



Lake District
National Park

**FUTURE MANAGEMENT OF UNSEALED SECTIONS OF
PUBLIC ROADS U5001 HIGH TILBERTHWAITE TO FELL
FOOT, AND U5004 HIGH OXEN FELL TO HODGE CLOSE**

**LAKE DISTRICT NATIONAL PARK AUTHORITY
RIGHTS OF WAY COMMITTEE REPORT
8 OCTOBER 2019**

SUMMARY REPORT

FUTURE MANAGEMENT OF UNSEALED SECTIONS OF PUBLIC ROADS U5001 HIGH TILBERTHWAITE TO FELL FOOT, AND U5004 HIGH OXEN FELL TO HODGE CLOSE - SUMMARY REPORT

1 Summary

- 1.1 This report discusses the options for our involvement in the future management of the unsealed sections of two public roads in the Coniston / Langdale / Skelwith area.

Recommendation 1: *Tilberthwaite Road (U5001) - we advise Cumbria County Council to maintain the road surface at its current condition, and we create a partnership management group of invited key partners and stakeholders to work collaboratively to monitor usage and condition; undertaking necessary activities to help mitigate any new issues that may arise.*

Recommendation 2: *High Oxen Fell Road (U5004) - we advise Cumbria County Council to maintain the road surface at its current condition, and we work with them and the National Trust to help monitor surface condition.*

2 Background

- 2.1 The two roads concerned are shown on the map overleaf in red/blue:
- Public road U5001: “*Tilberthwaite*”. This road runs between the A593 at Yewdale and Fell Foot, Little Langdale (A-D), and the section we are concerned with runs northwards from High Tilberthwaite (B-C-D [red] on the attached map) – around 2.5km.
 - Public road U5004: “*High Oxen Fell*”. This road runs between the A593 south of Colwith, and Hodge Close (X-Z), and the section we are concerned with is west of High Oxen Fell (Y-Z [red] on the map) – around 0.59km.
- 2.2 As public roads they have generally acknowledged motor vehicular rights, as well as rights for other users (foot, bridle, bicycle, carriage).
- 2.3 The maintenance and management responsibility for these roads lies with the highway authority, Cumbria County Council – as does the tarmac road network.
- 2.4 We have powers through the provisions of the Natural Environment and Rural Communities Act 2006, to restrict traffic on unsealed roads using Traffic Regulation Orders if we consider it appropriate.
- 2.5 We have been requested to use these powers on the two unsealed sections of the roads above. We have been implementing an agreed project to undertake remedial and maintenance works, gather information and evidence about use and condition of the roads and identify longer-term management options, since summer 2017.

**FUTURE MANAGEMENT OF UNSEALED SECTIONS OF PUBLIC ROADS U5001 AND U5004,
 LANGDALE AND CONISTON VALLEYS**



3 Policy Context

- 3.1 The key aim for access and rights of way within the Lake District National Park Partnership's Plan is to enhance the quality and diversity of the visitor's experience through improvements to accommodation, attractions, public realm and visitor facilities.
- 3.2 We have no formally adopted policy or aim with regard to motor vehicular use of unsealed roads. In the past we were key partners in the Trails Management Advisory Group, and our generally stated view was that whilst we would prefer recreational green road driving not to take place, we also accept that there is a legal right for this activity taking place on the 120km (approximate) of roads open to them. This is about 3.7% of the linear network (3,280km) which is all available to walkers, with smaller percentages open to cyclists and horse-riders. Our view is that it would be unnecessarily discriminatory to arbitrarily ban such legal usage.
- 3.3 Our overall strategy in dealing with both legal (on road) and illegal use (off road or in the wider countryside, or on routes with no vehicular rights) is one of management and containment through partnership working, collaboration and other practical means, including repair and maintenance. Management falls into two strands;
- a) We start with encouragement of responsible behaviour; users are encouraged to act responsibly on what can be vulnerable tracks to minimise environmental impact and respect other users. And we've worked with a number of partners, including Cumbria Trail Riders Fellowship, LARA, Cumbria County Council, landowners, parish councils and the police, in dealing with vehicle use on these non-tarmac routes.
 - b) Legal intervention through Traffic Regulation Orders (TROs) is a last resort for us.

4 Options

There are many potential options for management, and the most appropriate are those that address real issues, within reason, in the most effective way. The following are the options included within our online surveys requesting feedback from the public.

