

GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

www.gleam-uk.org

**A NEWSLETTER for those interested in protecting ancient ways
from the ravages of use by motorised recreational vehicles.
SPRING 2013**

PROLOGUE

In this issue of the Newsletter we have three articles, from the Peak District, from Wiltshire and from Surrey, highlighting the same problem which exists all over the country. This is to get local authorities to impose Traffic Regulation Orders (TROs) to protect Byways Open to All Traffic in their areas. For the last few years we have been pressing the Minister for the Environment to bring forward legislation whereby, if a responsible local body repeatedly asks a local authority for a TRO on a particular way, and this is repeatedly refused, that body can appeal to the Secretary of State against these refusals, and have that appeal heard before a trained inspector. So far this effort has been remarkably unsuccessful. Now read on.....

Can the Peaks be saved?

*The GLEAM Newsletter last covered Derbyshire and the Peak District in Spring 2011. Things have moved on since then, but very little in relation to the scale of the problem. The Chair of the Peak District Green Lanes Alliance, **Patricia Stubbs**, reports from the off-roading capital of the UK, and asks if the current legislation, which supposedly protects green lanes, can ever be made to work.*

Unless you know the area well, it can be hard to grasp how serious the off-roading problem is in the Peak District. Off-roading is a scourge elsewhere as well, but for a variety of reasons the Peak District National Park is a magnet for off-roaders from all over the country. They even come from mainland Europe to 'ride the Peaks'. Here are the basics:

- There are 300 lanes in the National Park with potential vehicle rights.
- One in seven new motor bike registrations is now of the type used for off-roading.
- The National Park is within an hour's drive time for a third of the population.
- Trail bikers arrive by van from major conurbations in the North and Midlands.
- Seven highway authorities in the National Park – but not one highway authority has applied a Traffic Regulation Order (TRO) since off-roading became a real problem.
- Peak District National Park Authority (PDNPA) started addressing the problem only two years ago.
- PDNPA is overwhelmed by the scale of the problem it faces.
- Illegal off-roading is done on bridleways and restricted byways.

Assuming that the current pattern in the outcome of Byway Open to all Traffic (BOAT) claims continues, we estimate that at least half of all claims in the National Park alone will succeed because they will be resting on clear historic rights of way for horse-drawn vehicles. By the time all BOAT claims are processed we can expect to see upwards of 150 new BOATs in the National Park. Meanwhile, the 4x4s, quads and trail bikes do not wait for BOAT claims to be resolved.

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Progress

Some victories are in sight. In response to growing anger from Peak Park residents, walkers and horse riders, PDNPA Members are now taking a more robust approach. In 2011 PDNPA adopted a new policy on off-roading, and is now prepared to use its legal powers. It is trying to get in place TROs excluding vehicles from three high level, iconic Peak District roads: Long Causeway; the Roych; and Chapel Gate. (The Chapel Gate TRO is a second attempt, PDNPA having lost to the Trail Riders Fellowship (TRF) in a High Court action in Autumn 2012 over a previous experimental TRO.) PDNPA is also consulting on a TRO to stop motor vehicles using Leys / Chertpit Lane in Great Longstone, the focus of the recent BBC4 documentary about off-roading in the Peaks. Another TRO in train proposes a permit system on a route which crosses magnificent high ground above the Monsal Trail. We think a permit scheme on this location won't work and that it won't stop the damage; but that is another story.



Long Causeway - Derbyshire County Council has already spent £75,000 on repairs and will be spending another £230,000 this year. PDNPA is consulting on banning all vehicles.

Chapel Gate before repairs – PDNPA lost in the High Court last year when the TRF challenged an 18-month Experimental TRO, but it is planning a permanent vehicle ban.



Upperdale to Brushfield – the surface is worn to bedrock, and off-roaders are damaging an adjoining SSSI and archaeological remains. Can a PDNPA permit system be made to work?

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PDGLA is supporting PDNPA in its effort to get these five TROs in place, and we recognize the determination it is showing. It is standing up to intense pressure and lobbying from the TRF. This includes regular 'mass ride outs' in the Peak District, tactics like driving slowly on tarmac roads so that other traffic is inconvenienced, and even occupying all the car parking space in popular beauty spots.

