

GLEAM



Green Lanes Environmental Action Movement

www.gleam-uk.org

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

SPRING 2023

Defra's plans for protecting green lanes

As we reported in our Autumn 2022 newsletter, Defra is proposing two solutions for protecting green lanes "*for the benefit of all their users*", following its consultation in January-April 2022 on recreational motor vehicle use of green lanes. It will "*refresh*" the guidance issued to authorities (guidance which currently dates from 2005 for highway authorities and from 2007 for national park authorities) on their powers to implement traffic regulation orders (TROs) effectively. It will also identify which green lanes are unsuitable and which are suitable for motor vehicle use, and seek agreement with the motor vehicle user groups that they will not object to TROs on the former, in exchange for digital signposting of the latter. Defra says it will legislate in future if these non-legislative solutions prove inadequate. The ministerial letters giving more information about these proposals are on our website at <http://www.gleam-uk.org/news/>.

GLEAM has suggested criteria for identifying unsuitable green lanes to Defra. We have also pointed out that suitability/unsuitability may need be reassessed over time, i.e. the criteria may need to be dynamic. For example, the Hierarchy of Trail Routes scheme in the Lake District classifies green lanes into three categories, sustainable, may be sustainable and requires management; but some lanes have changed category over the years, presumably due to changes in use and in climate.

The recreational motor vehicle user groups, the Green Lane Association (GLASS) and the Motoring Organisations' Land Access and Recreation Association (LARA) have published three documents following the 2022 consultation, presumably to try to persuade Defra that green lanes do not need further protection. Our rebuttals of these publications are on our website at <http://www.gleam-uk.org/contentious-issues/>, and in our Autumn 2022 newsletter (critique of GLASS's publication on the economic value of recreational motoring on green lanes).

Even if Defra can devise a framework for classifying green lanes into suitable and unsuitable which highway and national park authorities can use, the authorities will still have problems in finding the money for the TRO process on each of the lanes classified as unsuitable. (Funding for national park authorities has fallen by 40% in real terms in the

ten years up to 2022/23¹). One way for Defra to help the authorities might be emulate the Department for Transport (DfT). DfT, through its executive agency Active Travel England, is encouraging highway authorities to develop walking and cycling in towns and cities, (with a target of 50% of all trips to be walked, wheeled i.e. with a wheelchair or mobility scooter, or cycled by 2030). One of the ways DfT and Active Travel England are doing this is by making grant funding for walking and cycling schemes dependent on authorities implementing measures such as TROs (e.g. to create low traffic neighbourhoods) to protect non-motorised users. For example Derbyshire County Council (DCC) decided, in November 2022, to make a TRO closing a narrow tarmac suburban road as part of creating a new east-west walking and cycling route across Chesterfield, funded by DfT's Active Travel Fund. When DCC consulted on this TRO proposal, its questionnaire results showed a majority in favour, but online petitions gave a majority against. Despite this difference in opinion, DCC decided to go ahead with the TRO, two of its reasons being that DfT/Active Travel England have told authorities that they may claw back grant funding if the more "*bold*", often more controversial, elements of schemes are dropped, and that completion of funded schemes will influence the likelihood of future funding. DfT is thus using a combination of incentive and penalty to encourage highway authorities to help meet a target which will improve the health of the urban population and help alleviate the effects of climate change.

Perhaps Defra could consider funding for National Parks and Areas of Outstanding Natural Beauty (AONBs) aimed at stopping damaging activities on sites of special scientific interest (SSSIs)? These activities are a problem which it says in its Environment Improvement Plan 2023 "*must be tackled with greater urgency*".² The following article includes two examples of recreational motor vehicle damage to SSSIs, and we are aware of others.

Current green lane management issues

Northumberland

We wrote in our Autumn 2021 newsletter about the recreational motor vehicle user groups' (and the highway authority's) assessment that some green lanes in Slaley Forest and on Blanchland Moor in Northumberland did not require a TRO in 2012, when TROs were made for other lanes in this area, because they could sustain recreational motor vehicle use, and how this assessment had proved to be inaccurate, as damage had recurred. Further problems in the management of this network of green lanes have been reported this year. Northumbria Police, Natural England (Blanchland Moor is a site of special scientific interest), Forestry England and local people are trying to stop illegal driving, i.e. driving off the byways open to all traffic (BOATs) not subject to a TRO and driving on other BOATs when closed by a seasonal TRO). In March 2023 three 4x4s were seized by the police, having been driven on a BOAT closed by a seasonal TRO.³

1 <https://www.cnp.org.uk/news/extra-%C2%A34-million-much-needed-lifeline-england%E2%80%99s-national-parks>

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133967/environmental-improvement-plan-2023.pdf, page 46

3 <https://www.bbc.co.uk/news/uk-england-tyne-65109181>

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In 2021, GLASS and the Trail Riders Fellowship (TRF) supported the police and Forestry England in the provision of new signs to explain which routes were open to recreational motor vehicles and when. The current problems indicate that the 2021 initiative was not enough to protect this area.



