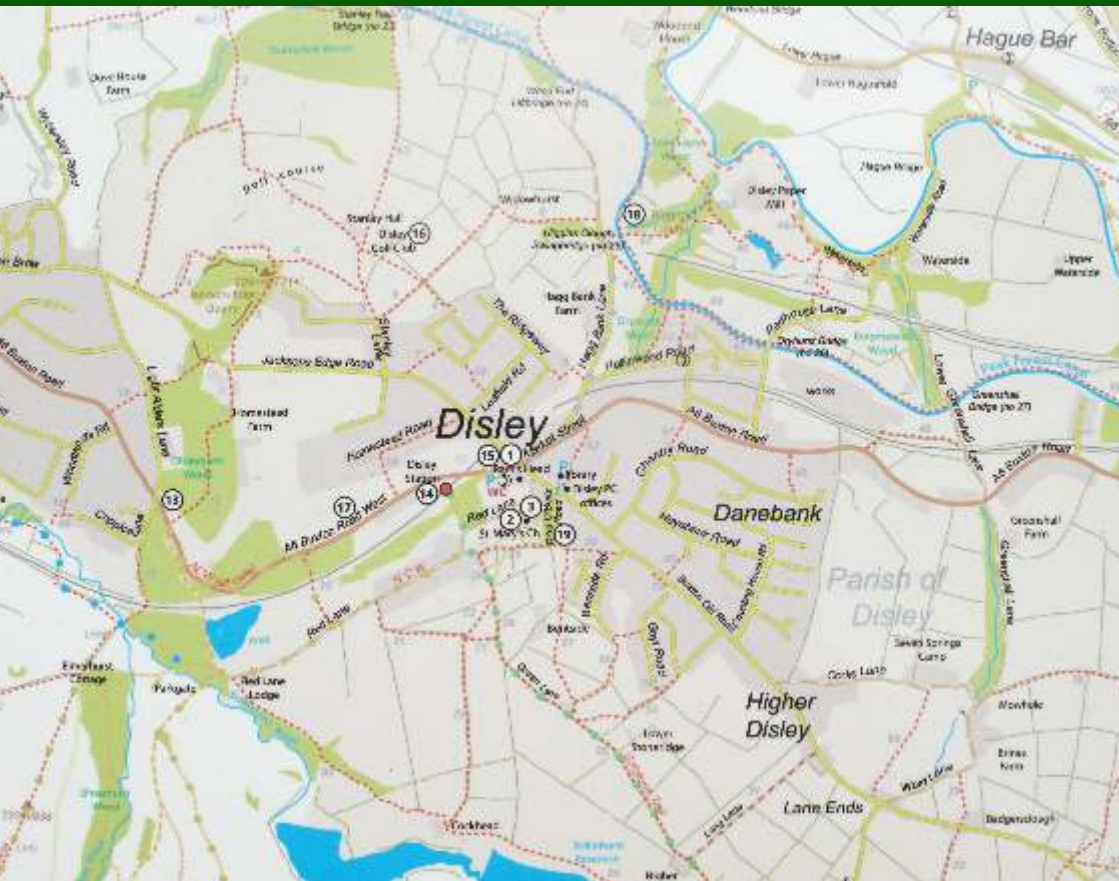


A Guide to
Footpath Law
For Parish Councils



Disley Parish Map

Published by: Peak and Northern Footpaths Society
Protecting Footpaths, Helping Walkers since 1894

Introduction

Parish councils interested in safeguarding and improving the public paths in its area has available to them a wide range of powers which give them a privileged position to protect this precious heritage. Most of this can still be done even at a time of budget restraint and cuts in public expenditure.

This leaflet has been published by Peak and Northern Footpaths Society to assist Parish Councils by explaining the powers available to them with respect to Footpath Law.

Highways Act 1980 section 130(6)

This provides that if the parish council makes a representation to the highway authority, who will be either the county council or the district (unitary) council, that a public right of way has been unlawfully obstructed it is the duty of the highway authority to take proceedings to have the obstruction removed.

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This would mean serving a notice on the landowner to remove the obstruction under section 143 of the Highways Act 1980. If the obstruction is not removed in the time specified, usually four or six weeks, then the authority can remove the obstruction itself and recover the cost from the landowner. Thus providing the representation is correct, i.e. the path concerned is a public right of way and is obstructed (not out

of repair e.g. because the surface is overgrown or flooded), the highway authority is bound to take steps to have the obstruction removed.