Problems

So far so good. But there are huge problems. The TROs are taking much longer than the PDNPA expected. PDNPA's resources are no match for the scale of the environmental damage being inflicted on the National Park, the number of unsurfaced lanes being heavily used by vehicles and the impact on local communities and non-vehicle users. The PDNPA Rights of Way team is tiny and has been swamped by the huge number of off-roader objections it received during the two TRO consultations held so far. PDNPA received 2,000 objections to one consultation and 2,500 to the other. Under the statutory regulations governing TRO consultations by National Parks, it appears that PDNPA must respond individually to all these objections. It also has to deal with extra work on Chapel Gate following loss of the court case against its Experimental TRO.

The upshot is that PDNPA is slowing down its TRO work. It is no longer planning to do two TRO consultations, to which it publicly committed a year ago (Brough Lane and Bamford Clough in the Hope Valley). For these lanes and all the others on the PDNPA 'priority list' the only action planned over the next year is occasional monitoring, vehicle logging or repairs.



Hurstclough Lane, Bamford, has scored the maximum on PDNPA's criteria for concern. There are currently no plans for a TRO. The picture shows one of the blind bends which makes the lane dangerous for horse riders.

PDNPA has at last identified some lanes outside Derbyshire where it needs to take action, and it has added 12 to the priority list, bringing the total to 36. But there are many other lanes in need of protection. (PDGLA has been able to identify them, as we have now walked and made a photographic record of over 140 lanes in the Park.) In many cases it is not just a question of environmental damage. There are

local communities in the National Park who feel besieged by off-road vehicles monopolizing their local lanes, but are unable to do anything about it. For example, the famous 'Plague Village' of Eyam is encircled by a ring of lanes, all now BOATs and all used as an off-roading circuit. All the lanes leading to and from the village are now too dangerous for residents to use. None is on the PDNPA priority list for action.

Swan Rake, Staffordshire has just been added to the PDNPA priority list. One of the 'steps' on the Rake is 2ft high. Staffordshire County Council currently has no plans to protect or repair it



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What about the highway authorities?

It is scandalous that PDNPA is being left to do all the heavy lifting. Highway authorities have similar TRO powers to National Parks and have the same legal grounds at their disposal. Only one of the eight grounds available needs to be fulfilled.

Highway authorities also have a statutory duty to 'assert and protect' the right of the public to use and enjoyment of all highways. Those in national parks have a statutory duty to 'support the purposes of the National Park'.

Despite years of pressure from parish councils and local communities, Derbyshire County Council (DCC), the main highway authority in the Peak Park, is still not using TROs. It prefers to do only repairs, setting aside a repair budget for unsurfaced lanes which is tiny in relation to the scale of damage. The reputational and financial costs to DCC are high. According to its own figures it costs DCC about £4k to put a TRO in place. Instead, it chooses to spend Derbyshire tax payers' money on sporadic repairs which rarely hold up for long. To take just one example, DCC has already spent £75k on repairing Long Causeway and will be spending another £230k on it this coming year. The repairs as planned will stop the Causeway from collapsing, but they will not restore the surface for use by horse riders or carriage drivers. A TRO ten years ago would have prevented the damage. The same story is repeated all over Derbyshire, but local communities have no redress against DCC's refusal to consult on, let alone implement a TRO. The only possible course of action is judicial review, the costs of which are prohibitive.

New legislation

PDGLA will continue to fight BOAT claims and press for TROs; but we have concluded that the current legal framework, which is supposed to protect both lanes and non-vehicle users, is failing and that new legislation is needed. Under the current law it is taking six to 12 months for the Peak Park to get any individual lane protected and communities affected by offroading are powerless to do anything about it. As a minimum, there should be an alternative to judicial review to challenge a highway authority refusing to consult on a TRO; and we need changes to the regulations which currently make TRO procedures excessively costly and time consuming for National Parks. In the longer term we need a solution which makes it illegal to drive a motor vehicle – residents etc excepted – on any highway which is not engineered to sustain motor traffic, ie all unsurfaced non-classified highways.

