

GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

AUTUMN 2002

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

Long Battles Fought GLEAM's Campaign on two fronts - the present law and irresponsible off-roaders

In this issue of GLEAM's newsletter two of the battles which have been the concern of local people and of the wider public are described in some detail. Both in a part of Hampshire and on a long National Trail, people have been prepared to give up their time and energy to try and right a situation which has arisen because of the inadequacy of the present law since the rise of the "sport" of off-roading.

The article by Graham Plumbe below, a professional expert on rights of way matters, will stretch the credulity of all except those who have had the misfortune to be embroiled themselves in the same sort of legal maze and minefield. It has come about through the untenable complexities of the layers and layers of laws which have not been subject to revision by successive governments. It may keep local government officers and lawyers gainfully employed, but can drive others to distraction and involve them in great expense. It is, of course, the searching out of possible loopholes in the law which makes it possible for off-roading organisations to claim, frequently with success, that there is some evidence, however tenuous, which could possibly be used to infer that a lane did once have wheeled traffic on it. Below is an example of how matters have reached a point where the local authority is obliged to use large amounts of taxpayers' money to put a case forward which then has to be rebutted at great expense also. The hearing took five days!

Hampshire County Council loses U-turn Order.

by Graham Plumbe FRICS FCIArb.

The Background.

Bramshill Common, north of Hartley Wintney in north-east Hampshire, is a forestry plantation formerly part of the Bramshill Estate owned by the Cope family until 1937 and by Lord Brocket until 1952. It is crossed by Sandy Lane, a straight track greatly used by walkers and horse-riders, and an obvious through-route from Hook to Wokingham if rights existed. Bramshill Common was subject to New Town development proposals, and in a bid to keep the track open as a right of way, Bramshill Parish Council made an ill-informed application for BOAT status in 1984 under s53 of the Wildlife & Countryside Act 1981, when it orchestrated a range of statements from locals to say that the track had

been used for many years as a right of way, including by vehicles. Hants CC, in conjunction with other local authorities, roundly averred that vehicular rights did not exist but otherwise did nothing.

At whose behest?

Sixteen years later, in 1999, the application surfaced for action. The County Council's rights of way department had changed its mind. Meanwhile, Bramshill PC had seen the error of its ways and had withdrawn its application, asking for a bridleway instead. The County Council's Map Review Officer (MRO) presented a bizarre interpretation of the historic evidence to the Committee, won a proposed

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GLEAM - Working to protect peaceful and quiet enjoyment of the countryside

Hampshire County Council loses U-turn Order.

Continued.....

order, but this then had to be withdrawn because of faulty procedure. He later repeated the report stage but made no attempt to mention the Parish Council's important change of mind. In 2000 Hants CC made an order reclassifying Sandy Lane as a Byway Open to All Traffic.

Professional help needed.

Another parish affected was Eversley, who led the objection to the order. They soon found the going too tough, and sought the help of GLEAM, who passed it to their Honorary Adviser. At a 5-day public inquiry in March/April 2002, the MRO's case rested on Vestry minutes in 1885/8 referring to "intent" on the part of Sir William Cope. Sir William was on record as saying that if locals helped in the cost, and if the highway authority agreed to adopt it for maintenance at public expense, he would dedicate the route as a public highway. There was positive evidence that neither happened.

However, the MRO ploughed ahead with the assertion that intent had been proved and that there was no evidence to prove that the landowner had not dedicated; he then looked to later user evidence and from omission from taxation in the Finance Act 1910 map in support.

A stoical blind eye was turned to several facts:-

- a. that Sir William had died a mere three years after the record on non-dedication;
- b. that all user evidence before 1949 related to established tenants, licencees or others with obvious authority;
- c. that a private right of way had been granted to the Forestry Commission when the land was leased to them in 1922;
- d. that no rights had ever been recorded on County maintenance maps.

The MRO refused to consider any alternative viewpoint regarding the evidence other than his own, and created some fanciful assumptions to justify his faulty preconception based on the Vestry minutes.

Ever greater complexities.

The council's lawyer widened Hants CC's case in her closing speech to include possible dedication by successors of Sir William, a possibility which the MRO had expressly not relied on. It was agreed that when the Forestry Commission (as lessee) erected locked gates temporarily in 1952 the matter of rights was "brought into question" under the Highways Act. This, together with later challenges, prevented prescriptive dedication thereafter. On behalf of the objectors (mainly the three parish councils affected) it was argued that intent has to be unequivocal, and

cannot be subject to unfulfilled qualifications. This view had previously been put in writing to the MRO by a senior solicitor resident locally. Furthermore, later use by a range of implicitly authorised people (without express consent) is to be distinguished from use by "parishioners" or "local people", both of which have been held in law on their particular facts to be public use. A range of other evidence was also critically examined, including the fact that omission from 1910 Finance Act taxation does not necessarily indicate vehicular rights.

The Inspector decides.

In his decision, the inspector agreed that qualified intent does not give rise to dedication if the qualifications are not met. He also agreed that use by people with implicit authority did not amount to use by the public; and it was further accepted that omission from 1910 taxation did not necessarily prove vehicular rights. An interesting twist lay in the fact that the Order Making Authority (OMA) had dismissed as valueless hearsay:-

- i) a letter from the Forestry Commission in 1960 to the county surveyor reporting the former landowner's stated belief that the way was private, and
- ii) a social conversation with an old local noted and reported by a solicitor.

