

Unsurfaced Unclassified County Roads (uUCRs)

Summary for the Devon Countryside Access Forum

April 2021

DCAF question 1

“What is the legal status of a UCR, the legal status of a byway open to all traffic and the associated responsibilities of the County Council?”

DCAF question 2

“How will public access on UCRs be secured and recorded in the long term, at least to the same extent as rights of way on the definitive map?”

Response from Helen Clayton, Public Rights of Way Senior Officer, Legal and Development:

Legal definition and protection

The term County Road was introduced by the Local Government Act 1929, when County Councils inherited responsibility for all roads in Rural District Council areas and classified roads in Municipal Boroughs and Urban District Councils. It was later made redundant by the Local Government Act 1974, but the term is still commonly used by highway authorities. Accordingly, the Planning Inspectorate Consistency Guidelines state that the classification Unclassified County Road *has no legal standing but it carries some inference that the public may use the highway with vehicles. Extant advice is that ‘all other relevant evidence must be taken into account’.*

Consequently, there may not be a national view on the legal status of UCRs. However, the records of Devon County Council demonstrate that those in Devon are considered to be vehicular highways. These records include the handover maps from Rural and District Councils, formal minutes and reports of the County Council Roads Committee, and instructions to roadmen in relation to the Definitive Map survey. However, if there is any dispute whether a particular route carries vehicular rights it would need to be considered on the basis of all available evidence.

Routes known as County Roads are recorded on the County Council’s List of Streets (record of highways maintainable at the public expense).

Byways open to all traffic (BOATs) are a specific category of highway required to be shown on the Definitive Map of Public Rights of Way. They are also vehicular highways. Their legal definition is “a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used”. Therefore, the test for a carriageway to be recorded on the Definitive Map and Statement as a BOAT relates to its character or type. Case law has provided clarity as to the definition of a BOAT (set out in the Government’s Rights of Way [Advice Note 8](#)).

The same case law also provides clarity as to the intention behind defining the word ‘byway’ in the Wildlife and Countryside Act 1981 as “*to distinguish byways from ordinary roads*”. Further, that “*Parliament intended that “full highways or cartways”*

which might not be listed as highways maintainable at the public expense under the Highways Act 1980, should be included in the definitive map and statement so that rights of way over such highways should not be lost.”

The Natural Environment and Rural Communities Act 2006 extinguished any unrecorded rights for mechanically propelled vehicles except in certain cases. Those routes recorded on the List of Streets (but not on the Definitive Map as footpaths, bridleways or restricted byways) and BOATs shown on the Definitive are specifically excluded and therefore protected from extinguishment.

To stop-up a route recorded on the List of Streets or a BOAT requires an application to Magistrate’s Court under section 116 of the Highways Act 1980 (public path orders cannot be used to divert or stop-up BOATs). The process is subject to public consultation. The legal test to be met is that the route is no longer needed for public use and may be challenged.

DCAF question 3

“How are uUCRs managed, signed, monitored and, where appropriate, maintained?”

DCAF question 4

How are the Rights of Way Improvement Plan policies on uUCRs working in practice? Is there a specific budget for uUCRs or is work reactive?

Response from Steve Gardner, Public Rights of Way Senior Officer, Asset Management and Enforcement:

Cat 12 Road Asset

The Public Rights of Way (PROW) Team manages approximately 365 miles / 587 kilometres of uUCRs or, as we refer to them, *Maintenance Category 12 Roads* (Cat 12 Roads: the lowest category of road maintenance in Devon). The Team took over their management from the Neighbourhood Highway Teams in around 2009 (I am uncertain of the year but we have certainly been responsible for them for over ten years). This includes the Cat 12 Roads within the two National Parks.

Name of authority	Metres of uUCRs	Miles of uUCRs
East Devon District Council	125,730	78.14
Exeter City Council	2,390	1.50
Mid Devon District Council	63,490	39.42
North Devon Council	77,890	48.40
South Hams District Council	143,660	89.35
Teignbridge District Council	80,050	49.75
Torrridge District Council	50,590	31.49
West Devon Borough Council	43,870	27.28

Length of uUCRs by district



DEVON COUNTY COUNCIL
UUCRs in Devon

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Cat 12 Road Definition

Maintenance Category 12 Roads can either be sealed or unsealed. Cat 12s are currently defined as roads that are “not used by normal vehicular traffic”. This is in contrast to Cat 9s through to Cat 11s which are all defined as serving fields or property. The internal source of information used to identify the maintenance category of any road is the National Street Gazetteer. Sealed Cat 12s can include road markings and signage (for example, in ‘give way’ or ‘stop’ scenarios).

