

Submission by Tony Thomson on behalf of FFT in response to
the DETR Rights of Way Consultation July 1999

Customary use rights of fringe benefits of common and greensward are the most significant to the livelihood of the poor and the marginalised.'

Registration processes and definitive map procedures have never been an exhaustive account of the actual practice of common rights. This is because of the systemic exclusion of those without property right or feudal title to the land they inhabit.

The expansion of mono-cultures into the commons environment has led to violent assaults on customary practices on a global scale. Statute has not been impartial in this process. The establishment of private and exclusive ownership of land has been one of its core functions.

One could characterise indigenous issues as an unresolved part of this legacy.

Nomadic dwelling brings these antagonisms into high relief as a result of the conflict between market forces and customary practice, the continuing enclosure of the commons environment, (this includes rights of way), the quasi-feudal hegemonies that operate behind our democracy, and the movement of refugees generated by poverty related conflicts.

The stimuli to Nomadic dwelling are perennial and form a continuous thread of human experience reaching back into prehistory. It is not an anachronism, but a continuing response to social, environmental, spiritual and economic need.

The traditionally used camping places, which evolved alongside the highway network as it developed, have witnessed nomadic dwelling for millennia. Green lanes are habitat to a diversity of life, including human. For the Traveller, whatever his race or origin, Rights of Way are Human Rights - for it is his relationship with land, greensward and common, that defines his heritage and culture.

The disparity between custom and statute invokes crises that are cultural. The Human Rights Committees General Comments to Article 27 of the International Convention on Civil and Political Rights have made it clear that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources. Article 27 states that:

"In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community of their group, to enjoy their culture, to profess and practice their own religion, or to use their own language".

The Human Rights Act 1998 will require central and local government to review all previous legislation and administrative policies so as to ensure that they comply with the

requirements of the European Convention. For instance, in the 1993 application to the Ruby Smith v UK the Commission held that; "the traditional lifestyle of a minority may, in principle, attract the guarantees of Article 8":

"Everyone has the right to respect for his private and family life, his home and his correspondence."

Discourse on nomadic land use within State Authorities is confined within the parameters of 'unauthorised sites', 'emergency sites' or 'tolerated sites' and 'illegal camping'.

Nomadism is preconceived as something criminal or extraordinary. This in turn provides the foundations on which the official response is justified, racism becomes institutionalised and social discipline once again, becomes an argument for enclosure.

Rarely does the moral entrepreneur act without self-interest.

"The Country Landowners Association's message that farmers will provide access if it is paid for at the right price is hardly revolutionary. Whether buying produce in supermarkets, or funding agricultural subsidies, access users are paying to keep landowners and farmers financially solvent"

Customary use rights have been routinely extinguished by a different and dominant culture. Recent research indicates a loss of between 80 and 90% in areas surveyed in Somerset and Hampshire between 1986 and 1993. Sites around the periphery of market towns have been particularly vulnerable because of their proximity to anticipated urban expansion and the perceived threat of the Traveller to 'property values.

The indiscriminate sanction of eviction and site closure is facilitating an 'unofficial' policy of ethnic cleansing with some highway authorities acting as its willing instrument. Rather than deploy statute addressing the act or the individual to some reforming purpose, injury is inflicted upon a population.

"Institutional racism consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice ignorance, thoughtlessness and racial stereotyping which disadvantage minority ethnic people" The McPherson Report to the Stephen Lawrence Inquiry.

The cumulative effect of piecemeal enclosure has been catastrophic to Nomadic culture. It is being achieved by increments and legal challenge on Human Rights issues have had no opportunity to come into play. The publication of 'Improving Rights of Way' offers the opportunity to bring these to your notice.

Convention on the Prevention and Punishment of the Crime of Genocide 1948

Article II: In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical racial or religious group as such

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Proposal 2 seeks to remove nomadic dwelling from its traditional habitat, in contravention of the above.

The emphasis on exclusion as a sanction of first resort to 'protect' the environment and as instrument of social control has led to the underdevelopment of integrated and socially inclusive systems of resource management and environmental law. This then is the context within which we shall offer our critique.

