

ITEM 17

EXMOOR NATIONAL PARK AUTHORITY

14 NOVEMBER 2006

OTHER BUSINESS OF URGENCY

EXTRACT FROM THE DRAFT MINUTES OF THE MEETING OF THE EXMOOR LOCAL ACCESS FORUM HELD ON WEDNESDAY, 8 NOVEMBER 2006

Restricted Byways/Items Requested by Jason Hooper, Forum member, concerning:-

- **the decision of the National Park Authority not to agree to recommend Somerset County Council to speed up the process for completing Definitive Map Modification Orders on Restricted Byways in the National Park; and**
- **comments from the Exmoor Society regarding low attendance levels at recent Forum meetings which the Society suggested called into question whether balanced decisions were being made between the various interests making up the Forum – to which he responded in a letter to the Forum that there was a balance of membership categories and user groups taking the decision on Restricted Byways and that it was the people who owned land, lived and worked on Exmoor who conserved it rather than the Society.**

Further to the Forum's last meeting (Minute 22(1), the National Park Authority, at its meeting on 5 September 2006 (Minute 34(2), had not agreed the Local Access Forum's recommendation to ask Somerset County Council to speed up the process for Definitive Map Modification Orders on Restricted Byways within the National Park and instead had sent letters of support to the three safari operators which they could use when contacting landowners for permission to use routes. Subsequently, however, new information regarding the interpretation of Part 6 of the Natural Environment and Rural Communities Act (NERC) in relation to these routes had been produced by the Head of Rights of Way Policy and Legislation at Defra who had drafted this part of the Act. The advice was that, while the former RUPPs (Roads Used as Public Paths) had been reclassified as Restricted Byways, on those where outstanding claims for BOATs (Byways Open to All Traffic) had been made before 20 January 2005 the unrecorded rights had been preserved from extinguishment until the applications had been dealt with (through the Road Traffic Act 1988 and the Countryside and Rights of Way Act (CRoW) 2000). This meant that any prosecutions on those routes would be unsafe where users had evidence of mechanically propelled vehicle rights, which they could use as a defence.

Paul Hawkins explained that the Defra advice had been provided as a result of confusion over the law and conflicting guidance from Somerset County Council as Highway Authority, which had the legal duties on enforcement. The role of the National Park Authority was to provide good quality information and to ensure that routes within its area were well managed.

Somerset County Council currently had approximately 270 outstanding applications for changes to the Definitive Map throughout the County, of which approximately 160 were former RUPPs.

The backlog was now thought to be 8 to 10 years, in view of the various processes that needed to be gone through, including public inquiries on each one which could last for up to three days.

There were 26 former RUPPs within the National Park, out of a total of 42, upon which applications had been made for higher rights prior to the due date for making them.

Paul Hawkins suggested, however, that, even with the new information, it did not provide absolute clarity on the situation and the National Park Authority would be writing to Somerset County Council requesting formal advice on the matter. He was also concerned that there was widespread misunderstanding of the law amongst the general public, as to where users were able to go, including businesses such as the safari operators. John Whitcutt commented that, until the applications on the 26 routes within the National Park were settled, uncertainty was likely to remain and the defence of higher rights would be used as justification for using motor vehicles over them. This could result in cases being taken to the Magistrates Courts which were ill equipped to deal with them, but they would need to reach determinations. These would not be binding on Somerset County Council and would be likely to complicate matters even further. John Whitcutt added that, while the National Park Authority had not supported the speeding up of the process on the applications, in light of the new advice, his view was that the sooner the 26 applications were resolved one way or the other the better to clarify the position. Despite this, he added that it was within landowners' rights to give consents for the public to use Restricted Byways over their land.

The letters of support provided by the National Park Authority for the safari operators to give to landowners when seeking consents to use routes had, however, produced little.

Paul Hawkins explained that management of the Restricted Byways would be easier from an unknown date in 2007 as the National Park Authority was to be given powers to implement Traffic Regulation Orders (TROs). TROs would not, however, be applicable on all Restricted Byways, but would be helpful in particularly sensitive locations.

Christina Williams, a member of the Executive Committee of the Exmoor Society and member of the public, responded to Jason Hooper's comments by saying that the Society was not totally against all vehicles using some of the former RUPPs, that it had expressed concern about the democratic nature of the Forum, that it was a voluntary body with 3,000 members (many living on Exmoor) with those on the Committee having been elected and 60% of the Committee having farming backgrounds.

RESOLVED: (1) to **recommend** the National Park Authority to reconsider its position in not agreeing to ask Somerset County Council to speed up the processes in relation to the 26 Restricted Byways within the National Park upon which there are applications for Definitive Map Modification Orders, in light of the new advice from Defra;

(2) to also make direct representation to Somerset County Council on speeding up the processes on these routes, in view of the County Council, as Highway Authority, being a Section 94(4) body under the CRoW Act which the Forum is required to provide advice to; and

(3) to contact the Somerset Local Access Forum to enquire whether, in the light of the new advice from Defra, it is seeking a speeding up of the processes where there are applications for Definitive Map Modification Orders on the large number of former RUPPs outside the National Park.