

# GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

[www.gleam-uk.org](http://www.gleam-uk.org)

A newsletter for those interested in protecting ancient ways from the ravages of recreational motor vehicles.

**AUTUMN 2020**

## **GLEAM loses its High Court Action against the Lake District National Park Authority**

Two green lanes in Little Langdale have become popular with motorcycle and 4x4 users. The consequent impact on the lanes themselves and on the amenity of local farmers and non-motorised recreational users is awful. GLEAM members will know, at first hand, plenty of similar cases. Two things, however, make the Little Langdale tracks more than usually important. The first is that they are not only in a national park, but they are in an area of the national park that is especially beautiful. The second is that the national park authority (NPA), whose two statutory duties are to protect and enhance the natural beauty of the national park, and to provide opportunities for understanding and enjoyment, believes that it is properly discharging these duties when it permits and facilitates non-essential motoring on the Little Langdale tracks.

The Authority faced down repeated calls from the public, from farmers, and from local amenity groups such as the National Trust and the Friends of the Lake District for it to impose traffic regulation orders (TROs) on the tracks. The Authority did not even take the first, tentative step towards a TRO – the commissioning of a statutory consultation. Instead, via its Rights of Way Committee, it decided to set up a management group for one of the lanes, and to do nothing, beyond routine maintenance, for the other one. In short, the can was kicked firmly down the road.

The GLEAM committee took legal advice: had the Authority acted lawfully in its handling of the issue? The advice was that we had an arguable case to take to the High Court, but that we should not raise our hopes of success too high. High Court cases are extremely expensive. Obviously, we could not jeopardise GLEAM's modest finances - which, in any case, would have been insufficient to cover the costs – to fight an action with an uncertain outcome. We therefore turned to crowd-funding, and to our immense satisfaction, over 2000 people contributed sums that collectively met the £80,000 costs we incurred.

Our counsel argued our case on three grounds. First, it was argued that the Authority misdirected its Rights of Way Committee as to the correct interpretation of the 'Sandford Principle'. (This principle, enshrined in law, says that where there is a conflict between the duty to protect natural beauty and the duty to promote enjoyment, the former takes precedence.) Secondly, it was argued that the Authority had failed correctly to apply the

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procedures for making TROs, and thirdly, it was argued that the Authority's officers misdirected the Rights of Way Committee on the TRO-making procedures governing the scope and nature of statutory consultations.

We would have liked to challenge the way the LDNPA assessed and interpreted the information available to it about the impact that motor vehicle use is having on the natural beauty of the Little Langdale area and on non-vehicle users. We and the local campaign believe that the Authority's officers assessed this information with a clear bias towards stressing the evidence that allowed them to recommend the continuation of recreational motor vehicle use. Unfortunately, we were unable to make this fundamental issue part of our legal challenge. This is because judicial review does not allow the court to re-examine the quality of decisions, or the evidence that they are based on. It can consider only whether there are legal errors in the decision process. In the face of LDNPA's handling of the issue, the only grounds of legal challenge open to us could not, therefore, involve the substantive issue. We were forced into making the only objection that was open to us.

We lost on our three legal grounds, and were advised that an appeal would be unlikely to succeed.

What have we learned? The chief lesson is that if a National Park Authority is determined to allow, and even facilitate, the activities of recreational vehicle users, it is very difficult for the public to challenge them. NPAs have very wide discretion, and in the case of LDNPA, that discretion has been exercised in favour of keeping the Little Langdale green lanes open to non-essential 4x4s and motorbikes, even though NPAs have ample powers to make orders prohibiting such use. Other NPAs, it should be noted, have successfully imposed TROs. In the face of LDNPA's handling of the issue, GLEAM was forced into making the only objection open to it, which involved very arcane bits of law. We knew it was a long shot, but we had to give it a try. But GLEAM's actions certainly were not those of a single, selfish pressure group: gratifyingly, our request for TROs was supported by the Friends of the Lake District, the National Trust, the Ramblers, UNESCO, local landowners and farmers, and thousands and thousands of visitors and residents, many of whom stumped up to help pay for the action.

