

Highways or Byways?

From May 2006, the provisions contained in the Countryside and Rights of Way Act 2000 came into force, the aim of which is to stop 'mechanically propelled vehicles' exercising rights of way over roadways and paths that are not suited for that use.

Classification of Highways:

Local authorities are required to maintain an up-to-date map and statement ("the Definitive Map") of all public rights of way that exist within their boundaries.

Historically there were four classes of highway:

- (1) Footpath – rights of way for pedestrians only;
- (2) Bridleways – rights of way for pedestrians, horse-riders and cyclists;
- (3) Byways open to all traffic (BOAT) – rights for pedestrians, horse rider and all vehicles;
- (4) Roads used as public paths (RUPP) – it has always been uncertain as to whether vehicular rights exist over these.

Whilst a number of RUPPs had been reclassified into one of the other category of highway many RUPPs still exist. Under the new legislation, all RUPPs have now been reclassified as a "Restricted byway".

A restricted byway is a highway over which the public has a right of way on foot, with horses; with vehicles other than mechanically propelled vehicles (i.e.- pedal bikes); and the right to drive animals of any description, but no other rights.

The Offence:

It is now an offence under Section 34(1) of the Road Traffic Act 1988 to drive a mechanically propelled vehicle off road or on a road that is classified as a footpath, bridleway or restricted byway unless you park within 15 yards of the public highway. "Mechanically propelled vehicles" include cars, vans and lorries as well as quad bikes and unlicensed scramblers.

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An exception to this offence exists for owners of land (or their visitors) who previously relied on a RUPP to gain vehicular access to their property where they continue to use the restricted byway for access.

Creating new public rights of way:

It is no longer possible to create a new public right of way for mechanically propelled vehicles unless this is expressly provided for by legislation or under statutory powers. In addition, save for a few exceptions the new legislation provides for the extinguishing of unrecorded existing rights for mechanically propelled vehicles.. Landowners who therefore have relied on such unrecorded public rights would now be deemed to have private rights of access and ought to seek to protect their position by recording the private right of access at the Land Registry.

In conclusion, when purchasing land that does not immediately abut a publicly maintained highway (which will be confirmed in your highway search), then you must carry out all necessary investigations to ascertain the classification of the highway, in order to avoid a situation where, by virtue of this new legislation, it is a criminal offence to drive a mechanically propelled vehicle on the access ways to the Property.

If you wish to discuss the issues above further in relation to your particular circumstances please contact Tim Hardsty on 01276-686222