Taken as a whole the proposals are riven with contradictions. The net effect of proposals 2,3, 5,6,7 will lead to a diminution of public rights and will inevitably, through the intensification of usage and demand on that which remains, create the pretext for increased regulation and authoritarian control (proposals 5,7,13,14,16,17), which will be vested in unelectable police and government officers. The neo-fuedal character of this approach to simplification continues over through to 6 and 14. Proposal 20 is undermined by proposal 3. Proposals 8 to 11 are undermined by all of the above. Proposal 12 is welcome.

The document draws its inspiration from the incompetent management and upkeep of public rights of way since WW2, and in doing so seeks to perpetuate it. This is unacceptable. Another approach is required, one more in tune with the 21st century than the 18th.

Rights of Way contain the last vestiges of the commons environment within public ownership. That this be surrendered to private and exclusive interests would be grossly negligent. Highways play a strategic role in the development process. The rights of way infrastructure in rural areas is a key that can shift agriculture towards a more organic, decentralised, skill intensive and more sustainable mode of production and distribution. They make land accessible. To meet the needs of present and future generations the precautionary principle must apply.

As habitat for a diversity of life, including human, they have the capacity to diminish agriculture's dependency on agro-chemicals, create temperate micro climates, retard soil erosion and reconnect humanity to the natural world. By examining the genesis of the present system we may arrive at a simpler method of completing the definitive map. We will focus on carriageways, the greensward of which is the locus of the Nomads' customary practice to lay-by and make camp.

The nation's country network of highways, which included those green lanes having a public right of way in vehicles, were transferred from Rural District Councils to County Councils under the Local Government Act 1929 and the surfacing of public carriageways with tarmacadarn begun by ROC's continued. However, following their example, County Councils did not continue to tarmacadarn the very minor green roads, which still retained public vehicular rights. There was no legislation stipulating that motor vehicles must keep to the roads that were surfaced.

The National Parks and Access to the Countryside Act 1949 enabled counties to reclassify most of these public roads used mainly as public paths. Through the definitive map process, County Highway Authorities could remake the highway network in their own image. It was a chance to offload, or at least diminish the responsibility for maintenance. This was not really the intention of the Act, but it gave counties the opportunity to give these roads an 'apparent' lower classification when they should have simply remained on the county surveyors public carriageway records however unsurfaced they were. Some were omitted altogether from the survey.

The 1968 Countryside Act gave the 'apparent' lower classifications further credibility by requiring 'evidence' as to 'suitability' and of public carriageway rights. The onus of defending public rights of access was placed on to the individual. 'Special definitive review' powers enabled highway authorities to reclassify RUPPs to footpaths without consultation. In Staffordshire 500 RUPPs were 'lost' in this way. This is what proposal 16 will replicate.

The 1981 Countryside Act, though fortunately removing the 'suitability' requirement, gave inspectors the power to consider whether public carriageway rights existed. However, he has no power to remove them, because the 1949 Act definition of a public bridleway and footpath is 'without prejudice to greater rights': for the Traveller Rights of Way are Human Rights. Once a highway, always a highway remains a precept in English Law. The information relating to the true extent of the Rights of Way system already exists within the maps and records prepared for the transfer of the responsibilities for maintenance from RDC's to County Councils in 1929.

The County Surveyors carriageway record should be updated to match the 1929 record. This is the basis for a simplified and complete definitive map.

From this foundation, sane and creative policies for rural regeneration can grow. Agenda 21 affirms that unless development is distinguished from economic growth, the opportunity to shift to sustainable development may be missed. Natural capital has now become the limiting factor to development. Within this new paradigm, investment must shift from man-made capital accumulation towards natural capital preservation and restoration.

Agenda 21 Section 2; Integrated approach to the planning and management of land para 10.1. By examining all uses of land in an integrated manner, it makes it possible to minimise conflicts, to make the most sufficient trade-offs, and to link social and

economic development with environmental protection and enhancement, thus helping achieve the objectives of sustainable development.

