

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 recreational motor vehicles.

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How to get a traffic regulation order (TRO) – Part 1

Derek Chapman describes how the Hampshire parish of Warnford has succeeded in getting its green lanes protected.

Warnford is a small village in the Upper Meon Valley, within the South Downs National Park. In the northern part of the parish is a small network of green lanes, unsealed unclassified roads, totalling about 2½ miles in length. According to local tradition Bosenhill Lane, the longest, used to be the main road to Winchester and certainly has considerable lengths of ancient flint metalling. There had been no through traffic on them within living memory and there is now hardly any farm use. They cross undulating farmland high on the chalk plateau and are accompanied by strip spinneys with many wild flowers and birds; they were and are favourite routes for walking and riding.



Nearly ten years ago they were “discovered” by off-roaders and by 2013 were being intensively used by heavy 4x4s and by trail bikes, to the point where many lengths were virtually unusable on foot, horseback or pedal cycle. Illegal 4x4 circuits were formed in adjacent woodland and trail bikes were seen on footpaths connecting the lanes to adjacent roads. To an accompaniment of noise, bright lights and litter, use was extended into the small hours at weekends. Direct complaints by residents produced aggression and threats of “we know where you live”.

Mud hole and illegal track, Dark Lane, Warnford, January 2015

Individual reporting to the Police and Hampshire County Council (HCC) by local residents produced little result. A dossier of photographs of damage and illegal use was built up, reported on the village website and presented to our local County Councillor at the Parish Meeting. The reports proved central to our eventual success. HCC Highways were

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initially sympathetic but unhelpful, citing a combination of budgetary constraints and fear of having to defend a TRO in court. The Police could only act against illegal activities and although a few warnings were issued it made little difference. A change in responsibilities brought a sympathetic and very active Sergeant to our Countrywatch team and from then on, his support to the case for a TRO proved decisive.

We also joined GLEAM, which gave us the incentive of knowing it could be done! That was very helpful because there were times when we felt we weren't getting anywhere. Contact with the off-roader organisations, the Green Lanes Association (GLASS) and the Trail Riders Fellowship (TRF), only produced assurances that their members would always comply with the law and act responsibly. A key step was taken in December 2016 when our County Councillor chaired a meeting in the village including Police and Highways. Parish Meeting representatives supported by landowners presented the case and Highways agreed to progress towards a TRO banning all motor traffic (except for landowner access) from the whole green lane network.



Mud hole, Bosenhill Lane, Warnford,
December 2014

The draft TRO was published in June 2017 with a disappointingly thin statement of reasons, covering only prevention of damage and avoidance of illegal access to adjacent land. It attracted twenty eight letters of support and three objections, one of which was from the TRF. GLEAM wrote in to point out the (rather large) holes in the case presented by HCC. That prompted the Parish to write a letter with a further list of reasons for issuing the TRO, covering hazards to walkers, cyclists and equestrians caused directly and by diversion of these vulnerable users to trafficked roads, environmental damage, opportunity to enjoy local amenities and avoiding disturbance of the natural beauty and tranquillity of the area. This letter was quoted later in one of the court judgments and was therefore not wasted.

On 1 June 2018 the TRO came into effect. On the ground this produced a strong reaction, with signs torn down and an evidence camera smashed, although motor traffic did decline. The TRO was challenged by the TRF on several grounds – that HCC had failed to identify the statutory purpose and failed to comply with Section 122 of the Road Traffic Regulation Act, that the Statement of Reasons was inadequate; that the TRF's representations were not properly considered and that the rejection of the TRF's alternative proposal for a permit TRO was irrational. These were rejected by the High Court, but the TRF applied

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for and was granted leave to appeal on two grounds, first the failure to comply with Section 122 and second that the advice given by the Police was contradictory – our local sergeant supported the TRO, but the Roads Policing Unit did not, on the grounds that they lacked the resources to police the Order. The appeal was ultimately rejected by the Court of Appeal – so our green lanes are now legally protected. We still get the odd intruder, but our local police sergeant has the best closing line “..hopefully the lanes can now return over time to the idyllic lanes and footpaths that they always were before being found and invaded by the off-road lobby it is definitely a reason to celebrate the power of the local community working together and to never give up”

How to get a traffic regulation order (TRO) – Part 2

It has taken over 25 years, but the Peak District village of Stoney Middleton at last has a TRO on the green lane called Jacob’s Ladder. Patricia Stubbs, Chair of the Peak District Green Lanes Alliance, explains how it was done.