Definitions for all carriageway maintenance categories are given below.

Carriageway Maintenance Hierarchy	Hierarchy Description	Type of Road / General Description
1	Motorway	Maintained by Highways Agency
2a	Primary National - Trunk Road	Maintained by Highways Agency
3	National Primary route	National strategic routes for through and long distance travel (A roads)
4	County Primary route	Main access routes connecting principal settlements.
5	Secondary County route	Main access routes to large settlements and recreational attractions.
6	Local Distributor	Main access routes to smaller settlements and recreational attractions.
7	Collector road	Rural – Access routes to small villages and other significant traffic generators. Urban – Industrial main collector roads & through routes and Residential collector roads. Access to schools, hospitals, facilities for the disabled, main shopping areas, libraries, car parks and tourist attractions. Shared surfaces with heavy pedestrian traffic. Local roads serving limited numbers of properties.
8	Minor Collector road	Rural – Roads serving small hamlets and scattered communities. Urban – Roads serving shopping areas, business premises, industrial estates and residential areas
9	Service road	Rural – Local road serving only a few properties Urban – Narrow collector roads and shared surfaces
10	Minor Service road	Rural – Local road serving only one property Urban – Cul-de-sac serving less than 20 properties.
11	Minor lane	Rural – Serving fields only or duplicating other routes. Urban – Back Lanes
12		Not used by normal vehicular traffic

The majority of Cat 12 Roads are unsurfaced, but some were previously surfaced and are now suffering from degradation, which can prove difficult to manage.

When the Cat 12 Roads were managed by the Neighbourhood Highway Teams, the *Policy for General Maintenance Treatment Standards* was to only treat potholes, and then only with road planings. The PROW Team has been more proactive with Cat 12 Road maintenance and improvement work as the majority form a valuable local recreational resource, particularly where they are well connected to the rest of the access network in an area (for example, where public rights of way are accessed off them).

Rights of Way Improvement Plan (RoWIP) Policies

The three main RoWIP policies that refer to uUCRs are copied below. It needs to be acknowledged that:

1. the first RoWIP was written before the PROW Team became responsible for the Cat 12 Roads; and

2. the maintenance and improvement of the Cat 12 Roads has evolved since the publication of RoWIP 2 in 2012.

M1F The feasibility of improving and maintaining the uUCRs will be investigated and supported, within the available resources, where they contribute to other strategic objectives and plans.

SW1E Improvements to signing of the uUCRs will be sought within the available resources under the following priority:

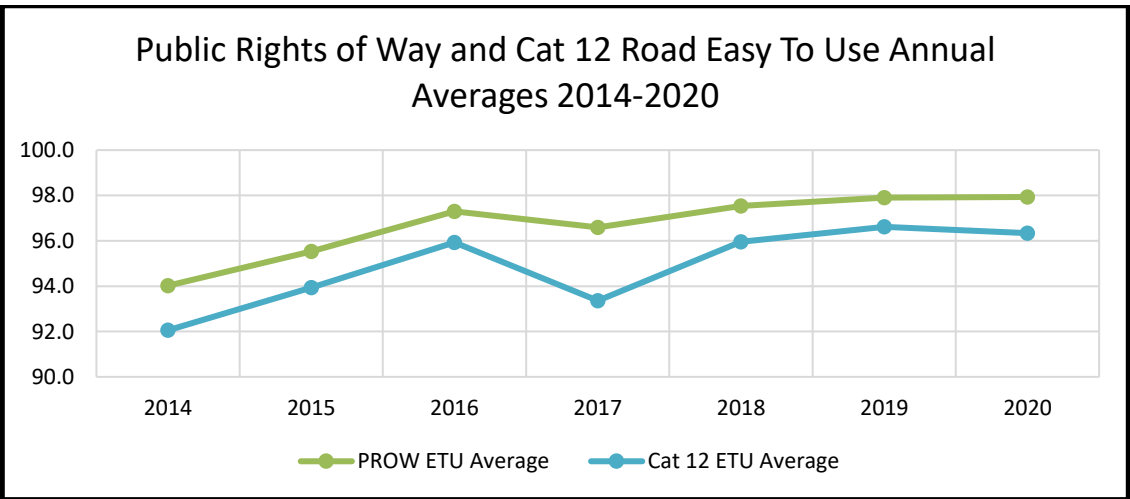
- i. those providing direct access to and from existing rights of way;
- ii. those forming circular links within existing rights of way or where they serve as the primary unsurfaced route in the area; and
- iii. all other uUCRs.

