bag and held up a copy of ‘The Land is Ours’. That says it all. Elected Members of our County Councils look to these officers for independent advice on matters of access. It’s a frightening thought.

**15.** A Statute should be created whereby parties who have seen their case approved by their locally Elected Members only to see it overturned by a single unelected, unaccountable, not legally qualified and it could be argued partisan DEFRA Inspector (the majority of whom are former footpaths officers); should be able to overturn these illegal decisions. This would uphold Local Democracy, Localism and go some way to restoring the credibility of a thoroughly discredited system. At present Inspectors do not have to give reasons for their decisions.

**16.** Decisions which go to appeal should be heard in a Court /Tribunal. This should be led by a judge. Witnesses should swear an oath- which does not happen now. At present DEFRA inspectors, not legally trained, more often than not- former footpaths officers, (how can they be independent?) preside over Public Inquiries. In doing so they are usurping legal powers they should not and do not have and making decisions which affect people’s homes, lives and businesses. Citizens are being denied their Human Rights, as Article 6(1) of The Human Rights Act clearly states;

*‘Every citizen is entitled to a fair and public hearing within a reasonable time by an Independent and impartial (legal) tribunal established by law.’*

These decisions, we would argue, are unlawful.

**17.** There should not be a seemingly unending system of appeals whereby anyone can get the decision they want- irrespective of justice simply by exhausting the existing system, confident that if a matter goes to a single Inspector they are likely to find a sympathetic ear. Most individuals do not have the time or resources to fight well organised charitable organisations with considerable funds. There is distinct unfairness in a system where anyone has to prove a negative.

**18.** ‘New Evidence’- there should be a limit on evidence. A shocking example of this is the Willington case in Derbyshire – also detailed in the ‘Lost Ways Scam.’ Here the application is for a footpath across back gardens. The householders affected took the case to the High Court twice – they won their case – twice (even having a Senior High Court Judge apologise to them for all the anguish this had caused, as the victim here openly admits it caused her to have a breakdown) –and yet the Council have accepted ‘new evidence’ and the whole thing has started again. I cannot imagine how much this case alone has cost the local council- tax payers.

**19.** Section 31 should be revoked. At present all a claimant has to do to claim a route is to declare that they have walked or ridden on a particular route for a period of twenty years. This has become known as the ‘cheat’s charter’. When a law is openly ridiculed and abused by both applicant and victim alike it has to be changed. The applicants make user statements with no reference to the truth. They are frequently copied word for word from each other. Sometimes the answers are flippant. We have all our user statements with maps – every map is the same and all share an

identical error they were clearly prepared by one person. The victims call it the 'Cheats' Charter' which we feel from our experience sums it up perfectly. There is not, nor has there ever been, any declaration of truth on user forms. We have had people tell us they were told what to put and even that 'we will do the rest...just sign it'. It is shameful that a law can encourage dishonesty and mendacity as this one clearly does. There are plenty of lovely local private gardens which I would like to explore...as it stands all I have to do is get a few like – minded people together, write a few user statements and put the application in.... That is not a flippant statement – it happens and this law allows it to happen.

**20.** *Section 31 results in a situation like ours. woe betide the farmer who allows even a small amount of permissive usage of land- perhaps letting the local children ride their ponies or bikes on the stubble after harvest, allowing a charitable group to use a private lane or turning a blind eye when neighbouring children access their friends' homes by using a route which is not a right of way...this is precisely what happened to us as my husband's father blamed himself for all the problems we faced resulting from this permissive and short term reciprocal use he had allowed between neighbours in the past. He became depressed as he recognised what the implications were for us and for the farm he was born at and loved - he committed suicide after making a sworn statement. As we said earlier this has been a dreadful and costly battle in every sense of the word.*

**21.** Under the present provision there is no consideration of safety, security, wildlife or privacy when a claim is considered. How can this be so in the Twenty first century? This has to be wrong and this has to be changed. The safety, security and privacy of individuals are important in every other area of life and work - how can it be that it is irrelevant when claims for rights of way are made? There should be involvement of the Police and the Health and Safety Executive. It is acknowledged that farming is the most dangerous of all occupations yet we often have rights of way through busy farmyards where heavy machinery operates, where cattle are moved etc – these are intrinsically hazardous places. It is difficult to imagine this happening in another major industry. Farmers cannot 'lock up' their farms yet we have hugely expensive machinery and valuable stock – theft from farms is endemic.

**22.** It would be a massive help to farmers if there was a dusk to dawn curfew on rights of way. I cannot count the times we have been out in the dead of night to find people in our bottom yard (where a footpath does exist) whose presence there is questionable to say the very least, only to be told 'we are on the (expletive deleted) footpath...' The problem of rural crime is huge, CCTV cameras are in towns...and the thief has moved out to the countryside- and what is really shocking is that he has every right to be there, any time of the day or night. Challenge them and they come and set fire to the straw bales – this very thing happened to us.

**23.** We are very involved in wildlife initiatives on our farm and would suggest that there is a ruling that dogs be kept on a lead everywhere for a period during spring each year. This would result in a significant increase in the bird and small mammal population which is under such stress. The Netherlands operates just such a scheme very successfully and there are penalties for those who do not comply. (During the last Foot and mouth outbreak when all paths were closed the bird population boomed.) There would be a gradual change in the mind set of people. Years ago hardly anyone picked up after their dogs and the streets and parks were dreadful and hazardous, this is no longer the case.

**24.** *This is not about closing legitimate rights of way but rather about bringing the system into line with the demands of the modern age; times have changed and we are foolish if we do not recognise and acknowledge that fact.*

**25.** The term 'landowners' has now become an almost pejorative term; likewise 'Ramblers'. This is a direct result of the confrontational situation which has developed and which this bad law has significant responsibility for. However, this is not the whole picture. We have had several local walkers groups object to the claim we are facing. A situation with an irate farmer shouting '*gerrofff my land*' at a stropky rambler who declares, '*I know my rights*' might be good copy for newspapers but it is far from the real picture. We have yet to meet a single individual who thinks the British Horse Society's claim on our farm is fair or justified. If you read our case, even one of the campaigners for the route, was horrified when she saw it for herself. Decent people do not wish to inconvenience others, cause distress or confrontation or indeed endanger themselves or others while simply going for a walk.

**26.** We should cherish the small family farm, regrettably there are few left in this area. The family farm is a corner stone of the local community; we have an interest in the locality which is not simply a financial one. We preserve the flora and fauna, the animals reared and food grown go into the local shops, it is a long established and cherished relationship. The small family farm is worth preserving and fighting for ...but we did not expect to have to fight the Government. There is a common understanding that a law is a force for good, indeed any law should be exactly that. We respectfully put it to the Committee that the law with regard to Rights of Way is fatally flawed in so many ways and has been abused and hijacked for political advantage. It is not a force for good, quite the opposite. Consequently, it should be rewritten as a matter of urgency – doing nothing should not be an option for a fair and responsible Government.

Thank you for considering our submission. (Word count 2988)

We would be able and willing to speak if required.

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