1. Do nothing
2. Maintain the surface to its current (post-repaired) standard to minimise damage
3. Consensus Working (such as a partnership management project with users, interested parties, and authorities)
4. Prohibit all traffic (walkers, cyclists, horses, all motor vehicles)
5. Prohibit all motor vehicles but allow all other users
6. Prohibit Four Wheel drive vehicles but not other users
7. Prohibit motorbikes but not other users
8. Prohibit some classifications of vehicles, such as size, axle weight, width, and so on
9. Prohibit specific groups (such as commercial operators)
10. Prohibit one or more non-motorised users (cyclists, horse-riders, walkers)
11. Restrict some (or all) types of user to specified permit days
12. Restrict some (or all) types of users to one way
13. Limit the numbers per day/week of some (or all) type of user
14. Limit the group size of some (or all) type of user
15. Prohibit some (or all) type of users on a seasonal basis
16. Prohibit some (or all) type of users on a weather basis
17. Other

5. Project and Headline Findings

- 5.1 The project has gathered evidence from online and onsite surveys, drop-in sessions, and from web-based petitions – as well as receiving submissions from other organisations and interested parties. Our detailed Assessment Report sets out the full findings of the project, and assesses the relevant grounds for a prohibition in the context of the special qualities of the National Park, and the Lake District World Heritage Site.
- 5.2 **Usage** – MPVs have used the roads for many decades, but we do not have much historic data. Current logger data shows that 4WD usage of the Tilberthwaite Road has increased since 2006, although it appears to have declined considerably again this year, and that motorbike usage has remained fairly constant since around 2000. For the last full year, usage was around 38 4WD and 21 motorbikes each week at Tilberthwaite, with 25 4WD and 24 motorbikes a week at High Oxen Fell.
- 5.3 **Websites / Petitions** – over 305,000 people have signed an online petition asking us to impose TROs, whereas a petition to keep the roads open to MPVs has been signed by over 8,500 people. Thousands of comments were added to the petitions.
- 5.4 **Emails / Letters** – we have received hundreds of letters, many formulaic in nature, most of which are urging us to impose a TRO.
- 5.5 **Drop-in Sessions** – we held drop-in sessions for local residents, around 100 attended. The views expressed were mixed, but mainly supportive of a TRO.
- 5.6 **Online Surveys** – over 300,000 people, organisations and interested parties were encouraged to complete our online survey which was open for three months.
- This led to 568 respondents for the Tilberthwaite Road, and 180 for the High Oxen Fell Road.
 - At Tilberthwaite, just over 50% of respondents considered that MPV usage had impacted on their own enjoyment of using the road or surrounding countryside, and 45% considered that 4WD usage negatively affected the special qualities of the National Park. The figures at High Oxen Fell were lower.
 - 56% of those expressing a preference for future management options at Tilberthwaite chose a TRO based solution as their first option. This was 33% of all respondents (42% did not express a view). At High Oxen Fell this was 40% and 24%.
- 5.7 **Onsite surveys** – over 1,200 people were interviewed on the roads themselves, mainly on the Tilberthwaite Road.
- Almost all of them had met other users at some time on the route, with just over 20% of users at Tilberthwaite having met MPVs, and 10% at High Oxen Fell.
 - Less than 6% of all users, and just over 10% of non-MPV users at Tilberthwaite had experienced any issues with other users. Under 5% of users at High Oxen Fell had experienced issues.
- 5.8 **The main issues** raised in all of the above were:
- a. Noise and impact on tranquillity.
 - b. Surface damage.
 - c. Usage by local commercial operators being inappropriate.
 - d. Impact on the farmers.
 - e. Behaviours of all types of users interacting with other types

6 Proposals (repeated as section 15 of the Assessment Report)

6.1 Our evidence gathering has shown that there are only a few realistic options:

- a. Do nothing
- b. Maintain the surface, but do nothing else
- c. Prohibit all motor vehicles (except agricultural / emergency / service)
- d. Prohibit some motor vehicles, or for some activities (such as commercial operators), or in certain circumstances (such as during winter, or one way)
- e. Develop a Partnership Management Group (consensus working)

6.2 **Option a – Do Nothing**

6.2.1 This would involve no further action by the National Park Authority. The current condition of both routes is acceptable, and current usage levels could continue. However, we would not know whether future usage would increase or decrease, and would not be alert to any changes. The maintenance of the route would fall to Cumbria County Council, and so it is likely to be low-key, if any. Given the levels of public concern, and the recent investment of over £50,000 on the Tilberthwaite Road, this option alone would probably not be appropriate.