MU2D The possibility of improved maintenance and signage of the uUCRs|within the available resources will be investigated in accordance with policies M1F and SW1E.

Inspections

Cat 12 Roads receive an inspection by a PROW Warden once every three years. This is the same inspection frequency as the majority of Public Rights of Way (with the exception of those forming the South West Coast Path which receive an annual inspection).

Cat 12 Road condition is measured against those standards set out for a public bridleway in the PROW Condition Criteria document. This document is due for revision soon as it contains some out of date information. From this, we can establish ‘easy to use’ figures for the Cat 12 Roads, the annual average of which is shown in blue on the chart below. The general trend for Cat 12 Road ease of use has been upwards since at least 2014 and is consistently above 90% easy to use (that is, at least nine out of ten Cat 12 Roads have no significant maintenance issues affecting their ease of use).

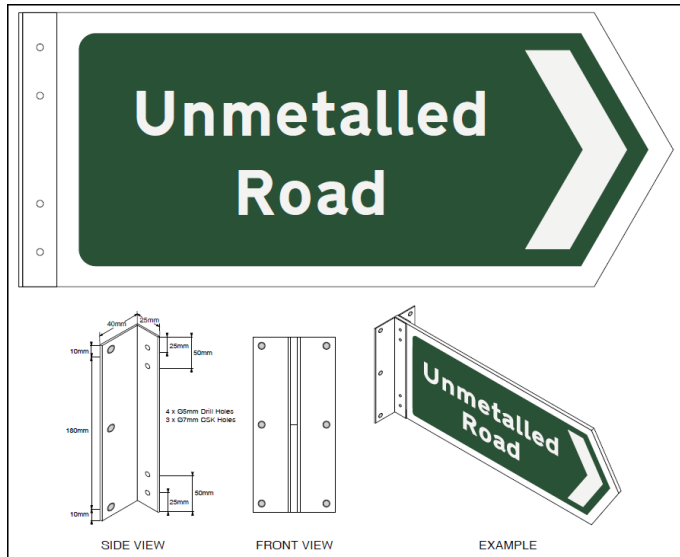


Maintenance

Maintenance of Cat 12 Roads is undertaken by contractors on the PROW Contract and by volunteers under the Parish Paths Partnership scheme and by, for example, the Trail Riders Fellowship working in partnership with the County Council.

Signage

In line with the signage used on the PROW network, we typically sign Cat 12 roads with white on green polycarbonate sign arms on wooden posts. The sign wording says either “Unmetalled Road” or “Public Way”, the latter wording normally reserved for metalled Cat 12s – example sign arm below.



We have discovered a few Cat 9-11 Roads which lead to Cat 12 Roads that were incorrectly signed with “No Through Route” (“T”) signage prior to PROW Team involvement. Where these are discovered, our standard practice is to replace the No Through Route sign with an “Unsuitable for Motor Vehicles xx yds ahead” sign – example below. These are placed at a location where it is still possible for *normal vehicles* to turn around.



Budgets for maintenance and improvement of Cat 12 Roads

Cat 12 Roads and PROWs are maintained from the same budget. It would be time consuming to give a breakdown of how much is spent on Cat 12 Roads versus PROWs as they are treated the same, in maintenance terms, and PROW Wardens often raise various call-off orders covering both networks in one order.

The maintenance (revenue) budget allocated to PROW and Cat 12 Road maintenance was £378,000 for the 2020-21 financial year.

Improvement work is undertaken from the PROW Capital budget (which covers PROWs, Cat 12 Roads, Recreational Trails (e.g. Tarka Trail and Exe Estuary Trail) and bridges and structures). The allocation for 2020-21 was £680,000. Of this, £146,400 was allocated to Cat 12 Road improvement schemes. The capital budget was increased by up to £900,000 in year from additional highways funding.