

**Open Report on behalf of Richard Wills - Executive Director - Development Services**

Report to: **South Lincolnshire & Rutland Local Access Forum**  
 Date: **13 October 2010**  
 Subject: **Discovering Lost Ways - Forward Planning & Volunteer Work**

**Summary:**

A report on the original Discovering Lost Ways project, the work of the Stakeholder Working Group and potential use of volunteers in map research.

**Recommendation(s):**

That the report is noted by the Local Access Forum and that consideration is given to providing advice on the potential usage of volunteers in mapping research work.

**1. Background**

Sections 53 to 56 of the Countryside and Rights of Way Act 2000 provided a cut-off date of 1st January 2026 for recording certain rights of way created before 1st January 1949 and providing for the extinguishment of those pre-1949 rights not claimed by this deadline. (It should be noted that sections 53-56 of CROW have not yet been brought into force).

The introduction of this cut-off date was aimed at bringing certainty to users of the countryside and landowners / managers about what rights actually exist. Going hand in hand with this deadline was a project aimed at increasing and improving the rights of way network in advance of the cut off date and by seeking to research and record certain routes which would otherwise be lost in 2026.

**The Discovering Lost Ways Project**

The Discovering Lost Ways (DLW) project was set up by the Countryside Agency (now Natural England). The focus of the project was to identify so called 'lost ways' through systematic archive research. In 2004 the Archive Research Unit (ARU) was set up (under contract with LandAspects) to carry out this research. The ARU formulated a research methodology which was to be piloted in the counties of Cheshire and Wiltshire. The research methodology followed a five stage process:

- Business readiness

- County planning and scoping
- Base map development
- Archive research
- Case evaluation.

It was not the responsibility of the ARU to transfer this research into routes on the ground.

By spring of 2007 the Countryside Agency had become Natural England (NE), operating under a different remit and with different motivations which left a question-mark over the future of DLW.

At approximately the same time questions were also being raised about the project. Public money had been spent on researching historic routes, but it was not clear how the results of this research were to be published:

- Would cases be submitted to Surveying Authorities through Wildlife and Countryside applications?
- Who would make these applications?
- How would Local Authorities and PINS cope with the additional workload?
- Who would choose which routes should be claimed?
- What would happen to those routes identified as potential lost ways, but not claimed?
- What about town centre paths?
- Was there really a body of able and willing volunteers ready to assist the ARU in their task?
- Above all, did the Discovering Lost Ways project really reflect good value for money? And what did DLW aim to do - record all lost ways in advance of 2026, or only those which filled in the gaps in the existing network, and provided a real public benefit?

In May 2007 Natural England announced that a fundamental review of the project would be undertaken which would take into account what the project had so far achieved, and what the future direction of the project should be. The review had two main components:

- A programme of stakeholder engagement
- A series of pathfinder projects

### **Stakeholder Engagement**

During the summer of 2007 a series of three 'Stakeholder' workshops were held. These workshops were held to consider the future direction of the DLW project, and the role of Natural England in that future. Meanwhile, a Technical Working Group was convened to consider detailed technical aspects of the project, such as legislative issues.

The outcome of these projects is published in a report named “Finding the Way Forward”, the basic premise of which was that DLW in its current format was not workable and that other methods of delivering lost ways should be explored.

## **Pathfinder Projects**

A series of five projects, designed to look at how routes identified through research could be transferred to routes on the ground, took place during 2007. The five projects are described below:

### **1. Cheshire**

Research has identified 109 strong or tentative cases for potential lost ways. Of these 109, 5 applications were made under section 53(5) of the Wildlife and Countryside Act 1981.

### **2. Shropshire**

Natural England worked with Shropshire County Council to look at how potential routes might be transferred into routes on the ground through avenues other than formal 53(5) applications.

### **3. Nottinghamshire**

An assessment of how research might be focused to concentrate on those routes which, if established, would provide a clear public benefit.

### **4. Herefordshire**

The Herefordshire Local Access Forum set up a sub-group to assess how local stakeholders might contribute to the project.

### **5. General**

Natural England worked with local volunteer groups and LAFs to investigate how local volunteers might contribute to the identification and research of routes.

## **Further Proposals**

The first formal indication of the outcome of the 2007 review was a Natural England Board Paper which recognised that the DLW project was extremely resource intensive, and made five proposals:

- Natural England to move away from actively researching/claiming routes and to instead provide advice to individuals and groups wishing to do this for themselves.
- Natural England to facilitate a fundamental review of access legislation and processes.

- Natural England to work with stakeholders on this review (the paper suggests that the Rights of Way Review Committee or a sub-group of it may be a suitable body to consider this review).
- To build on and progress ROWIPs.
- To invest the money saved on DLW on the above proposals.

Ministerial approval for the proposals was granted in early March. Following this approval the Natural England report "Discovering Lost Ways – Outcome of the Review and Recommendations for the Way Forward" was published.

The paper estimates that if the DLW project, in that format, were to be rolled out across England, the initial estimate (made in 2002) of 20,000 cases still stands, but the potential costs would increase from the initial estimate of £11.1 million to around £80 million. Natural England recognised that even if this amount of money had been available, the claims generated by the project could remain unprocessed for many years. On the 16th March 2008 Defra confirmed that no action would be taken to bring sections 53 to 56 of the Countryside and Rights of Way Act 2000 into force, at least until the conclusions of the stakeholder group (as proposed by Natural England) have been reported to Defra.

