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DDA and structures on rights of way and cattle grids

1. Background

When the Disability Discrimination Act (DDA) 1995 came out its applicability to public rights of way was unclear. But then the DDA Act 2005 amended the 1995 version and clarified and strengthened it. Two key aspects of these Acts together were the definitions of ‘providers of services’ to embrace most rights of way activity and of ‘disability’ to include far more than those previously considered ‘disabled’.

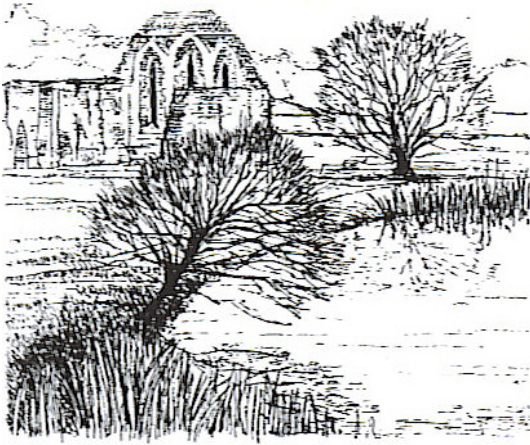
Some highway authorities have for some years tried to follow the government policy of Least Restrictive Option when drawing up path orders, for instance excluding structures from orders when they could be controlled better by subsequent authorisation¹ and applying conditions when exercising their powers to authorise structures outside of orders. Some have gone further than that and have removed some structures that no longer served a purpose such as stiles between two arable fields. Despite all that it was clear that, especially in path orders, least restrictive was not always being achieved for new structures and the quality of some structures in the field was not as good as was wished for.

Overlapping in time with the legislation a team at the British Standards Institution (BSi) was completely rewriting the path structure standards documents to incorporate the government’s least restrictive option concept and to be functional rather than prescriptive, so as to allow many different local designs of path structures to be easily adapted to comply. Participants at BSi included Countryside Commission, NFU, CLA and the main user groups.

In 2007 the Open Spaces Society sent a questionnaire to all local authorities involved with structures on public paths². The results showed a very mixed bag of understanding, of policy, and of practice. Whilst every authority would have known of the DDA and of the national standards (see 3 below) available to help implement it, the depth of that understanding was shown to be very variable.

¹ under Highways Act 1980 s147 on agricultural land or under s66 public safety.

² <http://tinyurl.com/structuressurvey> or www.oss.org.uk and search for *structures* to see the OSS survey forms and the results.



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Nationally the unevenness of least restrictive structure implementation was becoming very apparent to user groups with national cover such as the Byways & Bridleways Trust the Open Spaces Society, the British Horse Society and the Ramblers doubtlessly others including Natural England and Defra. As a result of this and the failure of path orders to apply clear functional standards (BS or others) the Byways and Bridleways trust was objecting to large numbers of them. These matters were raised in the respected Rights of Way Review Committee (RoWRC) and their discussions led to Defra working with the RoWRC to try to draw up guidelines on path structures and the DDA. A working party was set up and a paper produced. Early in 2009 it went to limited consultation and was revised by Defra, becoming a consultation paper which also went to LAF's.

2. Summary of the Defra document

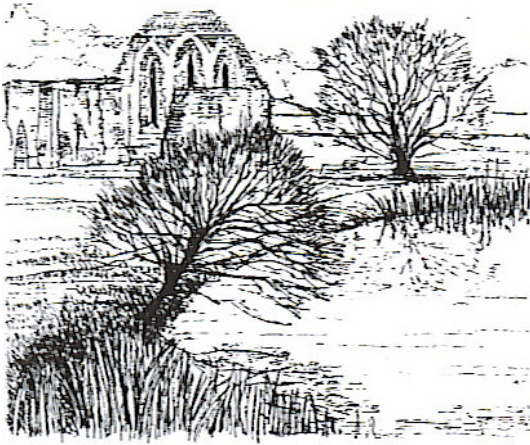
The document did two main things, firstly it tried to illuminate the principles of the DDA in relation to path structures, secondly it tries to identify the legal restraints and opportunities relating to new path structures in the light of the DDA and then to make recommendations for good practice.

In doing this it has undoubtedly given a seal of approval to several possibilities that were very far from being generally recognised previously. On Highways Act 1980 s147 authorisations of structures to control animals on agricultural land, many authorities were not making the approval automatically rescindable if the agricultural need ceased, indeed many believed that it was not lawful to do so³. Very few authorities were applying conditions such as tying open a gate when there were no animals to be controlled for a specified period of time. And even less were making the structures in diversion and creation orders conditional or variable, the view was widely held that that could not lawfully be done. The Defra guidance note makes it clear that such processes are not only proper, they are good practice.