Motorbike tracks on BOAT verge in Slaley Forest



Motor vehicle damage to Blanchland Moor SSSI

Derbyshire

In 2021, Erewash Borough Council (EBC) made a Public Spaces Protection Order (PSPO) to prohibit motor vehicle use of a green lane in its area of Derbyshire. The PSPO allowed EBC to install a locked gate at each end of the lane, with the aim of preventing anti-social behaviour (4x4s, quad bikes and motorbikes being driven inconsiderately on the lane and damaging adjacent woodland, fly-tipping) which has a detrimental effect on the quality of life of those in the locality, is persistent and unreasonable. The order was made and the gates were locked in August 2021, and since then there has been a significant reduction in motor vehicle use (some motorbikers can get through the access provided for mobility scooter users, horse riders and walkers); local residents report that the route has become more popular with walkers and horse riders who *“feel much safer without vehicles and associated behaviour from those in or using them”* and *“that the area is quieter”*. Derbyshire County Council (the highway authority) reported that the condition of the lane had improved, from being *“frequently deep in mud and water”* before August 2021 to *“in good condition and fit for purpose”* in October 2022. Shortly after the gates were locked, GLASS and the TRF challenged the PSPO by making an application to the High Court for judicial review. In response to this EBC proposed an amended PSPO which exempts persons and members of organisations authorised by EBC. This amended PSPO came into force in February 2023 and runs for three years, unless extended by a further PSPO. As authorised organisations, GLASS and the TRF agree to maintain a database of members who are granted a permit (i.e. the gate codes) to use the lane and to require those members to behave in specified ways when using the lane. When this PSPO comes up for

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renewal in 2026, it will be interesting to see how the permit PSPO has worked, compared to the order implemented in 2021. EBC's report proposing the amended PSPO is at <https://moderngov.erewash.gov.uk/ieListDocuments.aspx?CIId=104&MIId=2178&Ver=4>.

Essex

In 2021 GLASS persuaded Essex County Council (ECC) to consult on revoking a seasonal TRO prohibiting car use of two linked BOATs in Black Notley. It argued that the surface of the route could withstand car use during the winter, and that a new TRO could be implemented if this was not the case. We and local residents pointed out that the surface of the route was not in the good condition which GLASS claimed, despite repairs costing £43,000 only 5 years previously, and that recreational motor vehicle use affected non-motorised users' amenity, making the route unsafe for family walks (see photos below). Following the consultation, ECC decided not to proceed with the revocation of the TRO, accepting respondents' views "*that vehicular use during the winter months would cause sufficient damage as to hinder the current level of use*", i.e. accepting our argument about the surface but not about amenity.



Dog-walkers having to stand aside for a motorbike on the narrow route, August 2016



Motor vehicle ruts on the route, July 2021, five years after repairs to remedy ruts and improve the route.

Surrey

Recreational motor vehicle use of BOATs in Surrey, especially in the Surrey Hills Area of Outstanding Natural Beauty (AONB), has caused problems for other users and damage to the environment for many years. Surrey County Council (SCC) and local landowners have been trying since at least 2012 to stop 4x4s and motorbikes damaging ancient boundary banks on Wolvens Lane and driving off the lane, by installing signage, stumps and metal gates. The surface of the lane has also been damaged, despite improvements to the drainage. The most recent repairs to the surface and replacing stumps cost over £75,000 per kilometre.⁴ SCC has, after two rounds of consultation, made a TRO prohibiting use by

⁴ <https://www.capel-pc.gov.uk/noticeboard/>

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motor vehicles with 4 or more wheels and horse-drawn carriages wider than 4' 11". We, and many local non-motorised users, responded to the consultations by asking for a TRO prohibiting all recreational motor vehicles. but SCC considered that motorbikes did not damage the lane. However the response to the consultations appears to have led to SCC revising its policy for TROs on green lanes so that it will now consider the whole range of reasons for TROs specified in legislation e.g. conserving natural beauty and amenity⁵. We hope this change in policy will lead SCC to consider full TROs on other green lanes in Surrey Hills AONB.