The parish council first asked Derbyshire County Council (DCC) to exclude recreational motor vehicles from Jacob’s Ladder soon after off-roaders started using it in the 1990s. Despite repeated requests, DCC did nothing. Nor did the Peak District National Park Authority (PDNPA) after the National Park Authorities were given and started to use their own TRO powers. Inexplicably, as it is exceptionally dangerous to share with motor vehicles, Jacob’s Ladder just never made it onto the PDNPA list of green lanes requiring management and intervention.

The Peak District Green Lanes Alliance (PDGLA) got involved in 2012, when a claim made in 2003, to add the route as a byway open to all traffic (BOAT) to the definitive map, finally reached public inquiry. PDGLA lost at the inquiry because the Inspector decided that the route carried a historic right of way for vehicles (which right is excepted from the protection given to other historic vehicular routes by the Natural Environment and Rural Communities Act 2006 because Jacob’s Ladder is an unsealed unclassified road and was not on the definitive map). This meant that the copious evidence presented to the inquiry about danger and other forms of public nuisance being caused by off-roading on the route were irrelevant to the decision. But we didn’t stop there.

We immediately started working with the parish council on building and writing a case for a TRO. The key to eventual success was twofold: the copious evidence of public nuisance we had already collected for the public inquiry; and persistent lobbying and pressure on DCC. We were supported in this by the parish council, Friends of the Peak District and the local bridleway group. The latter played a particularly helpful role by commissioning a health and safety report on the route from a leading national specialist in the horse/motor vehicle interface.

The case for a TRO was presented to DCC at the end of 2013. It took a further four years of lobbying but in the end DCC agreed to consult on a TRO proposal. We kept a close eye on the consultation process, which was just as well as we spotted a legal error which

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meant that the consultation had to be re-run. The consultation led to a full TRO which came into effect on 2 August this year.

The lessons from the Jacob's Ladder saga are: collect nuisance evidence for all BOAT claims contested at public inquiry as this will be the core of the case for a TRO if you lose at the inquiry; if there has been no public inquiry, start collecting nuisance evidence; write up the case for a TRO; work with residents, the parish council, sympathetic county councillors, bridleway and walkers groups; lobby persistently; never give up.

If anyone would find it useful to see the case for a TRO developed for Jacob's Ladder, contact GLEAM at info@gleam-uk.org.



Exposed tree roots, surface and subsoil washed away, a corner with limited visibility on Jacob's Ladder



Surface and subsoil washed away, corner with limited visibility on Jacob's Ladder

Editor's note. Further information about the reasons for making TROs and section 122 of the Road Traffic Regulation Act 1984, mentioned in the two articles above, can be found in the guidance part of GLEAM's website at <http://www.gleam-uk.org/guidance/the-use-of-traffic-regulation-orders-to-restrict-motor-vehicle-use-of-green-lanes/>.

Government survey on use of TROs by highway and national park authorities

Michael Bartholomew, Chairman of GLEAM and GLPG, writes about the Government's response to TRO recommendations made by the Select Committee on the Natural Environment and Rural Communities Act.