There are two morals to this tale. The first is that NPAs have wide, and worrying, discretionary powers. In our case, we were up against a NPA that has the discretionary power to impose TROs, to decline to impose TROs, and even the power to decline to consult the public on the desirability or otherwise of a TRO. It is extremely difficult for the public to exert much influence. If a NPA construes its duty to conserve and enhance natural beauty as a duty that entails the welcoming of 4x4s and motorbikes onto green lanes, it's hard to persuade it otherwise. The other moral is much more encouraging. The comments left on the crowd-funding site by contributors are extremely heart-warming. People really do care deeply about the green lanes of the Lakes and want them to be freed from the damage and nuisance inflicted by non-essential motors. The success of the crowd-funding initiative, while it did not lead to success in the High Court, gives us the assurance that GLEAM is very far from being a bunch of bigots whose only aim is to stop the fun that 4x4 and motorbike users derive from motoring along green lanes. On the

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contrary, GLEAM gives expression to the public's desire for the peace, tranquillity and beauty that green lanes embody.



Recreational 4x4s on the two lanes

### **Definitive Map Modification Orders (DMMOs) - update** *by Diana Mallinson and Graham Plumble*

GLEAM is interested in and gets involved in only those Definitive Map Modification Orders which introduce pmvrs (public motor vehicular rights) i.e. by adding byways open to all traffic (BOATs) to the definitive map of public rights of way or by upgrading existing public rights of way to BOATs. It is also possible to apply for a DMMO which downgrades or deletes a BOAT, but such DMMOs are rare and require convincing evidence that a mistake was made when the public right of way was put on the definitive map. This note looks at some recent and pending examples.

#### **Potential upgrades to BOAT status**

Most DMMO applications which could lead to existing public rights of way being upgraded to BOATs have now been decided. These are applications which were made before the time limits set by the Natural Environment and Rural Communities Act (NERCA) 2006, which extinguished historic pmvrs and prevented new pmvrs being acquired, subject to certain exceptions, or where one of the exceptions is claimed. The last two newsletters summarised the law in this context and reported that 5 BOAT applications (mostly to upgrade existing bridleways) in Dorset had to be revisited because Dorset Council (DC) lost the argument in the Supreme Court (on appeal) that the requirement that application maps should be drawn to a scale of not less than 1:25,000 was not satisfied by maps drawn to a smaller scale and then enlarged. We also reported that the Trail Riders Fellowship (TRF) were trying to use an ambiguity in the Registrar's report of the Supreme Court judgment to give itself authority to disregard Appeal Court law (the *Winchester*

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judgment) as to the validity of applications – which is of course absurd. This matter has yet to be resolved.

The present position as to the Dorset 5 is:

T338 (Batcombe Leigh) – The applicants have been told that no DMMO will be made because the application was defective in failing to supply all the evidence relied on and so did not qualify for exemption.

T339 (Cheselbourne/Dewlish) – A BOAT DMMO was made on 6.3.20 which was notified to the public on 6.8.20 with the objection period expiring on 17.9.20. An objection has been lodged, principally on the ground that extracts from evidence documents do not suffice, particularly when they fail to identify the specifics relied on, so the matter will be referred to the Planning Inspectorate (PINS).

T350 (Tarrant Gunville and Chettle) – In limbo. We were told that it is to be decided under delegated powers, ie by officers. This should be safe as some of the evidence was never submitted and the application is recorded as being received on 24 Jan 2005 – which was after the NERCA cut-off date.

T353 (Beaminster) – Committee rejection based on lack of evidence; the TRF objected and the matter was referred to PINS who also rejected based on lack of evidence. Matter closed. The dispute as to the validity of the application became irrelevant, as is the fact that application was received on 6 Feb 2005.

T354 (Beaminster) – Part (SE length) DMMO'd as a BOAT; NW length excluded for lack of evidence. As a matter of procedure, the TRF appealed against the non-making of an order, but this was rejected given the lack of appeal rights where an order has been made, even if only over part. A lengthy objection was submitted in March 2020 and the application will have to be referred to PINS when DC has considered its position.

As we've said before, watch this space!

**(Link to register to get full details but not updated as to present position)**

**<https://mapping.dorsetcouncil.gov.uk/rightsofway/definitivemap/register>**

We reported in the Spring 2018 Newsletter that GLEAM and GLPG had made representations to North Somerset Council (NSC) about 12 applications made between 1995 and 2007 to upgrade footpaths and bridleways to BOATs, pointing out that, if the applicant had not included copies of all the evidence it relied on, the routes could not become BOATs. NSC has now decided all 12 applications; none of them are BOATs. In another BOAT application, made in 1997 and decided recently by NSC, the applicant had supplied the evidence he relied on. He wanted NSC to reconsider a decision made following a public inquiry in 1996 not to upgrade a bridleway to BOAT. In its recent (November 2019) decision NSC considered the applicant's new evidence and counter-



evidence and arguments supplied by GLEAM members, the Parish Councils and a landowner, and decided that the bridleway should not be upgraded to BOAT.