Meanwhile, we think that there is a job to be done nationally in building up a picture of how highway authorities are using (or not using) TROs: where they are being used successfully, what grounds are being used, and which highway authorities are persistently refusing to consult on TROs. We also need to find out the overall cost to the national purse of repairing the damage to unsurfaced highways caused by motor vehicles. Are these things that GLEAM should be taking on? Between us all, we also need to find a way of identifying and funding a suitable case for judicial review where a highway authority has repeatedly refused to consult on a TRO, and where there is clear evidence of the need for one.

The problems and cost of getting a TRO in Wiltshire

By a GLEAM member in Wiltshire who wishes to remain anonymous.

As a keen walker and lover of the countryside, it would be hard not to be appalled by the damage inflicted on ancient routes in Wiltshire by off-road user groups. Rights of way departments have a difficult balancing act to perform, and historically seem to have erred on the side of the motorised users. This, certainly to me, was incongruous because vehicles inflicted damage to the surface, to surrounding habitats, to peace and quiet, and deterred all other legitimate users. The local authority seemed to take a view that they had to protect the rights of the minority.

This illogicality was even more cemented in place because the mechanised users appeared to have developed a good relationship with the local authority. They were very prepared to fight, at significant cost to the council, any diminution of their rights.

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I live near a BOAT that has recently been transformed from a dangerous, noisy, damaged no-go area for walkers, horses and cyclists, to the most beautiful tranquil lane. This was because the local authority had the foresight to place a Traffic Regulation Order (TRO) on it. The inhabitants of the area are hugely grateful to the Local Authority for taking this to a public enquiry, and to fight the objections raised by some mechanised users.

The BOAT in question was deeply rutted at one end, and a racetrack in an ancient Holloway at the other, that has long been regarded as being of archaeological value. The council placed a temporary TRO on the route, while local volunteers levelled the ruts and planted grass on it. During this time the village was plagued by motorised protesters who would drive fast through the village and up the BOAT, disregarding the TRO. This behaviour had the effect of galvanising local support for the TRO. Motor cycles doing wheelies on the village green where children play was never going to draw out the sympathy vote.

The whole process was long-winded, confrontational and expensive; a real barrier against the sensible use of a legitimate tool to control inappropriate access. There was a consultation to see if a consultation was justified. Often nobody wants to speak out for fear of retribution. Mercifully there were few such sentiments in this case; instead there was widespread disgust at the damage caused by the off-roaders.

The pre-consultation was followed by a full consultation, which caused some confusion. Those that had written in on the first instance were irritated at having to write in again. The belligerent refused to comply with what they saw as a display of unnecessary bureaucracy.

During these consultations there was a regular flow of off-road vehicles breaking the terms of the TRO in acts of defiance. They succeeded in irritating all legitimate users. The authorities wondered why they did not use this period as an opportunity to consider why there was such a passionate desire to have their activities controlled.

After the second consultation a TRO was placed on the unsurfaced stretch of the route. The surfaced stretch remained an area of disagreement that had to go to public enquiry. The TRO was supported by a number of important organisations that wanted to see archaeology, habitat and peace and tranquillity preserved on the lane. These included Natural England, the local Area of Outstanding Natural Beauty (AONB), the local wildlife trust, the Ramblers and the local archaeological organisation. A large number of local residents wanted to speak, and a group of people clubbed together to pay for a solicitor and a barrister to help represent these views.

The public enquiry lasted for five days. The council were well prepared and also used a barrister. The off-road user group that was heading the objection also had an expert to represent them.

This seems a crazy way to fight an unacceptable situation. There was overwhelming support for the TRO from what appeared to be nearly everybody except the motorised users. How can this relatively small group of people, indulging in an activity that only gratifies themselves, be allowed to do so much damage and cause so much distress? Fighting case by case will be ridiculously expensive and confrontational.



