Written Evidence submitted by Josephine Oliver & Paul Richards

to

The Joint Committee on the Draft Deregulation Bill

Land Usage

Context for this submission

We have concerns over the process by which ROW legislation is implemented and misused through a quasi-legal framework. There is a lack of equality & rigour in the process; this favours the acquisition of increased access, rather than promoting a fair testing of all new applications/changes. It is not even handed and is void of common sense particularly in not considering negotiation around diversions. The **'Stepping Forward'** report suggestions from Natural England/Defra made our blood run cold! We have made submissions to the latter consultation.

We are very familiar with the **'Lost Ways Scam'** document and know personally many of the cases of stress, pain and injustice encapsulated within.

We are owners of a small acreage. We have direct experience of the process and the financially crippling and stressful effects of two footpath claims upon our land. We endured the **"behaviour"** of the Order Making Authority [OMA] Somerset County Council [SCC] – went to **'public inquiry'** – won our case and were awarded **'costs'** – the latter tells the reader something about the injustice within. Thus we make our submission based upon this direct experience spanning 13 years.

Key issues for consideration

1. If we continue to do 'what we have always done' or more disastrous still, add new levels of bureaucracy in the name of deregulation, we will worsen, not improve the current process of land access – which is we repeat - an already inefficient, poor value for money, and undemocratic process.
    - **Deregulation must -** produce cost savings, improve efficiency and introduce equality.
2. Use of video-recording of all decision making processes by OMA's to ensure standardisation, transparency and accountability – outcomes can provide a training base.
    - **Deregulation must -** ensure <u>consistency of all procedures</u> by all OMA's.
3. It is unreasonable, indeed unjust, NOT to have an application <u>charging system</u> which is proportional to what 'landowners' themselves can expect to pay, assuming they can in the first place defend their case. This should apply equally to alterations/deletions/modifications. Some organisations promoting applications [often multiple – because the legislation allows

this] have vast resources backing them; however, an even-handed approach is the basic premise of the word justice and in the long-run saves money for the tax-payers public purse and generates resources for a faster throughput – more access.

- **Deregulation must -** Reduce the disproportionate burden of cost from the OMA and also the landowner. A new charging system involving applicants is essential.

4. All User witness forms and statements should be nationally standardised and fully completed by individual witnesses prior to submission.
    - **Deregulation must –** ensure all user witness statements being submitted via an applicant to be statutory declarations. Applications should be completed to include all evidence being relied upon – this reduces reliance on the desperately stretched public purse.
5. The quality of witness testimony is an issue.
    - **Deregulation must –** ensure all witnesses [whether for or against an application] should give inquiry evidence under oath and under fear of prosecution [contempt of Court] should they be found to to testify falsely.
6. There should be an insistence on fully appropriate qualifications.
    - **Deregulation must –** ensure all inspectors possess necessary legal qualifications in addition to appropriate field experience like or similar to ROW Officers.

Our personal history and experience of ROW

The reader may simply like to cut to this sections end-point - read the Inspector's **Order decision** and particularly the **Costs decision** to obtain some understanding of the trauma linked to process shortcomings we have endured despite apparently winning!

Our experiences commenced in February 2000 and concluded in a 2-day public inquiry April 2013.

> **PINS web site: FPS/G3300/7/89** (No. 4) Modification Order 2012
> Link... http://www.planningportal.gov.uk/planning/countryside/rightsofway/onlinerow/s#somerset

Our backgrounds - both of us served a full career within the teaching profession. We have varied backgrounds which enhances our professional horizons. We have a passion for walking.

In our recent retirement we now own a very small farm [hard earned] and breed miniature donkeys – llamas and Shetland sheep. We live at Chiselborough in Somerset.

After searches of known land in our village we added 20acres to our holding which was purchased at auction in 1999, this was won to the detriment of an individual later to become the 'Applicant' who also attempted to purchase this land together with some friends – one year after the auction in 2000, he became the 'Applicant' of a Section 31 modification application.

We received no advice from SCC who offered extensive support to the applicant - a common shortcoming – lack of equality. This support included a County Councillor who later voted in favour with no declaration of interest – a point which does not seem to occur in Devon County Council. Some 10 years later in 2010, this matter was investigated with thoroughness and the ROW case officer produced a detailed report containing and an **"unequivocal officer recommendation"** [The inspector's reported words] based upon the evidence presented and collected to reject this application.

Due to the most dubious **"behaviour"** [the word behaviour was applied by the Inspector with regards to SCC minutes/understanding etc and their explanation or lack of it] for making the Order through their SCC Regulation Committee on 1st March 2012. The word **"behaviour"** was applied to one Councillor in particular. The Order was made through a majority of one and forced by members who by coincidence were of one political group! The Councillor directly criticised had influence over the group as can be identified within minutes and voted against the officer recommendation – she also championed the application publically. The Inspectors reports reinforce a written complaint made to SCC by us following the decision and promotes two questions: was the action to reject the **"unequivocal officer recommendation"**, predetermination or simple incompetence?