### **Downgrade of BOAT**

Previous newsletters described the '*Grim Fairy Tale*' of a green lane in Huddersfield which Kirklees Council (KC) thought was a BOAT, but which is shown on its definitive map with the wrong notation. KC has now investigated how its predecessor, West Yorkshire Metropolitan County Council, reclassified this route (and others in Huddersfield) from Road Used as Public Path to BOAT in the 1980s. KC concluded in July 2020 that an error was made in this reclassification process such that "*there was no basis for it [this route] to have been recorded as a BOAT*". It has decided to make a DMMO downgrading this route to bridleway.

### **The list of streets exception from NERCA**

As noted above, most applications to upgrade public footpaths, bridleways and restricted byways to BOATs have either now been decided (if they pre-date NERCA), or will not be successful (post-NERCA) because no exception applies. But there are still a substantial number of green lanes which are public rights of way (because they are recorded as publicly maintainable on authorities' list of streets) where their status (footpath, bridleway or BOAT) is unknown. This is because they were not on the definitive map and statement at NERCA commencement and potential historic pmvrs are not extinguished (section 67(2)(b) NERCA exception). Some authorities (mainly Derbyshire and Northumberland) have been investigating whether these green lanes should be added to their definitive maps and statements and have found that the majority of them have historic public vehicular rights (and so have to be added as BOATs) but that a substantial minority are public bridleways (and a few are only public footpaths). The off-roader organisations, the TRF and the Green Lane Association (GLASS), have tried to argue that these green lanes are ordinary minor public roads and so should not be recorded on the definitive map and statement, but this argument has not succeeded.

A recent decision by the Planning Inspectorate in Derbyshire illustrates these debates. The TRF applied in 2005 for a publicly maintainable highway which is part tarmac and part green lane to be added to the definitive map and statement as a BOAT. Derbyshire County Council made a bridleway DMMO on historic evidence and because there was insufficient evidence of public motor vehicle use in the 20 years up to the date of public rights being brought into question by the TRF application in 2005. (NERCA prevents evidence of motor vehicle use after 2006 counting for public rights.) GLASS had objected to the route becoming a bridleway on the ground that the whole route was an ordinary road. It withdrew this objection with regard to the green lane part of the route before the public inquiry. The Inspector found that the tarmac part of the route had evolved to become an ordinary minor public road but agreed with the Council, the Peak District Green Lanes Alliance and Peak Horsepower (the latter two organisations represented by GLEAM members) that the green lane section is a bridleway. His decision is available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/>

[attachment\\_data/file/912412/row\\_3222938\\_interim\\_od.pdf](#). A further 53 BOAT applications for green lanes on Derbyshire's list of streets are still outstanding.



These ruts were made by recreational motor vehicles using the Derbyshire green lane discussed above in 2013. The damage to the pasture was still evident 5 years later, when this photo was taken in 2018.



Ford and 18<sup>th</sup> century clapper bridge at the start of the bridleway section of the Derbyshire lane discussed above, in the foreground. The tarmac, ordinary road, section is in the background.

Photo © [steven ruffles](#) ([cc-by-sa/2.0](#))

### **No management of green lanes in Snowdonia National Park** *by Diana Mallinson*

We included a photo of two 4x4s stuck on a green lane, Carn March Arthur, in Snowdonia National Park, in our Spring 2019 newsletter. This photo had been submitted to the North Wales Area of the Green Lanes Association (GLASS), an off-roading organisation, in a competition for a new cover photo for its Facebook page. GLASS has been trying to raise money for the repair of this lane, two others (Happy Valley/Cwm Maethlon and the Horseshoe in the Gwynedd part of Snowdonia National Park) and a fourth outside the National Park, in North-east Wales (the Wayfarer, the damage to the SSSI section of which was mentioned in our Autumn 2018 newsletter). GLASS set a target of £30,000 when it launched its crowd-funding webpage in January 2020, to pay for stone to be transported to fill in holes and improve drainage on Carn March Arthur, Happy Valley and the Horseshoe, and for repairs and signage to deter users from leaving the track on the Wayfarer. So far GLASS has raised 40% of its target, just over £12,000. This shortfall means it has asked recreational motor vehicle users not to drive Carn March Arthur and Happy Valley and to drive the Horseshoe downhill only. It also asked users not to drive the Wayfarer, but this voluntary restraint proved ineffective and Wrexham County Borough Council has now made a temporary traffic regulation order prohibiting motor vehicle use on its section of the route.