*Wiltshire Byway,
severely damaged by
off-road motor vehicles,
before
reinstatement.*

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I have to feel slightly sorry for the off-road user groups; they are passionately trying to keep their pastime alive without listening to the concerns of everybody else. This seems to make them fight even very justifiable TRO proposals, such as the one that I have outlined. This does not give their cause credibility, and it seems difficult to see how this situation can be improved without a change in the law. This is why I support GLEAM.

The same Byway, after reinstatement with wild flowers, which cost a fortune, now visited by many non-motorised users.



A cry for TRO help from Surrey

Your Chairman received the following letter from a GLEAM member in Surrey, who has the same problem with off-roaders and the inability to get TROs imposed.

Dear Mr Gardiner,

I am a GLEAM member, who has spoken to you before on the 'phone, and have raised the BOAT problem with Sir George Young, a family friend, without much joy.

I wonder if your team would consider putting in my letter below, but it would have to be 'name and address withheld' since I fear the local TRF who thunder past my door, and know me from my Parish Council's (failed) attempt to impose two TRO's elsewhere.

REPLY TO SINKING IN A QUAGMIRE letter of 26 April 2012

To The Editor,

Dear Sir,

There may be two ways out - slow and boggy - but possibly OUT of the current mess.

The first is budgetary: if every County Authority and National Park Authority were asked to keep a running account of the COST to their Rights of Way budget, both in repair and legal team terms, of dealing per kilometre of the Byways Open to All Traffic in their area, this might prove shocking to the public; and even to Mr Pickles. All such budgets are suffering cut backs, and it would soon become apparent how a selfish minority were harming the rights of the majority users.

For example, here in Surrey last year, alas so close to the Metropolitan Area, in three adjacent parishes alone, in the Area of Outstanding Natural Beauty, £150,000 was spent repairing a few kilometres of abused Byways. The County Authority is being coy about the total cost to the county, but could be encouraged to publish it under the Freedom of Information Act. This sort of budgetary bad news could knock the badgers off the number one contentious issue in the countryside list.

The next idea may not work, but I'd like GLEAM lawyers to pronounce on it; apparently all Highway Authorities have almost limitless legal powers, shutting off roads etc. In the interest of budgets could they be persuaded simply to DECLASSIFY problem BOATs again? It was this desire to classify in the 80's Acts that got us into this mess in the first place. If no longer C or D roads, the Highway Authority could 'fail' to maintain them. Shouts of horror, but this might make it far easier legally to get TRO's imposed on them.

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Have your lawyers looked into this?

Of course long term we need GLEAM, CPRE, the National Parks and Areas of Outstanding Natural Beauty Authorities and others to come together to press to Parliament and the Treasury the democratic and budgetary reasons for the faulty Acts' wording to be rescinded.

Anything that has engendered the Byzantine term 'mechanically propelled vehicles' is clearly a 1980's Ass, as the late Lord Denning so clearly stated at the time.

Can these simpler ways be made effective? The lawyers would perhaps wish not....

I am a GLEAM member who must request anonymity as the TRF is particularly virulent in Surrey.

We replied to this letter as follows:-

Dear,

Thank you for your e-mail containing your thoughtful letter to the Editor of the GLEAM Newsletter. I have now discussed it with our Hon Adviser Graham Plumbe, and we would like to publish it (anonymously) in the Spring 2013 Newsletter. In the meantime we will take on board some of the points you make. However, the chances of progress with your first concept (naming and shaming Highway Authorities with their cost record) are greater than with your second (declassifying or downgrading BOATs).

Yours sincerely,

NERCA/Winchester - off-roader recession?

by Graham Plumbe (Hon Adviser to GLEAM; Vice Chairman GLPG)

There can be no doubt that the off-roaders, particularly the Trail Riders Fellowship (TRF), are in recession. NERCA and the Winchester judgment (see below) provided a double dip as a major collapse of their banking system. Whether Traffic Regulation Order (TRO) implementation can be harnessed to provide a triple dip remains to be seen. That is the battle that is being fought in the Peak District, lucidly described by Patricia Stubbs on other pages. We add only that TRO successes on technicalities in the courts by the TRF so far appear to be heading towards being very hollow victories.