A good illustration of the power of this provision is provided by the case of R v. Surrey County Council ex parte Send Parish Council heard in 1979. This concerned a path which had been taken into the gardens of a number of houses in the parish. The path was consequently obstructed by a number of fences. Also a summer house and a swimming pool had been constructed on the line of the path. Whilst the path was not recorded on the definitive map for the parish, there was good evidence, accepted by the county council, that the path had the legal status of a public footpath on the basis of historical evidence and use of the path as a public right of way for in excess of twenty years. The parish council duly made representations to the county council under section 130(6) asking for the obstructions to be removed. The owners of the houses then proposed a diversion of the path onto land which they had purchased for the purpose. The parish council objected to this proposal as the diverted path was not as convenient as the original path and they did not see why the house owners should be allowed to buy their way out of trouble by purchasing the land, diverting the path and so extinguishing the

rights of the public to use the original footpath. The county council then proposed to extinguish the original path and to recognise the path on the land purchased by the householders as an alternative substitute path. In response the parish council brought an action in the High Court claiming that the county council was not complying with section 130(6) and asking for an order, mandamus, to force them to take action to have the original path reopened free from obstructions. This application was successful. The Court found that the County Council was acting in the interests of the householders, the persons who had obstructed the path and not in the interests of those who should have been enjoying the use of the of the right of way over the original footpath. This was in breach of their statutory duty under section 130(6). In effect the County Council had shut its ears to the parish council's application made pursuant to the section and this was unlawful.

This case shows that representations under section 130(6) provide a powerful weapon available to parish councils to get an obstructed footpath or bridleway cleared by the highway authority which has a statutory duty to 'assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority'. Wonderful words and a worthy sentiment indeed!



Replacement Bridge on Holmfirth FP168

Wildlife and Countryside Act 1981 section 87(5)

This section, of the act, states that the parish council should have for public inspection, a copy of the definitive map for the parish. This is a map and description drawn up by the highway authority, the county council or the district council if a unitary authority, showing all public footpaths, bridleways, restricted byways (no public motorised vehicular rights) and byways open to all traffic (includes motorised vehicular rights) in the parish.

An excellent practice is for the parish council to display the map on the parish notice board and to include all access land where there is a right to walk under the Countryside and Rights of Way Act 2000. Recent relaxation of copyright restrictions by the Ordnance Survey means that the highway authority can make available a copy of the definitive map for display purposes without payment of a fee. A good example of such a map can be seen outside Marsden station in West Yorkshire. This was erected by Marsden Walkers are Welcome Group with the assistance of Kirklees Council with funding from a local charity.

The parish council should also hold, for public inspection, a copy of all orders made by the highway authority which modify the definitive map. This includes Definitive Map Modification Orders (DMMO's) which have added or deleted paths from the map. The parish council has to be consulted about any application for a DMMO before the order is made. Where an application is made to add a path to the map, this will be on the basis of evidence of use of the route as a public right of way for a considerable period and /or historical evidence of the path's existence such as inclosure awards or estate maps. Many parish councils have successfully made such claims. Applications to delete paths are much rarer and are on the basis that evidence has been discovered which, had it been available at the time the definitive map was produced, would have meant the path not being included on the map as a public right of way. In either case the local knowledge of parish councillors will often enable the parish council to provide useful comments on the merits of the DMMO application. If the parish council or any person objects to the making of the

**must not be
substantially less
convenient to the
public**

DMMO the order cannot be confirmed by the highway authority but must be sent to the Planning Inspectorate, after which the matter will be determined by written representations or at a public inquiry or hearing.

Any order to divert or extinguish a public right of way must be served on the parish council. Such orders may be made under highways or planning legislation. A public path diversion order may be made under section 119 of the Highways Act 1980 in the interests of the public or a landowner or both. The new path must not be substantially less convenient to the public than the original path. Also the effect on public enjoyment is a relevant matter. A public path extinguishment order may be made under section 118 on the ground that the path

is not needed for public use. Such an application is normally on the basis that there is a satisfactory alternative path or the path is no longer serving a useful purpose because of developments in the area. Under planning legislation a path may be diverted or stopped up where it is necessary to do so to enable development to be carried out in accordance with the grant of planning permission by the planning authority, normally the district council. The normal practice is for the parish council to be consulted before the order is made so their comments can be considered before the final order is made. As in the case of DMMO's this will provide an opportunity for the parish council to comment on the draft orders in the light of its detailed knowledge of the locality. If the parish council objects to the making of the order, then as in the case of DMMO's the matter must be referred to the independent Planning Inspectorate which is then responsible for the final determination.