6.3 **Option b – Maintain the surface, but do nothing else**

6.3.1 This would require some sort of agreement between Cumbria County Council and the National Trust and ourselves to ensure that the works carried out on the Tilberthwaite Road were protected by routine maintenance, and that minor works were carried out on the High Oxen Fell Road as and when required.

6.3.2 However, we would learn nothing about future use and how such use impacted the surface over a longer period of time. Because of this, option b alone is probably not the most appropriate for Tilberthwaite given the obvious public concern – but could be appropriate at High Oxen Fell, given the lower level of concern expressed.

6.4 **Option c – Prohibit all motor vehicles (except agricultural / essential vehicles).**

6.4.1 This option would meet the requests of the Save the Lake District Campaign. However, as discussed within the body of the Assessment Report, the grounds for such a prohibition may not be sufficiently met to support the case. Any prohibition is likely to be challenged through the courts, and so we would have to be sure that this was the right thing to do, based on evidence, before choosing this option.

6.4.2 Defra advice is that other avenues should be explored before prohibitions are imposed. The Sandford Principle refers to 'irreconcilable conflict', and the World Heritage nomination document refers to visitor management as being important. The last active management of these roads ceased in around 2006, and it is therefore probably inappropriate to prohibit traffic at this point, without fully exploring whether re-instating some form of management or partnership working would help reduce (reconcile) any of the issues and problems – perceived or otherwise.

6.4.3 Before any Traffic Regulation Order was made, we would be required to carry out a formal consultation on the actual regulation proposed. The results of such a consultation would then be brought back to this committee for a final decision.

6.4.4 We have not exhausted other management options to see if the conflict is reconcilable, so it is inappropriate at this time to impose a full TRO.

6.5 Option d – Prohibit some motor vehicles, or for some activities, or in certain circumstances.

- 6.5.1 A significant number of people have concerns about commercial 4WD usage. It is difficult from the evidence we have to conclude that such groups do in fact contribute a greater impact upon the surface, landscape, or tranquillity than the same number of single users.
- 6.5.2 Many of the comments are about those making money through using the roads not then contributing to the repairs and maintenance. But this argument overlooks the fact that all of our footpaths, bridleways and other leisure routes are also funded by the Government. That is – walkers do not directly pay us to maintain footpaths, it all comes out of general budgets and taxation – in the same way that maintenance of unsealed and sealed roads is funded through general taxation.
- 6.5.3 Many of the other comments relating to the commercial companies refer to the behaviour of the drivers. It would not be appropriate to prohibit companies from using these roads because of perceived behavioural issues or prejudice.
- 6.5.4 In addition to this, there is a question over whether solely prohibiting commercial operators could be construed as discriminatory and inequitable. If we did impose such a prohibition, we would need to consider whether to have a lead-in period in order for the relevant companies to develop different business plans. And if these business plans involved additional usage of different unsealed roads (displacement), then we may have to consider the potential impact on those roads as well.
- 6.5.5 Very few people have actually suggested prohibitions for size, direction, weather conditions, and so on – and there is little evidence to show that any of these factors directly contribute to the issues to a greater degree than general usage for these roads.
- 6.5.6 Finally, we could consider prohibiting motorbikes because of the noise impact, as it is clear from the evidence gathered that people consider 4WD to damage the surface and the immediate tranquillity, whereas motorbikes damage the tranquillity over a greater area.
- 6.5.7 The Yorkshire Dales National Park Authority commissioned report shows that motorbike noise travels further, and has a different pitch than that of 4WD vehicles. However, prohibiting them from these two roads alone may not resolve anything. Anecdotally, motorbikes use the whole network of unsealed roads, such as through Hallgarth, Hodge Close, and so on. And therefore to be effective in the local area, all these roads would require some sort of prohibition.
- 6.5.8 It is also difficult to prevent motorbikes from physically accessing these roads, and so any prohibition would be difficult to police. Field gates would have to be locked, and even pedestrian gates may require some form of restriction to limit their size. The problem with this is that as soon as you limit the size or accessibility (such as using kissing gates) then other users are also restricted (mountain bikes, horses, pushchairs, wheelchairs). It is noticeable that motorbike usage continued throughout the time the Tilberthwaite Road was legally closed to traffic for the ‘settling-in’ period in November and December 2018.
- 6.5.9 The difficulties involved in a partial prohibition make this option inadvisable.

