Written Evidence submitted by Richard Connaughton

to

The Joint Committee on the Draft Deregulation Bill

Land Usage

Government of the People, by the Bureaucracy

1. It is difficult to comprehend:

    - Why a Deregulation Bill is to be the means of further adding to a disparate body of Rights of Way Law.
    - Why the Public Service should take the lead in preparing their opportunist material to become law.

- For reasons set out in the main body, we recommend the proposals appearing in the Land Usage section of this draft Deregulation Bill be expunged.
- To ensure a positive and necessary contribution is not lost, we recommend the present Land Usage material be withdrawn and substituted by the following proposals:
- In accommodating the aspirations of the User and Used, there is an overarching principle that the interests of the former should not be advanced to the detriment of the latter, that a near equilibrium is sustained where the latter is regarded as first among equals. The present proposals before the Committee is a step too far. It is not unreasonable for the balance of advantage to be adjusted in favour of the Used who live in the country, maintain and nurture the land.
- The structure which sustains a hegemonic imbalance and bias must be uncoupled.
    - The SWG offends democratic principles. It must go. The membership of its replacement, organisations, nationally and regionally, should reflect the idea of a common interest guided by common Charters.

- Control Measures are to be drafted and applied to the inappropriate activities of Officials within DEFRA, the Planning Inspectorate and County Rights of Way Departments.
- The present cadre of Government Inspectors should be stood down immediately and replaced by Officials from the Land Registration Division of the Property Chamber.
- Bad law should be modified to prevent abuse.
- Sponsors of the idea of Lost Ways are invited to set out their cases to demonstrate the legitimacy of their claims. Failure to convince would see Definitive Maps closed to new additions in late 2014, thereby achieving significant savings in manpower and costs.

2. What we have here is the confident presumption of the bureaucracy to usurp the authority of both Houses by setting out new legislative *Regulation* of its own self-serving measures camouflaged within a draft *Deregulation* Bill. We have the coincidence of a broad discussion considering whether the malfeasance evident within the access industry should be the subject of a proportionate Leveson-scale Inquiry or the dossier simply handed to the Metropolitan Police with a view to identifying those with questions to answer.

3. I am not opposed to Rights of Way. I enjoy walking. What is unacceptable are the means employed to justify ends, employed by militant hierarchies who misrepresent their membership. Ordinary walkers loathe walking through the homes of others yet it is the big issue where the creation of precedent is not going to be allowed.

4. The machinery employed to achieve such certitude is a form of Centralised Democracy borrowed from the PRC involving the co-ordinated effort top-down of Government Officials from DEFRA, through the Planning Inspectorate to access Officials in Strategic Authorities. Within that framework, we identify the two components essential for successful subversion, communication and control, C^2, ensuring active access industry opposition at every point of contact.

5. Examination of Land Usage topics reveals a linkage with the product of a Joint Natural England and DEFRA endeavour which led them both, in separate papers, to come to 32 identical recommendations for 'reform'. At the end of that exercise, there was a consultative period.

None of those who responded negatively to a clumsily executed deception was invited to any further participation. The Joint Parliamentary Committee is being asked by the access industry to provide the legislative endorsement to permit their aspirations to become Law. I would hesitate to allow the public service to reform themselves.

6. The route to this point reveals the public service intent upon reaching two objectives. First, enhanced job security for their members and second, the consolidation of their dominant position in all Rights of Way matters. In 2008, a Stakeholder Working Group (SWG) on unrecorded rights of way came into being. This group, a Front for the access industry, inveigled its way into becoming central to Rights of Way management. We wish to know on what authority? There are two principal observations arising from that act. First, the nature of the SWG, all of whose members were selected by Natural England, a quango. The Minister said its composition reflected a "balanced representation". There were three or four individuals who might be thought to have been pro-Country – e.g. the CLA and NFU. It is they who would have felt the force of psychological pressure the greatest. The Group was told not to prejudice consensus or attempt to destroy the integrity of the 32 recommendations by cherry-picking.

7. In its draft Deregulation Bill submission dated 21 August 2013, the NFU stated: "The members of the Group (SWG) including the NFU consider the changes (the report) advocates a cohesive package. Any partial implementation of its recommendations would unbalance the position and

damage the consensus behind the proposals" – quintessential Stockholm Syndrome. As part of my research, I interviewed the one unattached member of SWG. I asked him to explain how he had come to vote in favour of all 32 recommendations. His reply is revealing: "I did so because I was worried what might happen to my farm had I not done so". Research also revealed one of the SWG is known by the name "the animal". There is enough evidence here to indicate the SWG is unfit for purpose.