### **Following Discovering Lost Ways**

In the autumn of 2008 Natural England set up a Stakeholder Working Group to undertake a fundamental review of the law and procedures relating to the recording of rights of way. The group has looked at ways of completing the definitive map (in effect, trying to achieve by other means what the Discovering Lost Ways project failed to do), but also explore other improvements to the way in which rights of way are recorded and managed.

The group consisted of fifteen members (five from each of the authority, landowner and user interests) and was chaired by Ray Anderson, a retired civil servant. The group's final report was published March 2010.

The report identifies 32 strategic proposals for reform which aim to:

- deliver greater certainty about where pre-1949 public rights of way exist and do not exist, protecting useful or potentially useful rights from extinguishment;
- incentivise good quality applications, promote early sharing of information, and limit the scope for unreasonable objections;
- improve procedures where things can be done more effectively, or unnecessary steps can be removed;
- make the system easier for all to understand;
- make procedures more flexible, so that a light touch administration is possible where appropriate and there can be early negotiated solutions to potential conflicts with modern land use;
- encourage the poorest performing authorities to rise to the standards of the best performing authorities; and
- encourage consideration of the scope to integrate the management and administration of the highways network.

The Chairman of Natural England, in a letter to ministers unreservedly commending the Report, urged the Government to:

- commission Defra officials to work up quickly the detailed legal changes needed to give effect to the Group's recommendations, and
- consult widely with stakeholders to ensure that such changes fully reflect their needs for an improved system.

Since then however the change of Government has led to no further response although the matter has been raised with Richard Benyon, the new Parliamentary Under-Secretary for Natural Environment and Fisheries

### **Volunteer Involvement post DLW Project**

A number of Authorities have begun to review the use of volunteers in carrying out "lost Ways" type projects and at a previous meeting of the Mid-Lincolnshire Local Access Forum it was felt that it may be beneficial for Lincolnshire to engage with volunteers to review potential routes. The following is a suggestion on how this may progress and is based on the experiences of other Authorities who have already begun this type of work.

The initial stage should be to assess the aims of undertaking such work – Other authorities have found it beneficial to link such projects with their Rights of Way Improvement Plans and to use the definitive map modification process as a mechanism for establishing routes for which there is a modern demand, using historical evidence.

Some authorities have also used volunteer led research to investigate the various anomalies which appear on definitive maps regarding route status or seemingly dead-ends at parish boundaries.

In making such an assessment it needs to be recognised that the authority has limited resources coupled with an existing backlog of casework and it is essential that the results of volunteer led research is prioritised properly to ensure that positive outcomes are gained from the project.

Taking Hampshire's experience, volunteers researched routes in 45 parishes where it was felt that network improvements could be made and forms relating to 200 routes were returned of which 5 showed that there was strong historical evidence of rights. These 5 cases were the ones submitted to the Council for investigation.

In Lincolnshire it is recommended by officers that a similar approach is taken and trialled over a specific area. Given that Lincolnshire's definitive map is split over various Rural and Urban Districts it is felt that investigation into an area such as the Spilsby Rural District would provide a good barometer of the scale and scope of such a project.

Once an approach has been agreed the level of interest in undertaking the historical mapping research will need to be gauged. Initially this could be confined

to interested members of the two Local Access Forums although if, successful or if more numbers are required, interested user groups such as the Ramblers, British Horse Society or Lincolnshire Fieldpaths Association could be approached. An alternative approach would be to advertise for volunteers in the Council's free newspaper, *Inside Lincolnshire*, which is delivered to most households across the County.

Having selected the appropriate number of volunteers the County Council will provide training in researching the principal important historic sources of evidence such as the enclosure awards, tithe awards, old series OS mapping and Finance Act records. It is proposed that the most suitable venue for such training will be the County Archives Office where the majority of such documents are stored.

Once formed and trained the volunteer group may wish to assist the Council in the production of an appropriate recording form for the resulting research and also in the assessing of specific routes or areas requiring research.

**2. Conclusion**

That it is possible for the County Council to engage with the voluntary sector to review unrecorded rights of way but that this should be initially limited to a specific area as opposed to being rolled out across the whole county.

**3. Consultation**

- a) Scrutiny Comments**
  
- b) Executive Councillor Comments**
  
- c) Local Member Comments**
  
- d) Policy Proofing Actions Required**

n/a

**4. Appendices**

These are listed below and attached at the back of the report	
Appendix A	Electronic addresses of referenced reports

**5. Background papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Chris Miller, who can be contacted on 01522 782070 or [countryside\\_access@lincolnshire.gov.uk](mailto:countryside_access@lincolnshire.gov.uk).

Appendix A – Electronic Addresses of Referenced Reports

**2007 - Finding the Way Forward**

[www.iprow.co.uk/docs/uploads/dlwfindingthewayforward.pdf](http://www.iprow.co.uk/docs/uploads/dlwfindingthewayforward.pdf)

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**2008 – Natural England Board Paper**

[http://www.naturalengland.org.uk/Images/discoveringlostways0910\\_tcm6-3688.pdf](http://www.naturalengland.org.uk/Images/discoveringlostways0910_tcm6-3688.pdf)

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**2008 – Natural England DLW Review Report**

<http://www.iprow.co.uk/docs/uploads/dlwreviewreport.doc>

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**2009 – Final Report of the Stakeholder Working Group on Unrecorded Public rights of Way**

[www.naturalengland.etraderstores.com/NaturalEnglandShop/NECR035](http://www.naturalengland.etraderstores.com/NaturalEnglandShop/NECR035)