

GLEAM



Green Lanes Environmental Action Movement
Patron 2001 - 2021 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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Limited additional protection for the Ridgeway in Wiltshire

Most of the Ridgeway National Trail in Wiltshire has the status of byway open to all traffic (BOAT). In 2004 the County Council made a traffic regulation order (TRO) prohibiting motor vehicles from using most of the BOAT sections (except for access) between 1 October and 30 April each year. The TRO was made for the purposes of preventing damage, facilitating the passage of users, preventing vehicular use which is unsuitable having regard to the character of the BOAT or adjoining property and for preserving the amenities of the area through which the BOAT runs. The County Council said the intention was to protect the route when it was most vulnerable to damage. A study of green lanes carried out for Defra just before the 2004 TRO was imposed showed that over one third of the motor vehicles using this part of the Ridgeway were motorcycles, indicating that they made a significant contribution to the damage.

The southern end of the Ridgeway is part of the Avebury World Heritage Site (WHS) and is in the North Wessex Downs Area of Outstanding Natural Beauty. In 2016 the WHS Steering Committee and the Ridgeway Partnership asked Wiltshire Council to change the TRO to provide year-round protection to this 3 mile section of the Ridgeway. Their reasons were that motor vehicle damage had increased despite the seasonal TRO, and that this damage could increase as summers become wetter and lead to sensitive archaeology under the surface being exposed and damaged. The damage which had occurred in the 12 years the seasonal TRO had been in place had resulted in a surface which fell far short of the standard specified for a National Trail, and over which non-motorised users and mobility scooter users struggled to pass; an annual cycle event for charity had been re-routed because this section was not usable.

Wiltshire Council made a temporary TRO for the summer of 2019 to trial surface repair techniques in four areas of this section of the Ridgeway. The repairs consisted of chalk and soil infill to the vehicle ruts, the infill being collected and deposited by machines working in the adjacent fields so as not to cause any additional damage to the surface and

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archaeological features, and to restore the original surface geology. The areas were cordoned off and non-motorised users asked to avoid these areas to allow the chalk to settle. Very wet weather over the winter of 2019/20 meant that a further temporary TRO was made for the summer of 2020 (and the test areas cordoned off again) to encourage the establishment of a grass sward in these areas.



Motor vehicle ruts on this section of the Ridgeway, January 2014
Photo © Shaun Ferguson ([cc-by-sa/2.0](#))



Repaired surface (behind the barrier) on this section of the Ridgeway, May 2020
Photo © Michael Dibb ([cc-by-sa/2.0](#))

Wiltshire Council has not reported on the recovery of these trial areas but made an experimental TRO which has the effect of banning cars and quad bikes but not motorbikes from this section of the Ridgeway for the five summer months of 2021 and 2022. The statement of reasons for the experimental TRO says that it is for *“testing whether or not motorcycles can be accommodated on the materials which will be used for repairs”*. But a video published by a motorbiker in July 2021 shows the trial areas still cordoned off, so the experiment did not apply at that time to the repaired areas, but only to the unrepaired surface. There is also no indication in the experimental TRO documents as to how Wiltshire Council will evaluate the experiment. The Ridgeway National Trail website gives some more information, saying that the *“experiment involves observations of areas that are open to the public at all times, as well as areas that are subject to traffic only at times when Wiltshire Council opens them up for controlled observations”*. So the experiment appears to be both testing the effect of a few (less than five) months’ motorbike use on the repaired sections and of five months’ motorbike use on the pre-existing damage. Wiltshire Council is proposing to continue the experimental TRO as a permanent TRO, although it must consider any objections received within six months of the experimental TRO coming into force before doing so.

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GLEAM thinks the limited period (less than five months) for testing the effect of motorbike use on the repaired areas is too short for Wiltshire Council to be able to decide whether the experimental TRO should be permanent, and we will therefore be objecting to the experimental TRO being continued as a permanent TRO. We do not understand why Wiltshire Council is trying to assess whether motorbikes make the existing damage worse, because it is clear that motorbikes caused some of the damage which led to the original TRO in 2004. We also think that Wiltshire Council should consider the detrimental effects, of allowing motorbikes to use this section of the Ridgeway in the summer, on the purposes for which it made the experimental and the original seasonal TRO; not just continuing the damage caused by motorbikes before 2004 and in subsequent summers, but also the effect on the character of the historic route and on the amenity of the WHS and AONB for non-motorised users.

GLEAM asks readers who agree that motorbikes should not be allowed on this section of the route in future, at least without more evaluation of their effects on the repaired surface and on the amenity of non-motorised users, to send an objection to Wiltshire Council by 1 November 2021. The experimental TRO documents can be downloaded from <https://www.wiltshire.gov.uk/tro-consultation-experimental-order-various-byways> (n.b. this page gives an incorrect closing date for the consultation of 3 May 2021), which also gives the contact details for objections.