8. The CLA and NFU do not claim to represent anyone other than their own members. They owe their membership an explanation why they identified their people with *all* 32 of Natural England's and DEFRA's self-serving recommendations. The CLA "advisor" said a new Bill would simplify the correction of errors. There is no provision for the correction of errors in statute law. Both the CLA and NFU appear quiescent, as though content that is the price to be paid for a seat at the high table when, in reality, their numbers are so small as to guarantee they remain a permanent minority, destined to be consistently outvoted. The Minutes of the SWG's 4th Working Group reveals: "Several members emphasised that it should be easier and quicker to change the alignment of existing rights of way where this carries widespread local support". The entry continues: "These people recorded their regret that it had not been possible to reach agreement among the Group".

9. There are country people outside the CLA and NFU totally unrepresented in this process. There is a randomly assembled dozen people representing countless other dozens. They want to see the SWG bias changed, to see the process democratised; they want to be heard. Their common denominator is that they have all suffered or been aware of the bullying and intimidation of Government Officials and their associates to achieve their aims. Their accounts appear in the Open Letter to Oliver Letwin MP dated 16 July 2012.

10. Only two of the dozen members of the self-styled Alternative Stakeholders' Working Group (ASWG) are members of CLA and NFU, both of whom have repudiated these Organisations. There are also regional access committees about which little is known in relation to the leadership and membership. The ASWG believes that decision-making affecting the countryside, where they

live, should be represented by a country lead rather than the present state of perpetual subservience. Sir Arthur Hobhouse would be distressed to discover the sins and liberties taken in his name by those whom he was originally instrumental in introducing to the countryside. It resembles a takeover and has gone too far. The balance must be redressed. The attempt to insert new Regulation into a Deregulation Bill is the last straw.

11. I will conclude the observation on the first principle by reference to the curtain-raiser on this subject at the top of p.4 of the draft Bill – i.e.

> "devolving decisions on public rights of way to a local level, which will cut the time for recording a right of way by several years and save almost £20m a year through needless bureaucracy".

We find in the Counties' dedicated officials, supporters of rights of way who invariably see it as their duty to further rights of way. Access is their *raison d'êtr*e. As a priority, they process access applications first while they score-down and delay applications relating to proposed diversions or deletions. The suggestion that devolving decisions on public rights of way to a local level will make an improvement is only true of *recording* rights of way. There has to be a mindset revolution. There is no indication how the £20m might be saved other than through "needless bureaucracy". That sum is small change relative to the hundreds of millions of pounds that will be loaded on Councils by virtue of our second principle relating to the Lost Ways Scam. The Ramblers say the Deregulation Bill contains "measures to make it easier for Councils to offer alternative paths", something easier said than done and something I have not previously seen the Ramblers supporting.

12. The collation of paths that were reasonably alleged to exist within parishes began in 1949 as a guided, due process with a view to creating a Definitive Map for every County. Parishes did not, or generally did not, declare ancient or historic ways which had become redundant over the years. Paths which had been used by agricultural labourers one or two centuries previously and which no longer existed had been absorbed by fields and woods. The access industry set out to identify these lost ways and reclaim them for public use. Many a mature lady has spent time in the National Archives scanning

historical records for lost ways which had previously been assessed within parishes and found to no longer exist. Elsewhere, representatives of the access organisations with insatiable appetites made claims from maps declaring private paths to be public. They were in no position to second-guess the decisions taken by country communities at the time. One of the failings of the Hobhouse plan lay in the absence of any statutory requirement for counties to tell owners what they had done. Many years later, local people would discover non-existent paths being claimed across their property.

13. Lost Ways were part of DEFRA's and Natural England's grand design. In Stepping Forward, Natural England equates 10,000 Lost Ways in value terms as justifying a quadrupling of the resources presently allocated to the access industry. Counties were asked for their tally of identified Lost Ways. The 'consultant' hired by Wiltshire, for example, recorded 1700. An attempt is being made to identify that consultant.

14. There is an intention to keep open the Definitive Maps until 2026, more likely to be 2031. The proposal is groaning with exceptions and exemptions. The process began in 1949. How is it possible that any genuine Lost Ways can still remain undiscovered? There is no coherent reason for observing 2026 (2031) as a closure date of Definitive Maps to new additions. A properly conducted costing exercise will reveal why. We recommend that interested parties submit reasons why Definitive Maps should not be closed to new additions in 2014. Otherwise, there is good reason to believe that what we have here is an exercise in empire-building.