There then followed one representation by the applicant but 38 objections, representing 48 people of a 355 population [Most ever received by this authority] from local people. We made our own objection then a constructive complaint about procedure and process which has added to SCC's costs who are attempting to defend the indefensible! Their processes which do NOT include videoed decision making, provides NO evidence for them to adequately deal with our complaint.

We have engaged in some considerable research of ROW cases and attended several inquiries ranging from footpaths to bridleways. Cases are very diverse – we trust there will be other informed submissions like ours which reveal opportunities to improve the veracity of the process rather than invent new layers to the complexities which already exist.

The inquiry resulted in the Order NOT being confirmed and indeed an award for 'costs' running from the date of the Committee decision. An order for costs was made based upon the **"behaviour"** of SCC which we challenged in our complaint and was in effect upheld by the Inspector who returned both report decisions within 16 working days - post April 16th 2013 2-day public inquiry.

As of this date we are currently still engaged in prolonged 'haggling' with SCC who are now attempting to renegotiate the award. The latter is particularly abhorrent for our case being such a significant statistic of one award of costs against SCC, hence the Inspector's reference to **"behaviour".** This statistical significance of one also applies when compared to Cornwall, Devon, Gloucestershire, Hampshire, Dorset and Wiltshire – source PINS web site.

1. **Cost of the ROW process.**
    a. We are reliably informed average case would have amounted to an estimated £6K for Somerset before reaching Regulation Committee stage. We estimate a significantly higher sum in our case. There is then the costs of the objection period then a 2 day inquiry with all its organisational cost involving two members of the ROW team and then the 'costs' awarded by the Inspector.
    b. Our total personal costs are circa £36K and this does not include many costs such as our decision not to lamb [prudent move] this year as we follow the spring lambing for our Shetland flock.
    c. The 'Applicant' and his retired entourage have borne the cost of a telephone call and a first class stamp as the trigger to total SCC cost, probably not dissimilar to our own plus the 'costs decision' against SCC – there is NO equity in this!
    d. The burden of cost is totally disproportionate – this needs to be urgently addressed.
        i. Example - Had the Applicant and the landowner both been required to provide a significant [circa £5K] 'bond' to apply and defend the case this would have 'focused minds' and would have almost covered the OMA costs to regulation committee stage. Upon an unchallenged result the loser forfeits their 'bond' which is directed towards the OMA. There needs to be a further bond of at least £5K from both parties if the matter goes to public inquiry.
        ii. It would not be unreasonable for either party to be repaid their bond if proven to be correct as we were in our case.
        iii. Such a system would reduce the speculative approach by either party – saving time and money for all involved; particular the taxpayer0

2. **Reliable evidence**
    a. Because witnesses on either side can effectively lie and deceive without consequence, all inquiry evidence given should be provided on oath with the risk of contempt of court being the only necessary measure to ensure the process in not being exacerbated by unworthy witnesses and erroneous evidence.
    b. We have direct evidence of this happening in our own case. Hinted at regarding the Inspector's references to the 'country code.

3. **Consistency of procedures by OMA's - Monitoring**

   a. In our own case there were blatant anomalies on the part of SCC Regulation Committee **"behaviour"** as identified by the Inspector; hence our costs award.

   b. Our research and experience soon identified a huge diversity of approaches to ROW through OMA's which we tested across the South west. We have identified both ill-trained Councillors [Regulation Committee decision makers] and individuals within a ROW team. We simply make the point that such a diversity of approaches does not help a system having an end-point of judgement in one legislative focus.

   c. Our greatest concern is however the need for transparency, consistency, accountability, producing credibility. Having worked with video-recording as a tool to improve performance within the educational field, we recommend this option. Necessary technology is no longer rocket science – Devon is experimenting with this facility and at long last, apparently, SCC are considering the proposal. The advantages are many fold:

      i. Will promote an immediate improvement of quality and conduct by officers and members. There would be no bully-tactics such as *"well you all know what I think"* on the part of a member, as in our case.

      ii. Provides 'sample monitoring' of decision making by the OMA.

      iii. Provides an evidence base for any challenge or issue which may arise.

      iv. Allows for the provision of 'national quality control' through random sampling.

      v. Provides for comparative training – this we can personally recommend rather than individual OMA's assuming in-house training is 'best-practise'.