6.6 Option e – Develop a Partnership Management Group

- 6.6.1 There is a difference between the Tilberthwaite Road and the High Oxen Fell Road in the levels of feedback, survey data and surface conditions. The levels of concern at High Oxen Fell are significantly lower than at Tilberthwaite, and so the following discussion should be read with this in mind. Given the low concerns, it is probably not necessary to establish a partnership management group for High Oxen Fell. But given the greater concerns at Tilberthwaite, this option is worth considering.
- 6.6.2 Defra Guidance on National Park Authority powers to make Traffic Regulation Orders suggests that other actions should be taken before considering prohibiting traffic – such actions could include establishing a working group to develop a local strategy.
- 6.6.3 The World Heritage Nomination Documentation (p299 – Lake District’s Integrity and Authenticity) specifically refers to opportunities for quiet enjoyment and spiritual refreshment as being potentially vulnerable to tourism and other development pressures, and considers that this attribute is best protected through implementing visitor management strategies.
- 6.6.4 A consensus relationship or partnership management group would be the logical first step in implementing such a strategy for the Tilberthwaite Road. This would bring together the various interested parties such as those using it for all the legal purposes, those maintaining the road, those managing the surrounding land, those wishing to see MPV usage reduced or prohibited, and so on. A partnership of this nature could continue monitoring use, attitudes, surface condition and other factors in the future – and could make appropriate recommendations as to future management. It should be a management group, rather than open ended.
- 6.6.5 The Sandford Principle, in the words of UK National Parks, says that *“If there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important.”* Active management regime of the routes and the usage of them ceased in around 2006, and therefore, before imposing any TRO to remove any conflict, it is incumbent upon us to explore whether or not the conflict can be resolved by management – that is, is the conflict irreconcilable? A partnership management group would explore this.

6.7 Recommendation

- 6.7.1 The evidence supporting the grounds for prohibition is not conclusive, and as we have not exhausted other management options to see whether any conflict is reconcilable, it is inappropriate at this time to impose a TRO.
- 6.7.2 Given the summary above, a combination of options b and e (maintain the surface, and develop a partnership management group) for the Tilberthwaite Road (U5001) would seem appropriate. This would be to maintain the surface through an agreed management regime (we are already developing a regime to be agreed by the National Trust, ourselves, and Cumbria County Council), whilst also developing a partnership management group to monitor and maintain the route, whilst continuing to build on the evidence collated so far. Such a group should include the three bodies named above, with relevant stakeholder representatives such as user bodies and campaigners. A draft proposal for such a group is at Annex 1.

- 6.7.3 For the High Oxen Fell Road (U5001), Option b (maintain the surface, but do nothing else) would suffice. Far fewer concerns have been raised about this road in all aspects), and the surface appears to be stable. However, it should be monitored to identify and assess any issues that may arise. We would need to agree with Cumbria County Council and the National Trust exactly who would do what, but it is likely that we would propose that we monitor the surface, and report any issues to Cumbria County Council to carry out any required maintenance.
- 6.7.4 These are only recommendations, and the decision is with Members to make. Members may consider that the grounds have been met and propose and agree a different recommendation, such as a prohibition of some or all MPV traffic. If so, then the exact proposal, reasoning for the proposal, and the relevant grounds on which any prohibition would be made, and how these grounds are met, will have to be agreed within the committee meeting, so that staff can make the required order, and defend it against any potential challenge through the courts.