Natural Environment and Rural Communities Act 2006 (NERCA)

Last August we reported a third convoluted attempt by the TRF in **Northumberland** (Belsay) to separate overlapping rights and so gain exemption from NERCA extinguishment of motor vehicular rights. Happily, the argument was roundly dismissed by an inspector and Belsay now has an interrupted Byway Open to All Traffic (BOAT), which is useless for off-roaders.

The argument resulted from applying the rule as to part of the way being on the List of Streets ('LoS' - ie ways maintainable at public expense) but not already on the Definitive Map. In such cases NERCA extinguishment does not operate. GLPG sought to argue that the LoS in Northumberland does not qualify under the recent Fortune judgment. Unhappily that too was dismissed. Although the inspector was plainly wrong in law, an appeal under Schedule 15 Wildlife and Countryside Act 1981 (WCA) was stillborn, mainly because important factual information had been deliberately withheld by the County Council. The story has not ended there.

In **Hertfordshire**, an important section of the ancient Icknield Way is under threat from a BOAT application where exemption arises again under the LoS rule. The Council however ordered a bridleway based on evidence, but an inspector in turn modified the order to BOAT. That is now being contested on behalf of GLPG and local GLEAM members, although probably on absence of historic rights rather than on non-qualifying status of the LoS.

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In **Somerset**, incompetence on the part of the Council as to processing claims has resulted in something of a stalemate when it rejected an exposition of the various legal breaches - simply on the ground that the argument had already been rejected! The batch of claims concerned all centre on the exemption granted under NERCA for 5-year motorised use leading up to May 2006, in spite of the fact that such use cannot result in BOAT orders by definition. The next round in that battle is pending. Meanwhile however, three off-roaders caught driving on one of the Restricted Byways (RBs) involved were fined £130, £155 and £500 respectively last September.

Winchester College + Humphrey Feeds v Hampshire CC [2008]

Back in **Northumberland**, the Simonburn case previously reported has been confirmed with RB status, the leading TRF adviser having failed as applicant to submit copy evidence, so that the application was not strictly compliant and fell foul of Winchester. Still pending is the decision in the **Northumberland** (Healey) case, for which a hearing is scheduled for April. This was argued by the same imaginative TRF adviser asking the inspector to believe that the way was created expressly for use by mechanically propelled vehicles in 1765! As the application again was non-compliant as to copy evidence, it will be a travesty of justice if it succeeds.

Compliance is also in question in the **Dorset** case due to be heard by the Court of Appeal in April (where GLPG is represented personally as Interested Party). The outcome will decide the fate of 11 BOAT claims, and will set the precedent as to whether application maps blown up from 1:50,000 satisfy a strict requirement for maps to be drawn to a scale of not less than 1:25,000. Can devious law overcome plain horse sense?

Buckinghamshire has become a focal point for Winchester with three cases on the boil. A public inquiry is due in May at Lillingstone Dayrell, where GLPG is representing the Parish Council as well as itself. The track in question is a back door to the Silverstone circuit, so is vitally important to keep free of vehicles, quite apart from the historical value of a track leading to the chapel of St Thomas à Becket - hence the corner by that name. The DMMO was made for a BOAT by direction from the Secretary of State after partial rejection by Bucks CC and a Sch 14 WCA appeal by the TRF, but the question of NERCA and compliance as to copy evidence was overlooked by all parties to the appeal. Following an objection by GLPG, Bucks CC is now endorsing RB status. Two other cases in **Buckinghamshire** (Little Missenden) are pending inquiries in August, again based on wrong map scales.

Defra and PINS

We had a useful meeting in October with Margaret Read, Head of Commons and Access Implementation (Defra), when issues as to the Planning Inspectorate's (PINS') guidance were discussed. As a result of our representations, the PINS' Advice as to 'duly made' objections is being reviewed and sent to Defra's lawyers' for vetting. Defra has a copy of GLPG's analysis of the current legal errors. Other issues are on the back burner due to pressure of work at Defra together with budget cuts on staffing.

**If you would like more information or wish to assist please write to:
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