A highway authority can apply to a magistrates' court for an order stopping up or diverting a highway under section 116 of the Highways Act 1980. The court must be satisfied that the highway is unnecessary or can be diverted to make it nearer or more commodious to the public. This is a profoundly undemocratic procedure, which cries out for repeal. Appearing in court to argue before magistrates is a daunting experience for objectors. Also it is doubtful whether magistrates are the appropriate people to determine such applications. Fortunately most councils make little or no use of these provisions preferring the more open and democratic procedures under sections 118 and 119. St Helens and City of Manchester are exceptions, all their orders are processed before magistrates' courts. In any event the parish council can veto the use of the procedure and do not have to give a reason. I would urge them to use this power of veto unless there are very exceptional circumstances.

The parish council can veto the use of the procedure

Maintenance of public rights of way.

A parish council may undertake the maintenance of any public right of way within the parish. In some parishes there are well established schemes in place whereby routine maintenance is delegated and funded by the highway authority. The Cumbria County Council Parish Paths Initiative provides a splendid example of what can be achieved by a highway authority and the parishes working together (full details on Cumbria County Council's website). The parish council may well be in a good position to recruit volunteers to work on paths in the parish. The highway authority should have a volunteer policy dealing with the important practical issues of risk assessment, insurance cover and provision of tools and training. Public rights of way staff should assist with liaison with landowners, disposal of waste and overall supervision of work undertaken .

There is also a power to sign and waymark public rights of way with the consent of the highway authority under section 27 of the Countryside Act 1968. Waymarking is very

important to encourage use of rights of way and to keep users on the proper line, avoiding trespass onto private land. Also waymarking is a suitable task for a wide range of volunteers to undertake. The parish council can insist that a particular footpath or bridleway or restricted byway be signposted by the highway authority where it leaves a metalled road. Signing is particularly important when the path or way looks private, so the public is discouraged from using it. It is quite possible for somebody to purchase a house or other property with no knowledge of the existence of a public right of way through or next to the property. This should have been dealt with by the solicitor's search of the local authority records during the conveyancing process. The problem is that this question on the search form is optional, it costing a few extra pounds for the question to be answered. Some solicitors do not tick the appropriate box in order to save money. This is misguided and probably negligent but still common. If a sign is in place where the path leaves the metalled road then hopefully this will alert any potential purchaser, leading them to make appropriate enquiries as to the route of the indicated public right of way.

Signs are also very important where a gate has been placed across the path. Under section 147 of the Highways Act 1980, gates may only be erected with the permission of the highway authority for stock control purposes, this including the management of horses. Under s.66 of the same Act the highway authority may install gates to safeguard persons using the highway. This does not include for reasons of increasing security or enhancing the appearance of the entrance to the drive of a house. Erection of a gate across a path without authority amounts to an unlawful obstruction. Unfortunately this rule is not always properly enforced, despite case law making it clear that the whole width of a path must be available to the walker.



One of the Society's Signs

It is a common practice, hugely welcomed by walkers, for parish councils to erect seats on any land abutting any road within the parish. 'Road' is defined as any highway, including a public path. This provision is in the Parish Councils Act 1957 which also allows for the erection of shelters and lighting on any footpath or bridleway. Under section 30 of the Highway Act 1980 the parish council has power to create new highways by agreement with the landowner over land in their area and adjoining parishes. This power could be most usefully exercised to provide a 'behind of hedge path' where the existing footpath passes along a narrow busy lane with no footway (pavement) or where a path

emerges onto such a road. There may also be cases where a path from a neighbouring parish ends at the boundary of your parish but could be extended to meet an existing path to provide a through route.

There are powers under highway legislation for parish councils to prosecute for unlawful obstruction, or where crops inconvenience users of footpaths or bridleways or where paths have been ploughed but not restored within the time allowed by law, normally 14 days. Rather than carrying out a prosecution themselves, most parish councils would expect the highway authority to be responsive to complaints and for there to be in place a rigorous enforcement policy which will include a section on the appropriate use of prosecution.



New Kissing Gate Colne Valley FP 185

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Construction of Steps at Holdworth Farm (??FP No??)