Agenda 21 Section 3; Strengthening the role of major groups 26.5; (b) Provide technical and financial assistance for capacity building programmes to support the sustainable self development of indigenous people and their communities; (c) Strengthen research and education programmes aimed at achieving a better understanding of indigenous peoples' knowledge and management experience related to the environment, and applying this to contemporary development challenges.

Customary practices facilitate shared usages within an ecological discipline. By learning from the traditional nomadic models of land use that have developed over the centuries sustainable, practices can be arrived at through inclusive management measures.

Customal practice functions within a framework of reciprocal obligations between people and necessitate the observation of certain mores on which reasonable people can agree as being 'common sense'. Principally, they are;

- 1) keeping sites clean.
- 2) respecting rights of way, and
- 3) controlling dogs.

Where these are not observed, specific legislation addressing the offence and the individual should be deployed. In this there is equity.

Customal site usage offers the Opportunity for population dispersal, discreet location, geographic choice and rotational conservation. Sites are used seasonally and in sequence to eventually create a cycle. They are therefore temporary and permanent at the same time. A rotational conservation approach involves newer Travellers in a custodial approach to land use, an approach which conflict has too often thwarted. Movement and dispersal within an inclusive management regime avoids situations escalating into crisis. The virtues of customary site models are many:

1. The settled community (if any) in proximity to sites are likely to be more tolerant of transitory occupation of known duration.
2. There would exist the facility of geographic choice, population dispersal and discreet location.
3. Most of the sites are already there. A green lane is not an alien feature on the landscape. Hedgerow, as well as being a visual screen, offers protection from strong wind and sun, creating temperate micro-climates in otherwise exposed locations.
4. Orthodox local authority site provision is budgeted at £27,000 a pitch, traditional site models could translate this into 3 miles of mixed species hedgerow, of reinstated green lane.
5. Cross funding for tree and hedgerow planting, shelter-belts, set aside, restoring historic landscapes, enhancing public amenities and highways will help allay costs.

6. The knowledge that there is fresh ground in the vicinity after the expiry of the site presently occupied would engender a spirit of cooperation between the settled and the nomadic community and obviate recourse to expensive legal action.

7. It meets an identifiable need for Traveller site provision within both the parameters of DOE i/94, The Cripps Report, The McPherson Report, Agenda 21, ECHR, ICCPR and International Convention for the Protection of Rights of the Child.

The cooperative approach to rotational conservation has been implemented in Dorset for the past 5 years. Dorset CC's Best Value Proposal states:

"This strategy has successfully avoided legal costs of up to £1 million, and reduced the level of complaints and antagonism between travelling and resident communities".

These savings in legal costs, along with an ethnically and culturally appropriate interpretation of Parts VI and VII Housing Act 1996 as to what 'suitable accommodation' is - RE ECHR A8- could liberate substantial resources to reinstate, enhance and maintain the green lane network for all countryside users. Essential green lane and hedgerow and green lane maintenance could coincide with transitory occupation. The bio-dynamic potential of this resource could be enhanced through the planting and cultivation of useful herbs, flowers, fruits and raw materials in greensward and hedgerow creating an enhanced commons resource. This integration can be furthered by Countryside Skills training for Travellers. The synergy between environmental regeneration and poverty alleviation could provide sustainable livelihoods for many and an enhanced environment for all.

"At the heart of sustainable development is the simple idea of ensuring a better quality of life for everyone, now and for generations to come. To achieve this we need integrated policies, which recognise that quality of life depends on economic social and environmental objectives, and make the links between them."

MICHAEL MEACHER. MINISTER FOR THE ENVIRONMENT DETR MAY 1999.

Summary

In taking the 1929 Local Government Act records as the datum, the County Surveyors carriageway record forms an already comprehensive definitive map of green lanes. On the ground, this will facilitate a greater dispersal of usages and minimise the need for regulation because impacts will be less. Habitat would be secured and expanded throughout the rural landscape.

Green Lanes have a strategic role in rural regeneration. That this capacity be abandoned to private interest would be negligent to future generations.

Rotational conservation strategies may be assisted with temporary TRO's, but will find greater security in operation within inclusive management regimes allied to countryside skills training

As traditional habitat for Travellers, Rights of Way are Human Rights.

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