Motorbike damage to access land adjoining Wolvens Lane, Surrey Hills AONB, November 2015



Motor vehicle damage to/widening of Sandy Lane, September 2017. This lane is in the Surrey Hills AONB and is part of a SSSI for its heathland flora and fauna. In its 2022 publication on green lane management LARA claims that voluntary restraint, stumping to reduce the width/deter off-lane driving and a night-time TRO would be sufficient to remedy the damage to the surface of this lane and adjacent land.

Illegal activity related to recreational motor vehicle use of green lanes

One of the arguments GLASS and the TRF use for permit TROs (or PSPOs) is that permit use by their members will result in a reduction in illegal behaviour by other recreational motor vehicle users. But they and their members often do not recognise (let alone challenge) illegal and irresponsible use of green lanes. A post on a GLASS Facebook page in February 2022 reported that a 4x4 had got “*beached*” on a BOAT, “*until a GLASS convoy came through and pushed them through*”.⁶ The TRF support the Trans Euro Trail (“*a single dirt road route from the edge of Africa to the Arctic Circle and back*”) by providing advice on which green lanes are open to motorbikes in England and Wales. The Trans Euro Trail Code of Conduct says that if the motorcyclist witnesses “*dangerous or*

⁵ https://www.surreycc.gov.uk/_data/assets/pdf_file/0019/319510/TRO-policy-Surrey-style-draft-2.pdf

⁶ <https://www.facebook.com/groups/381795295351998/> , post dated 12 February 2022

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*irresponsible behaviour on the trails and it is safe to do so, we would ask you to have the moral courage to have a chat ...”*⁷ Nothing about reporting such behaviour to the police.

Another example on a GLASS Facebook page is a 4x4 driver asking for advice on replacing part of his car, damaged when the handbrake failed and it went through a gate and into a wall. He appears to be a GLASS member because he writes about the information about the lane on Trailwise, the map software available to GLASS members; but neither he nor those commenting suggest he should arrange for repair of the gate or wall.

We provide two photos of illegal/damaging behaviour below, screenshots from videos taken by motorbikers who say that these are TRF trips.



Motorbiker damaging pasture land adjoining a flooded unsealed unclassified road (UUR). This UUR ends on a public footpath; this TRF group of motorbikers continued illegally along the footpath, October 2022.



Another TRF group who have used another UUR to drive illegally onto access land and then pose for a photo, March 2023.

Definitive map modification order changes and decisions

Defra has announced a U-turn in government policy in England on the cut-off date for recording historic public rights of way, a change which (from GLEAM's point of view) affects those green lanes which are not on the definitive map and statement but are maintainable by highway authorities. In February 2022, Defra said that it would repeal the cut-off date specified in the Countryside and Rights of Way (CROW) Act 2000, a statement met with relief by user organisations such as Ramblers and the British Horse Society, whose members are busy researching and claiming historic rights of way, and probably also by highway authorities faced with ever-lengthening lists of claims to be investigated and decided while resources are cut. But, 13 months later, in March 2023, Defra U-turned, announcing that secondary legislation would be laid before Parliament to

⁷ <https://www.trf.org.uk/the-trans-euro-trail/>

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implement a cut-off date of 1 January 2031, i.e. no more claims for footpaths, bridleways and byways open to all traffic based on historic (pre-1949) evidence will be accepted after this date. This policy does not apply in Wales where the Welsh Government has decided, following consultation, not to implement the cut-off date, and is considering primary legislation to repeal this CROW Act provision. This U-turn by Defra makes us concerned that our expectations of action on protecting green lanes, following Defra's consultation on its response to the Landscapes Review, may also be met by a U-turn or a dead end.