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Previous attempts to manage these lanes in Snowdonia National Park by voluntary means have been unsuccessful. In 2018, GLASS started another crowd-funding webpage for repairs on Happy Valley, which raised only £1,254. This was after Snowdonia National Park Authority (NPA) had issued a press release about the problems caused by off-roaders – see <https://www.bbc.co.uk/news/uk-wales-north-west-wales-43142187>. The NPA said *"The authority finds itself in a very frustrating position. Consideration is not given to other users, fragile habitats and the environment of the national park are being destroyed as tracks become wider resulting in more damage. Repairs are too costly for the authority and landowners to implement and traffic regulation orders can result in significant costs."*

While these lanes continue to be damaged by recreational motor vehicle drivers ignoring the voluntary restraint while they wait for repair, GLASS's only solution for other damaged green lanes in Snowdonia National Park is more voluntary restraint, which is ignored by many 4x4 drivers and motorbikers.



4x4 stuck on Happy Valley, Gwynedd, September 2020. As another user commented, when this photo was posted in a plea for help on the GLASS Facebook page, *"that bog will eat cars"*.



4x4 stuck on a green lane in the Conwy part of Snowdonia National Park, July 2020

### **David Becket and the foundation of GLEAM**

*by David Gardiner (Founder and former Chairman of GLEAM)*

It is with great sadness that we record the death of David Becket on April 15<sup>th</sup> at the age of 84. David was a founding member of the GLEAM Committee and was instrumental in



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getting the organisation going. He was into it **before** it started. How it all started was like this.

Carolyn, my wife, came back one morning from riding on Old Street, an ancient track which runs from North Heath, near Chieveley, Berkshire, to join The Ridgeway 7 miles to the north. She complained that Old Street was in a terrible state; so, that afternoon we went up there to inspect. Sure enough, it was awful, with ruts 2ft deep with up to 14 inches of stagnant muddy water in them. The ruts were so deep that they could not have been caused by any normal 4x4, and they had definitely not been caused by farm vehicles. They must have been caused by some ex-military vehicle. I took photographs of Carolyn standing in a rut with water nearly over the top of her gum boots. I then wrote a letter to the *Newbury Weekly News (NWN)* about the state of Old Street, illustrated with one of my photographs, which they published.

In the next issue of *NWN* were letters from two Berkshire County Councillors whom I had never met before, both complaining about similar damage to green lanes in their wards. They were Elizabeth Still from Bucklebury and David Becket from Hermitage. The three of us very quickly got together. They got the Council interested and organised a party of County Councillors to come and inspect Old Street – including one lady councillor in her high heels! A few days later I gave a presentation to the Council, and they really took the problem on board. They scraped together £70,000 of scarce resources and spent it on Old Street. The Council also made a traffic regulation order to protect the part of Old Street which is a byway open to all traffic (the remainder is restricted byway and bridleway). Today, 25 years later, the surface of Old Street is excellent.

The three of us, Elizabeth, David and me, then extended the fight to other damaged rights of way in Berkshire. After a year we realised that, if we were going to make any real headway, particularly in getting law changed, it had to extend beyond Berkshire and cover the whole of England and Wales. (Not Scotland, because the law is different.) So, we founded GLEAM, with committee members from other parts of the country, all experienced in protecting public rights of way. From Berkshire there was me as Chairman, Elizabeth as Hon Secretary, Chris Marriage (another County Councillor), David Becket and David Marr as Hon Treasurer. From elsewhere we had Andy Dunlop from Cambridgeshire, Felicity Turner from Derbyshire, Marlene Masters from Somerset and Tricia Newby from Hampshire. We also recruited Graham Plumbe and Jonathan Cheal as Honorary Advisers. As far as GLEAM is concerned, the rest, you may say, is history, and GLEAM is what it is today.

David Becket remained on the GLEAM Committee till 2000, when he and his family moved to Staffordshire, to Betley, near Newcastle under Lyme. We greatly missed his wise counsel and the twinkle in his eye. With his passion for the environment, David became involved in Staffordshire politics, and was elected to the Newcastle Borough Council in 2002 and was elected Mayor of the Borough of Newcastle for 2012/13.

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