4. **The process is not even-handed**

   a. Because of the cost implications it is the 'landowner' who currently bears the burden of cost which is obviously personal to them and not shared by partcipants.

   b. A 'landowner' may be the owner of a small garden or a small non-syndicate farmer who is struggling to survive against all the economic pressures of food production in a global economy.

   c. To successfully fight an application [some are obviously valid - such cases we would support] the 'individual landowner' needs the following:

      i. Time – it swallowed our life to the extent one of us being forced to retire early.

      ii. To be articulate - have a relatively good standard of education also relatively high ICT skills – which fortunately we both possesed.

iii. Money – we effectively placed our savings on the line – total cost some £36K although there were many hidden costs which could not be counted or considered but were part of this burden! Despite our own skills we relied upon and needed quality professional input from a solicitor with a ROW background.

iv. Resilience – this experience which for us spanned only 13 years. We have met many other 'landowners' who have had their lives placed on hold for much longer. In talking of our cost we do not include two years of lost earnings, including farming and certainly not the stress imposed through what has been a total imposition of our privacy.

v. We and others strongly contend there to be real issues of infringement of **'human rights'** attached to some of these cases – not yet fully tested.

5. Pay to increase recreational access – think outside the box!

If the hidden agenda is to foster employment [ROW] within the cottage-Industry of access, there are other pathways to achieve the desired goal – part of our submission in response to the 'Stepping forward' report:

a. Whilst this could be dismissed from the current exercise such a recommendation should not be ignored assuming value for money and improved efficiency is part of the deregulation objectives.

b. Austerity means we need to **'think outside of the box'**, and not reinvent the already broken and ailing model with more smoke and mirrors which is how we viewed the **'Stepping Forward'** proposals.

c. A visionary consideration - embracing 'encouragement through incentives' beyond the token of Countryside Stewardship. Consider, people pay for recreational activities, joining a gym, swimming etc., yet we fail to use these modern expectations to improve and provide new access to the Countryside through encouraging revenue/funding streams rather than wasting money through the ongoing and costly legislative contrivance of the past. To illustrate our thinking further, access lands, owned by a consortium within Yeovil, Somerset, afford valuable managed access and enjoyment for thousands through such a pay to use basis – no public money is wasted in such a scheme. This 'win-win' model could and should be part of a 'vision for the future' strategy – this does not detract from established rights of way or legitimate

claims but adds to the total access and simply applies public monies in a more productive manner! The model has been applied to toll-roads.

6. Qualification and training profiles

a. This needs to be an early runner for change in affording the process credibility through transparency.

b. This is initially a simple web-site exercise at PINS level and OMA levels to advertise team qualifications – encourage individuals to raise their own training profiles through every step towards individual accountability. We would all expect to see such a breakdown on a good school prospectus?

c. Link this to over-due standardisation and video recording of decision making and we have interchangeable OMA/Inspectorate resources for training.

7. Summary as related to our case experience:

a. There is in our mind a strong suggestion, identified in our complaint to SCC, about the **"behaviour"** of the Regulation committee. This was vilified by the inspector. Had such measures which we suggest within this submission been in place, there could have been some **very different outcome scenarios:**

   i. The proven dubious application could have been rejected rather than being placed to the bottom of the pile.

   ii. The application could have been withdrawn.

   iii. The ROW investigation costs could have been covered.

   iv. The challenge of the SCC Regulation committee **"behaviour"** could have been effectively challenged and more importantly, subsequently improved.

   v. In our case, we feel the cost of the public inquiry stage could have been saved.

   vi. With witnesses on oath, there would have been at least two if not three contempt of court issues.

   vii. A total saving to the taxpayer of many thousands of pounds and a gain of wasted ROW officer-time.

b. Whilst we acknowledge a generally well run inquiry of Inspector Heidi Cruikshank, her use of legal power in the context of evidence which needed challenge could have been much more robust with the threat of contempt. Her acceptance of new photographic evidence taken by the applicant between day one and two should never have happened – she did however cleverly parry its significance but this is time and

this was public money being wasted here! Our comment about legal training and qualifications would empower the inspectorate - we feel a number of Inspectors would choose to leave their post if the bar was raised.

Use of our case experience

There is much irony in our case; we won after all!

It does however illustrate many shortcomings regarding the processes we are all considering. All our materials are digitised and freely available for scrutiny. We are not rabid-landowners [get off me land!] but simply ex-professional people who have dedicated most of our working lives to the guidance of pupils and the importance of integrity and truth. We are also keen walkers and would defend any legitimate ROW – we are currently engaged in a challenge 'on the other side' at the time of writing. Also one of our own case witnesses is a confirmed walker and is extremely pro-active in the defence of legitimate ROW as SCC ROW team could verify – the process should always be equitable and seek the truth – it is not an acquisition agenda – or is it?.

We would welcome an opportunity to speak or would be prepared to be questioned in the hope that deregulation produces real improvement through initially tightening up on systems to raise standards and introduce equity for all.

We have lived through many layers of changes within a teaching profession which had much need of improvement post-war. This process has been slowed by politicians doing what they do best – attempting to circumnavigate the issues and keep the vast majority happy. There are numerous core issues identified within this submission which would bring about improvement – simply by raising the bar at key points, being the applicants/witnesses, OMA's and at Inquiry level. Notice we have not mentioned judicial review.

We would be very happy to be contacted to contribute further.

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