Over half the green lanes in England and Wales are unsealed unclassified roads, routes which are maintainable by highway authorities but whose level of public rights – footpath, bridleway or vehicular – are unknown, because they were omitted from the definitive map and statement of public rights of way in the early 1950s. The off-roader organisations, the Green Lane Association (GLASS) and the Trail Riders Fellowship (TRF), argue that all these unsealed unclassified roads (UURs) have public vehicular rights, i.e. 4x4, quad bike and motorbike users have the legal right to use them, and that there is no need to apply to add them to the definitive map and statement before this becomes impossible at the cut-off date. However, some highway authorities have been adding them, either as the result of applications or under their duty to keep the definitive map and statement under continuous review, and because they often form important parts of the public rights of way network. (The Ramblers' Association persuaded the Ordnance Survey to record UURs as other routes with public access, ORPAs, in the late 20th century, because of this role in the public rights of way network). In adding UURs to the definitive map and statement, these highway authorities have found that not all of them have public vehicular rights but some are only public bridleways or public footpaths. UURs were exempted by Defra from the extinguishment of public motor vehicular rights in the Natural Environment and Rural Communities Act (NERCA), so that if they were publicly maintainable at NERCA commencement in 2006, they become byways open to all traffic, not restricted byways, if they are found to have public vehicular rights, even though these rights almost always arise from historic horse-drawn vehicle use. We describe below two recent examples of UURs where the highway authorities (Norfolk County Council and Northumberland County Council) assumed that they had public vehicular rights and should be recorded as byways open to all traffic, but evidence presented to public inquiries led to the conclusion that they were wholly or partly only footpath. The implementation of the cut-off date in England in 2031 will mean that some UURs will not be investigated and protected from off-roader use by being added to the definitive map and statement at their correct historic status of footpath or bridleway.

UUR protected by footpath status, Thompson, Norfolk

Norfolk County Council (NCC) is responsible for about 460 kilometres of unsealed unclassified roads, which it terms "*soft roads*". Thompson Parish Council applied in 2014 for one of these routes, about 0.75 kilometres long, to be added to the definitive map and statement as a footpath. When NCC decided this application, it discovered that the route was recorded as a soft road in its old highway records and assumed that this meant it had public vehicular rights and made a byway open to all traffic (BOAT) order. The parish council and landowners objected (on various grounds) to the BOAT order, resulting in a

public inquiry in November 2022. At the inquiry, NCC accepted that its historic recording of the route as a soft road was insufficient evidence for public vehicular rights and that the evidence presented pointed to footpath rights only. NCC also accepted that the route was not on its list of publicly maintainable highways at NERCA commencement in 2006, so that if the route had had public vehicular rights, it was a restricted byway, not a BOAT. The inspector's interim decision that the route is a public footpath, issued in March 2023, is available at <https://www.gov.uk/guidance/rights-of-way-order-information-decisions-and-maps-published-in-2023#norfolk-county-council>.

Central section of UUR protected by footpath status, Bamburgh and North Sunderland, Northumberland

Northumberland County Council (NCC) has about 470 kilometres of BOATs and UURs, and has been adding the UURs to the definitive map and statement, usually as BOATs, for many years, under its duty to keep the map and statement under continuous review. NCC made an order in 2016 adding an unclassified road (partly sealed with tarmac and partly unsealed) to the definitive map and statement as a BOAT in the parishes of Bamburgh and North Sunderland. The Trail Riders Fellowship (TRF) objected because they considered this route to be an ordinary road, not a BOAT; landowners objected because they considered the (unsealed) central section does not have public vehicular rights, but was only used by the public on foot (and by horse riders from a local riding school). The inspector decided in April 2020, following a public inquiry, that the central section should be recorded as a footpath and the end sections as BOATs. The TRF objected to the footpath modification of the original order, but accepted BOAT status for the (mainly sealed) ends. NCC also objected to the footpath modification. The inspector's final decision, issued in October 2022, on the objections confirmed her original interim decision that the central section is a footpath. The TRF then challenged her final decision in the High Court, but have been unsuccessful. The High Court judgment, handed down in April 2023, rejects the TRF challenge, unpersuaded that the inspector made two mistakes claimed by the TRF and finding that the weight attached to different elements of the historical evidence was for her to decide. The order decisions are available at <https://www.gov.uk/guidance/2020-rights-of-way-order-information-decisions-and-maps#northumberland-county-council> (reference ROW/3193904), the High Court judgment at <https://www.bailii.org/ew/cases/EWHC/Admin/2023/900.html>, and a summary of the judgment at <https://www.localgovernmentlawyer.co.uk/transport-and-highways/443-transport-and-highways-news/53681-trail-riders-lose-high-court-challenge-to-decision-of-inspector-on-rights-of-way-in-northumberland>.

We wonder why the TRF invested so much time and money in this case, given that the evidence indicated little use of the route by trail motorcyclists.

*Published by GLEAM, PO Box 159, Otley, LS21 9BT, www.gleam-uk.org.
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