Seasonal selective traffic regulation order (TRO) in West Berkshire

Another seasonal TRO which has proved to be ineffective is an order made by West Berkshire Council in 2017 for 15 byways open to all traffic in the North Wessex Downs Area of Outstanding Natural Beauty. The order prohibits cars during the winter months but places no restriction on motorbike use of the byways, some of which run over common land and some of which are narrow, enclosed lanes. The aim of the TRO was to preserve the (repaired) surfaces of the byways during winter months. But it has failed in this aim. The ruts on some of the enclosed lanes make them too dangerous for horse riders, who are forced to use tarmac roads instead. A 4x4 got stuck in the ruts on the common land this summer and had to be winched out by another 4x4. The Trail Riders Fellowship has offered to train motorcyclists on the common land this winter, to try to stop abuse of the byways; it will be interesting to see if this training reduces the frequency of motorcycle ruts.

Trail Riders Fellowship's inaccurate assessment of sustainability

Northumberland County Council made traffic regulation orders (TROs) on some, but not all, byways open to all traffic in Slaley Forest and on Blanchland Moor, in 2012. Four byways were not subject to any TRO, because the recreational motor vehicle user

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organisations and the County Council considered that motor vehicle use was sustainable. For example, the Trail Riders Fellowship (TRF) commented that part of Long Edge Road (byways Healey 14 and Slaley 48) was “*sustainable for all users now that repairs have been carried out to the two rutted sections*”. Nine years later, in 2021, Northumberland County Council has had to close this section of Long Edge Road by a temporary TRO “*in the interests of public safety because of the likelihood of danger to the public, or of serious damage to the road.*” The photo below shows how this section was already damaged by May 2015. 4x4 and motorbike use of these byways is not sustainable.

4x4 and motorbike damage to this section of Long Edge Road had already occurred three years after the TRF said the route was sustainable for all users. Photo taken May 2015.



Public Spaces Protection Orders

GLEAM has noticed that some local authorities trying to deal with nuisance off-roading are turning to Public Spaces Protection Orders (PSPOs) rather than using, or attempting to use, Traffic Regulation Orders. For now, the jury is out on how effective PSPOs will prove to be. Meanwhile, we explain what PSPOs are.

PSPOs are part of the Anti-social Behaviour, Crime and Policing Act of 2014. Unlike TROs, which can be used only by county councils, unitary and national park authorities, PSPOs can only be used by district councils and unitary authorities. Hitherto, they have typically been used to control matters such as the presence of dogs and dog fouling, urinating in public and street drinking, but they can also be used to restrict or bar motor vehicular access to public rights of way.

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Under the terms of the 2014 Act (S.59) councils using a PSPO must be satisfied on reasonable grounds that the activity they want to restrict has a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect. Statutory guidance from the Home Office¹ sets out some broad tests for councils to use in deciding whether a PSPO is needed. It says that as well as having a detrimental effect on the quality of life of those in the locality the behaviour must also be persistent or continuing in nature and be unreasonable. Guidance on making PSPOs is also available from the Local Government Association², including advice on consultation.

Experience of using PSPOs to protect green lanes is currently very limited, so it is too early to say whether they can work as well, better or worse than TROs. What is already clear however, from two authorities where we have been following progress in making PSPOs, is that, just like with TROs, effectiveness depends on the competence of the council and the extent to which it is determined to stop damaging off-roading. Half measures are unlikely to work. We will have more to say on this in a later issue of the newsletter.

TRF trickery

Recent newsletters (NL) have reported the legal nonsense being relied on by the Trail Riders Fellowship (TRF) in cases which have been re-opened following the loss of a case in the Supreme Court (SC) by Dorset Council (DC) re 5 applications which were, in DC's judgement, wrong as to the need for a map drawn to the specified scale. The Court Order was the subject of a Declaration by the Deputy Registrar seeking to record the Order in short form, where he unfortunately used an ambiguous phrase that the applications '*were made in accordance with paragraph 1 of Schedule 14*'.

Paragraph 1 of WCA 81 Sch 14 says:

- An application shall be made in the prescribed form and shall be accompanied by—
- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

In fact, the only requirement in issue had been the first limb of Sch 14 para 1(a), referring to 'drawn scale'. Whether the map showed the way, or whether the requirement in para 1(b) as to evidence had been met, had not been in issue.

1 <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

2 [Public Spaces Protection Orders: Guidance for councils | Local Government Association](#)

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One of the cases is DC's T338 (Bailey Drove) where the proposed DMMO has been referred to the Planning Inspectorate (PINS) following an objection on 6 April 2021 made in the name of GLPG. PINS has not yet started its decision process.

The TRF are arguing that the words '*were made in accordance with paragraph 1 of Schedule 14*', override the *Winchester* Appeal Court judgement and give the applications validity even though they failed to satisfy the statutory requirements. Their argument also implies that the Deputy Registrar has the power to override Appeal Court law. For a fuller explanation, see the newsletters on the GLEAM website - particularly NL Spring 2020 at pages 7 and 8.

The latest twist is the threat of a claim for costs by the TRF for 'unreasonable conduct' and 'abuse of process'. Their solicitors have written to the various members of GLPG asking whether the objection of 6 April 2021 'was written with [sic] your behalf and with your authority. Please confirm.' They have sent chasers to GLPG members which did not reply. The TRF do not seem to understand that the scope for claiming costs in DMMO cases referred to PINS does not arise until the process is underway and there has been unreasonable conduct in that process.