15. Odd how the arrival of a large British trade delegation in an important trading State always seems to be accompanied by a sanctimonious lecture of that State's failure to observe human rights. Do we epitomise the perfect state, above criticism?

16. The Human Rights Act 1998 came into English law in 2000. Article 6(1) guaranteed any needy citizen a fair, impartial and independent tribunal. By 2001 that promise was compromised, the law never applied. In 2000, the Institute of Public Rights of Way Officers was openly advertising vacancies for Government Inspectors. The only experience required was "the recording

of rights of way on definitive maps". A new cadre replaced the Lord Chancellor's Panel of Independent Inspectors. Nine of the eleven engaged on casework were formerly junior rights of way officials.

17. In that measure, the Inspectors' impartiality became increasingly open to question, they were not independent and the absence of any legal qualification among them meant they could not chair a tribunal. In short, they were illegal. Those who faced their rough justice complained of their treatment but were ignored. The only way in which bad decisions could be challenged was through the disproportionate, expensive path to the High Court. Here, Judges have accepted the novices as their tribune of fact, "entitled to come to the decisions they did". At a recent case where an Inspector had erred in law on four counts, the Judge called for 'ventilation' in the public interest. These paper judgements are very limited. Paper cannot be cross-examined. Potentially, there are eleven years' worth of dodgy decisions to be annulled. The Hobhouse Report 2011 recommends reversion to the local decision in those cases where the Inspector illegally overturned the expressed wishes of the County's elected members. There is the matter of compensation. From 1 July 2013, there can be a fresh start to a newly-created Land Registration Division of the Property Chamber. Fully compliant with the law, in future, evidence will be given on oath as a long sought after deterrent to those who might otherwise be tempted to lie.

18. The Committee has been provided with a number of briefs. The Bowers Case explains a *modus operandi* used for depriving property owners of paths and ways. In the Bowers case we see Government Officials of the access industry colluding with fellow travellers to claim a path through the Bowers' home. They meet dogged resistance, yet Bowers could not win. His opponents took him through the courts. He was broken in health and also financially. In the Bowers Case, we see how bad law can be manipulated. The worst is Section 31 of the Highways Act 1980. A group can testify to their alleged 20 years plus uninterrupted use of a private path to have it dedicated to public use. The most unpleasant aspect of the misuse of this law is the sight of a gang assembled to deprive an owner of his or her rights. Patrick Lowe of Cumbria, a member of the ASWG, wrote: "In each case, it has been the horse riders'

statements that they had ridden the route for more than 20 years – not given on oath or verified with any documentary evidence" and accepted by the Inspector as "overwhelming evidence".

19. The Bowers Case is an amplification of one of 12 appearing in an open letter to Oliver Letwin dated 16 July 2012. These submissions tell of serious abuse, bullying and intimidation by Government Officials. Please refer to "Rights of Way. A Collection of Letters for the Rt Hon Oliver Letwin MP to Convey to the Rt Hon Owen Paterson MP, Secretary of State DEFRA". A reply to this Letwin letter by Owen Paterson was received 13 months later. It had proven impossible to receive comment on public service malpractice before that date. The Hobhouse Report 2011 tells of the public's endeavours "to avoid the interference of a partisan bureaucracy". Bowers wrote to the Minister, Richard Benyon MP, explaining why he had sent his letter care of Ms Nadine Dorries MP. He had particularly asked her to contact the Secretary of State direct "due to the reputation of your Rights of Way bureaucrats to be pro-access and biased. I did not want the correspondence intercepted and subject to a nonsensical response".

20. Owen Paterson's response to Oliver Letwin was nonsensical. Nothing was being learned, no one cared. It would seem obvious, in a case strong in evidence of public service malfeasance, the draft reply should not be entrusted to the hands of public service colleagues. They have no qualms in writing rubbish and presenting their political leaders as unworldly fools. If one thing is learned from this exercise, it is this: public servants despise their political masters but the reverse is not the case. The opportunity to absolve themselves proved irresistible and yet another duly signed, nonsensical letter was carried from the Secretary of State's desk in triumph.

20. The Hobhouse Report 2011 is a repair manual to address some of the damage caused among the country community. The last line of the last page ends thus: "It is to be hoped that those who have the power to alter things also have the courage to resist the ingrained prejudice of the present administrators and can see that there has to be change".