With Parliament and Government mired in Brexit, GLEAM members won't be surprised to read that little, if any, progress is being made by the DEFRA stakeholder working group that was set up to consider the whole business of non-essential motor vehicles on green lanes. The DEFRA and Natural England officials who were leading and supporting the group have probably been diverted to other duties, leaving the working group to languish – although it hasn't formally been prorogued. Readers will recall that the House of Lords Select Committee balked at the challenge of proposing legislation to prohibit 4x4s and motorbikes from green lanes. Instead they said that, as a first step, the existing process for making traffic regulation orders (TROs) should be simplified and improved to manage problems caused by motor vehicles on green lanes. Defra and Natural England have now written to all local and national park authorities in England, asking them about the current TRO process as used for green lanes, whether it is sufficient for effective management of recreational motor vehicle use and what changes could be made to current TRO legislation/processes to make them more efficient and flexible. The closing date for this survey was the end of August. Until the evidence is analysed, the working group's work is at a standstill.

TRF trickery

Graham Plumbe, an honorary adviser to GLEAM, reports on the Trail Riders Fellowship's attempt to rewrite the law.

Under s67 NERCA (Natural Environment and Rural Communities Act 2006), unrecorded public motor vehicular rights (pmvrs) were extinguished, unless one of the exceptions applied. One such is where an application for pmvrs had been made before 20 Jan 2005 (England). In *Winchester College + ANO v HCC + Defra 2013* (the *Winchester* case) the Appeal Court held that to qualify for such a privilege the application must have strictly complied with the requirements set by Schedule 14 to the Wildlife & Countryside Act 1981 (WCA). Para 1(a) of that schedule requires that the application was accompanied by a map 'drawn to the prescribed scale [1:25,000]'; para 1(b) requires that the application was accompanied by copies of any documentary evidence [which the applicant wishes to rely on]'.

In *TRF v Dorset CC* (the *Dorset* case) the Supreme Court upheld (by a 3:2 majority) an illogical ruling by the Court of Appeal that a map presented at a scale of 1:25000 qualified, whatever had been the drawn scale. That gave the OK to 5 Dorset applications based on maps that were not drawn to the right scale that the High Court had said should fail.

The TRF took the opportunity of being in the Supreme Court to challenge the *Winchester* judgment. The Court agreed to consider that issue, albeit in an obiter ruling. The

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challenge failed, so the *Winchester* ruling as to strict compliance remains good law even though the allowable meaning of 'drawn scale' under para 1(a) has been stretched. It remains an open question as to whether the 5 Dorset applications were compliant under Schedule 14, particularly para 1(b). The Green Lanes Protection Group (GLPG) says they are not.

The judgment by the Supreme Court was summarised in a document issued by the Registrar on 13 April 2015 and loosely worded thus:

THE COURT ORDERED THAT

- 1) The appeal be dismissed
- 2) The claim for judicial review of [Dorset's] decision of 2 November 2010 [to reject the applications] succeeds

3) [costs] and

IT IS DECLARED that

- 4) The five applications made to [Dorset] under section 53 (5) of [WCA] were made in accordance with paragraph 1 of Schedule 14 (my emphasis) to [WCA].

The TRF argues that its applications all qualified on the grounds that the Declaration is an order of the court and it embraces both paras 1(a) and 1(b).

Dorset Council does not agree that the applications were compliant, but does argue that the Declaration is a court order. Helpfully, it has applied to the Registrar to amend the Declaration to clarify the point by specifying para 1(a).

GLPG (represented by the author of this article who was Intervener in the Supreme Court) argues that the Declaration is not a court order as the Registrar does not have the power to make an order which supersedes the findings of the court. The defect in the Declaration is no more than an ambiguity which can easily be clarified. It supports Dorset in asking for an amendment.

The Registrar has referred the matter to Lord Carnwath who was one of the judges in the case.

Watch this space!

Other rights of way issues

Diana Mallinson, GLEAM Honorary Secretary, writes about two recent public inquiry/hearing decisions.

Carr Head Lonning, Mungrisdale, Lake District – 5 year main use exception

Off-rovers objected to a restricted byway order made in 2017 by the Lake District National Park Authority (LDNPA), following an application by Cumbria Bridleways Society. The off-rovers argued that the route should be a byway open to all traffic, which led to a public inquiry in April 2019.