If PINS does decide that the process is to be a hearing or inquiry (rather than an exchange of written representations in which costs cannot be claimed), the TRF would only be able to apply for costs against another party if the other party behaved unreasonably, leading the TRF to incur unnecessary or wasted expense during the hearing/inquiry process. Examples of unreasonable behaviour given by PINS in its guidance as to costs are (i) unreasonable delay to/extension of a hearing/inquiry, (ii) asking to be heard and then not turning up without good reason, (iii) making an irrelevant objection and then asking to be heard, and (iv) withdrawing an objection so that the hearing or inquiry is cancelled at a late stage.

On a separate point, it was felt by GLEAM's officers that, as GLPG had served its purpose some time ago and was no more than an umbrella organisation (it is not a legal entity), it should be discontinued. All members have been informed accordingly. That means that its members will not be involved as no representation will be made in its name when the DMMO is processed by PINS.

Deadline for byway open to all traffic claims in England

The Countryside and Rights of Way (CROW) Act 2000 set a deadline of 1 January 2026 (the cut-off date) for applications for definitive map modification orders (DMMO) to add footpaths and bridleways, or to upgrade footpaths to bridleways, to the definitive map and

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statement of public rights of way on the basis of historic (pre-1949) evidence. The Act also said that byways open to all traffic (BOATs), i.e. ways mainly used as footpaths and bridleways but also legally open to the public with motor vehicles, could not be added to the definitive map after the cut-off date. The UK government intends to implement these provisions for England (the Welsh Government has decided not to for Wales) and included provisions for implementation of these and other rights of way reforms in the Deregulation Act, passed in 2015. One of Defra's ministers told Parliament in April that Defra intended to lay the secondary legislation required for the Deregulation Act rights of way reforms before Parliament this year. Because the cut-off date is now so close, user organisations such as the British Horse Society (BHS) and the Ramblers Association, whose members are doing a lot of research to apply for historic public rights, have asked Defra to extend the cut-off date to 1 January 2031, the latest date allowed by the CROW Act.

The question of what happens at the cut-off date to those unsealed ways which have historic public vehicular rights, and which are recorded as publicly maintainable on highway authorities' list of streets but which are not on the definitive map and statement (often shown as other routes with public access on Ordnance Survey maps or described as unsealed unclassified or unsealed county roads, UURs or UCRs), has been debated since at least 2007. This was when it was realised that one (section 67(2)(b)) of the exemptions in the Natural Environment and Rural Communities Act (NERCA) 2006 would result in most such ways becoming BOATs if they were added to the definitive map. There are over 3,000 miles of these potential BOATs in England and almost 1,000 miles in Wales. The Trail Riders Fellowship (TRF) and the Green Lane Association, organisations representing motorbikers and 4x4 users of green lanes, assert that all these ways have public motor vehicular rights (the TRF says they are ordinary roads i.e. mainly used by motor vehicles). They also argue that DMMO applications do not need to be made for these green lanes because an exemption from the cut-off date was proposed for these ways before the Deregulation Act was passed.

However, the BHS is now encouraging its access staff and volunteers to make DMMO applications for unsealed ways on the list of streets before the cut-off date. This is for the following reasons: clarity about what public rights are available, because these ways are a vital part of the equestrian network, uncertainty about the exemption of such ways from the cut-off date and making easier to deal with obstructions on such ways.

GLEAM's experience (e.g. from Derbyshire, where the TRF made DMMO applications to add these green lanes to the definitive map and statement as BOATs before it changed its mind and started arguing that they are ordinary roads) is that most of these green lanes will be BOATs, but some will be bridleways and a few footpaths, when their status is clarified by the DMMO process. The DMMO process also resolves issues such as width and

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alignment which may be disputed (different versions of the list of streets sometimes show different alignments). So, although DMMO applications for these green lanes originating from the BHS initiative may be unwelcome to landholders and non-motorised users who fear an increase in recreational motor vehicle use, the DMMO process will result in clarity about which green lanes have public vehicular rights, and should require highway and national park authorities to improve their TRO-making procedures to protect more BOATs from problems caused by recreational motor vehicle use.

GLEAM is campaigning for legislation which would extinguish unrecorded public motor vehicular rights on UURs/UCRs, closing the s67(2)(b) NERC Act loophole; this would mean that those found, via the DMMO process, to have historic vehicular rights would become restricted byways, i.e. with no public motor vehicular rights, rather than BOATs.

The cut-off date also applies to DMMO applications which seek to downgrade BOATs to footpath or bridleway, or to show there are no public rights of any sort, on the basis of historic evidence.

An attempt to claim another NERC Act exception

A photo taken in November 2008 of a public footpath in Wiltshire. Recreational motor vehicle users are trying to get this footpath upgraded to BOAT, on the basis that it has historic public vehicular rights, and that it was used mainly by motor vehicles in 2001-6 (section 67(2)(a) of the NERC Act, an exception intended for ordinary roads).

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