The main guidance is only three pages long, but there are twelve annexes, which are informative or contain specific guidance, or both.

There are four main recommendations for authorities:

³ Partly because one edition of the Blue Book had a missing 'and' in the statute, changing its meaning substantially.



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- 1. Have a published policy on structures on rights of way in line with DDA and of the duty to assert and protect public rights.**
- 2. Ensure that structures are clearly specified and documented.**
- 3. Always consider including in authorisations and orders suitable conditions for removal when their purpose has been served.**
- 4. Consider publicising information on accessibility of structures so as to inform users in advance of their using the paths.**

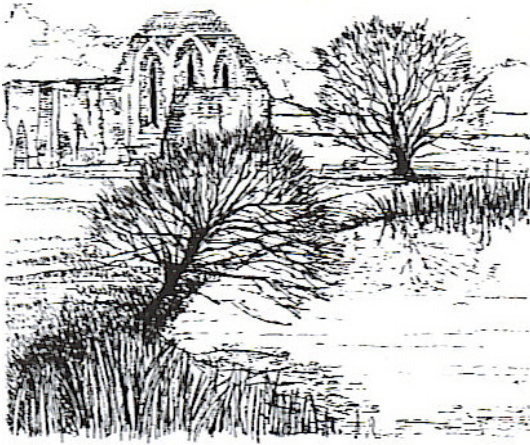
3. BS 5709 Gaps Gates and Stiles

The consultation document time and again emphasises the need for standards in structures, standards that clearly specify what degree of interference of the public way is to be tolerated. Standards that define the manoeuvring space, the state of the ground under a kissing gate, the separation from barbed wire and electric fencing as well as the type and necessary physical parameters of the main structure. Standards that can, where considered appropriate to do so, should be unambiguously enforced.

It quite rightly points out that a local standard may achieve that, whilst mentioning BS5709 some twenty times in the document. It never quite says 'use BS5709 unless you have something better and more comprehensive'. But it gets close. What the guidance and the BS do not do is take account of the increasing use of self closing gates for the introduction of conservation grazing and as specified for Higher Level Stewardship and kissing gates. These two changes has affected not only the normal user especially equestrians but all forms of disabled users including mobility scooters and equestrians.

There are many reports from those users of mobility scooters who feel that their needs and rights are being ignored in the rush to erect kissing and other gates as most of them do not allow them access to the countryside. Likewise bridleway gates are being installed which are impossible to open as an able bodied equestrian even if you do not have arthritis and cannot bend to reach the handle or pull against the spring. That is before you have to negotiate a self closing gate which shuts in under 5 seconds trapping your horse in an equestrian mousetrap.

Similar situation applies to the construction of cattle grids in the highway and the attendant bypass gates. These have no specific DDA compliance specification set out in BS 4008 and was not consulted on as part of the Defra structures paper. Yet this is important as many bypass gates are crucial for mobility scooters gaining access to the countryside. Many older bypass



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gates can not be operated from a seated position with out help as is the case with many of the older Countryside Stewardship one way bridle gates

Defra guidance must make it clear to local highway authorities that they must specify the access ways and gates that meet all user needs that is any combination of lawful user whether disabled or not and where maintenance is proposed then that is the time for the duty under the Highways act 1980 [s130] and the DDA to manifest itself.

4. BS 4008 Cattle Grids

There seems to be confusion as to who needs to do what and when in regard to cattle grids. There is separate legislation for carriageways [HA 1980 s82] but this it seems does not extend to footpaths or bridleways. In or on a highway is the issue for some. What constitutes a carriageway i.e. cycleway or cycletrack.

In order to clarify the question of cattle grids and section 147 of the 1980 Act, Defra and the DfT needs to give guidance. BS4008 Cattle Grids automatically requires a BS5709 compliant bypass gate and so simply specifying 'A cattle Grid to BS4008' resolves all issues so long as the legal width of the path can accommodate the whole of the bypass gate, if it can not, then additional width would need to be dedicated. It is very unlikely that a cattle grid could satisfy DDA constraints unless a gated bypass was to be part of it. Cattle grids are complex structures with guard rail and access highway requirements for ridden and driven horses negotiating the bypass and small-animal escape ramps from the grid itself and fairly critical grid spacing as well as DDA compliance in terms of gate furniture and two way opening.

Bob Milton with thanks to Chris Beney
April 10th 2010

It may be of interest that BS5709 is due for its five yearly review in 2010 and the BSi working party would be very pleased to hear of any issues or suggestions relating to standards for structures on paths contact chrisbeney@aol.com.