7 Finance Considerations and Human Resources

- 7.1 From initiation until the end of June 2019 we logged 211 Staff days and 18 Volunteer days on the project. This includes input from staff including the Chief Executive and various Park Management staff, Communications Team, and Volunteers. There has been subsequent time spent in July and August.
- 7.3 Whatever decision is taken will undoubtedly involve further staff-time and involvement. However, the variables are so wide that it is difficult to calculate just how much. For instance, if the decision was that the best management would be a prohibition of vehicles, the following would have to be undertaken:
- Formal Consultation, and Collating and Responding to formal consultation
 - Compiling committee report for decision on whether to make the proposed order
 - Making and publicising the order
 - Dealing with any legal challenges to the decision if they arise – which could involve preparing for court and defending the order.
- It is likely that the time we would need to allocate to this would be something comparable to the time already spent.
- 7.3 With regard to costs, the data logging has so far cost in the region of £3,000. Other costs, which have not been calculated, include items such as stationery, fuel and sundries. The cost of the repair works were met by Cumbria County Council and the National Trust.
- 7.4 As with time spent, whatever decision is made will result in some expense to the Authority. Obviously 'doing nothing' would be the cheapest option, but it is difficult to calculate precisely how much any of the other options would cost. However, it is most likely that our main input into whatever option is chosen will be time – as it has been so far. If data logging continues, it will be at a similar cost of around £1,500 a year.
- 7.5 If further large-scale maintenance of either of these routes is required, then this should be funded by Cumbria County Council, who are responsible for such work. This will be part of any future maintenance partnership. It is not appropriate for us to make decisions based on other local authorities' funding streams. Cumbria County Council also have the ability to make Traffic Regulation Orders if required.

7.6 Minor maintenance (drain clearing, surfacing, and so on) of the rights of way network costs around £425 per kilometre per year (based on 2018/19 figures) – and this could logically be extended to these roads (which measure just over 3km, so around £1,275 per year). Who would meet such a cost would have to be agreed between all the relevant bodies involved, and the work may be required whether there is public vehicular traffic or not.

7.7 Any decision made by our committees is open to Judicial Review, and in this particular issue, there is more likelihood than usual of this happening. Defending the decision taken through the courts could cost us upwards of £10,000.

8 Risk

8.1 This matter has been investigated following the Authority's standard procedures and the report approved by our Solicitor. I therefore consider that this addresses any risk of failure to comply with legislation. Reporting to Committee and the associated debate and decision provides the most effective defence against any legal challenge.

8.2 Other risks such as safety, likelihood of damage, and so on, are discussed within the body of the assessment report.

9 Legal Considerations

9.1 Traffic Regulation Orders are made under the Road Traffic Regulation Act 1984, and we have been granted powers to make orders under certain circumstances by the Natural Environment & Rural Communities Act 2006.

9.2 As mentioned at 7.6, it is not appropriate for us to make decisions based on other local authorities funding streams or priorities.

10 Diversity and Sustainability Implications

10.1 If a prohibition is introduced, we should give consideration to including an exception for users with certain limited mobilities. The recommendation as made should not have any diversity implications.

10.2 The repairs of the route will be monitored whatever option is chosen. And out of that monitoring, we will be able to determine the sustainability, or otherwise, of the roads and the options chosen.

Background Papers:	Defra guidance, website, petitions, LDNPA documents – all referred to, with links, within the Assessment Report. Appendices.
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MANAGEMENT OF UNSEALED SECTION OF U5001 HIGH TILBERTHWAITE TO FELL FOOT

POTENTIAL PARTNERSHIP MANAGEMENT GROUP: DRAFT TERMS OF REFERENCE AND MEMBERSHIP

Purpose

To steer and monitor a collaborative approach to the establishment and proving of a long-term sustainable management regime for the unsealed section of the U5001 public road (High Tilberthwaite to Fell Foot).

Potential Membership

Lake District National Park Authority
National Trust
Cumbria County Council
Ramblers
Cumbria Bridleways Society
Lake District Mountain Bike Association
Trail Riders Fellowship
LARA (Land Access & Recreation Association)
GLASS (Green Lanes Association)
GLEAM (Green Lanes Environmental Action Group)
Save the Lake District Campaign Group
Joint Lake District & Cumbria Local Access Forum
Parish Councils
Commercial 4WD operator

Potential Scope of Activities

Establish a project management based approach to the management and monitoring of the road. To include:

- Design and implement an appropriate road maintenance programme;
- Design and implement an appropriate use monitoring programme;
- Design and implement an approach to monitoring the affects of recreational motor vehicle use of the road;
- Design and implement an approach to monitoring the affects of weather events on the road;
- Identifying and securing the resources to undertake the maintenance and monitoring activity over defined periods;
- Regular meetings to analyse and review the information about the relative success of the maintenance and monitoring over time;
- To test and agree at a point in time the adequacy of the management approach of the road.