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Carr Head Lonning is an unsealed road recorded on Cumbria's list of streets throughout its length. (The lonning part of its name is a Cumbrian word for a lane, according to the Lakeland Dialect Society.) The ends of the route went on the definitive map in the 1950s as a public footpath, with the middle section of the footpath taking a short-cut away from the route, across fields. But the historical (back to the 18th century) evidence researched by LDNPA indicated that the route has public vehicular rights. LDNPA argued from case law that the list of streets exception in section 67(2)(b) of the Natural Environment and Rural Communities Act (NERCA) 2006 did not apply to the middle section. The Inspector agreed with LDNPA that public motor vehicular rights had been stopped up over the middle section because there could be no lawful access for the public with motor vehicles over the restricted byway end sections. (Section 67(5) NERCA provides a private motor vehicular right for the farmers who access their land with motor vehicles via the route.)

The off-roaders also claimed that the 5 year main use exception in section 67(2)(a) NERCA applied to the route. This is the exception which was designed to ensure that the public's right to drive motor vehicles on 'ordinary' roads was preserved by NERCA. It says that if the main lawful use of the road was by the public with motor vehicles in the 5 years leading up to the commencement of NERCA (2 May 2006 in England), then public motor vehicular rights are not extinguished.

GLEAM provided evidence from local residents about their use (and use by their B&B guests) of the route by motorised and non-motorised means (on foot, horse, cycle and horse-drawn carriage) in the 5 years ending 2 May 2006, and compared this use with the motorised use reported by the off-roaders and the farmers. The Inspector concluded that lawful use by non-motorised means exceeded that by motorised means, i.e. the exception claimed did not apply.

The Inspector's decision that the entire route is a restricted byway is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802761/row_3199173_dec.pdf. Local residents and visitors can continue to enjoy the lonning without being disturbed by off-roaders.

Back Lane, Darley Dale, Derbyshire – TRF objecting to BOAT

An Inspector decided in March 2018, following a public inquiry, that Back Lane has historic public vehicular rights over the whole of its length, not bridleway rights over the lower unsealed section (as argued by Derbyshire County Council) or over both lower and upper unsealed sections (as argued by GLEAM members on behalf of the Peak District Green Lanes Alliance, PDGLA). The TRF then objected to the Inspector's interim decision that both upper and lower sections were byways open to all traffic, by claiming that the upper section is an ordinary road. The TRF's objection led to a public hearing in February 2019.

We think the TRF made this objection because it wants motorised users to be seen as the main users of green lanes (or 'green roads' as it calls them), so that highway and national park authorities place less weight on the amenity of the non-motorised public who use green lanes and on the unsuitability of green lanes for motorised use when considering

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TROs. Although byways open to all traffic (BOATs), as their name implies, have public vehicular rights, they are defined in statute as highways “used by the public mainly for the purpose for which footpaths and bridleways are so used”.

The evidence of public use and nuisance which PDGLA had collected from local residents and non-motorised users for the inquiry in 2018 was also useful for the hearing. This evidence showed that people used to be able to access their land in ordinary cars, and to walk, canter, cycle, drive carriages and drive/lead animals with ease and in safety. But such use is now difficult on the upper section (and impossible or almost impossible on the lower section) because of the risk of meeting off-roaders and because of the damage their vehicles have done to the surface.

After hearing argument at the hearing from the TRF, Derbyshire County Council and PDGLA about the case law and guidance on the BOAT definition, the Inspector agreed, in her final decision, with Derbyshire County Council and PDGLA that the upper section is not an ordinary road but is a byway open to all traffic. She found that the character of the upper section fits the concept and character of a BOAT and is more suited to use by walkers and horse riders than by motor vehicles.

The Inspector’s decision is available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829868/ROW_3177165M_final_OD_dated-with-map.pdf.

We have subsequently learned of other cases where the TRF is arguing against BOAT status and in favour of part of “the ordinary road network”.

The section of Back Lane which the TRF claimed is an ordinary road, not a BOAT.



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