The inspector attached considerable weight to both, no doubt conscious of the very tenuous nature of a great deal of the evidence that rights of way inquiries necessarily rely on. Having therefore declined to accept virtually everything the OMA had asserted, he modified the order to bridleway status.

Who pays?

An application for costs was made by the objectors on the grounds that Hants CC's conduct was unreasonable because of :-

1. lack of knowledge,
2. lack of objectivity,
3. failure to understand or meet the burden of proof,
4. misrepresentation at committee stage, combined with failure to obtain proper advice,
5. unnecessary expansion of the issues by use of material not relevant to the case,
6. making a simultaneous TRO decision and thereby muddling the representations and decision process, and
7. failure to state a legal case until the closing speech.

It remains to be seen whether the tradition of not awarding costs can be broken.

And there will be more to come.....

The Victorious Campaign to Save Durford Heath Path.

In our next newsletter, Anne Judd will be describing in some detail the incredible campaign her group of ordinary people fought and won. Here is what she had to say about it in a letter to the editor who had asked her to write four sides on it.

“.....Have you ever tried to condense 5 years’ work into 4 sides of A4 - and not just produce a shopping list?

This campaign was about David and Goliath, and the truth won - or at least 80% of it if we ignore the mistake of the BOAT cul-de-sac. So very many people gave their time and effort - and people don’t give much nowadays unless it benefits them personally and swiftly.

If you care for your bit of heaven, don’t ever assume that the powers that seem to have got it all right and buttoned up must be right - and know what is good for us. Get in there, ask questions and if you don’t like the answer, get a team and fight.

Without GLEAM and Andy Dunlop I would have been a voice in the wilderness squawking on an orange box without expert help. The team was the key, and we were a very blessed one with a righteous cause. I thank God every day for what I truly believe He did for us. People, money, law cases and timing fell into place. It was incredible.”

News....News....News....

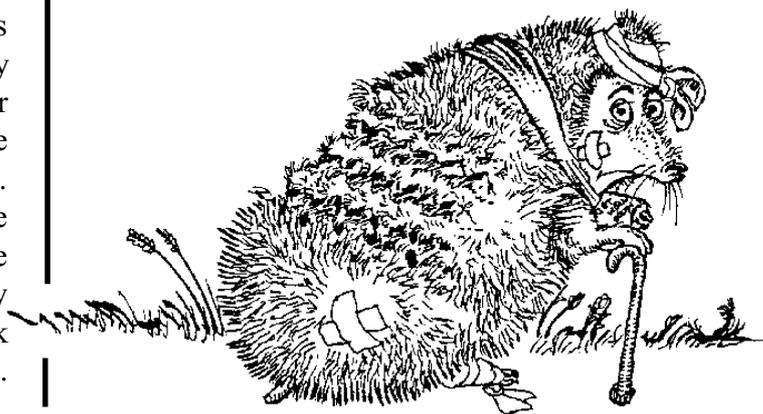
West Berkshire Unitary Council has agreed to take steps to ban off-road vehicles from the stretch of the Ridgeway within its jurisdiction from Streatley to West Ilsley, a part which has sustained a huge amount of damage as it is easily accessible from main roads. Temporary Traffic Regulation Orders can, of course, be imposed without any objectors being entitled to call for a public inquiry.

Janet Street-Porter, a Rambler and TV personality, says about the green lanes in the Yorkshire Dales and Nidderdale, “These green lanes are in really remote areas where the noise of motor vehicles is totally polluting. There is a small minority which is destroying the environment for everybody else. When I’m told they are bringing money into the area I just laugh. Most of the money is coming from people who just enjoy the peace and quiet of the area. The routes should be treated as if they were historic buildings - they go back centuries and are just being destroyed”.

Now there’s an idea! List these historic highways and put a preservation order on them!

Our Speaker from the North at the Annual General Meeting.

In this newsletter there are two articles dealing with rights of way problems in the southern half of England. But the balance will be righted by Michael Bartholomew at the AGM. His talk will be about GLEAM’s “offspring” in the Yorkshire Dales where off-roaders have also wreaked havoc.



Saving the Ridgeway.

Report from Ian Ritchie, Chairman of the Friends of the Ridgeway.

A previous GLEAM newsletter highlighted the battle that the Friends of the Ridgeway are fighting to save the oldest green lane in the UK from the ravages of off-road recreational motor vehicles. As we are only a small way towards our objective of banning such vehicles from the trail, this is very much an interim report. However, we are very encouraged by the progress we are making, and we hope it may inspire others elsewhere in the country in their similar battles.

The first phase of our campaign was designed to heighten public awareness of the issue and to gain more support for our views. We established better links with a number of like-minded organisations such as the Ramblers, the Country Landowners Association, the Council for the Protection of Rural England and particularly GLEAM. David Gardiner and Elizabeth Still of GLEAM have proved staunch allies and very wise and knowledgeable counsellors. The highlight of the awareness-raising phase was our decision to withdraw from the ineffectual 'Code of Respect'. We took the bold decision to appoint a professional PR consultant to assist us, and the results we achieved vindicated the decision. We generated enormous publicity, including three TV items, numerous local radio interviews, articles in many specialist magazines and extensive coverage in local and national newspapers. All this gave us the opportunity to present our case to a much wider audience, and it has resulted in a 50% increase in membership, as well as a much greater awareness by local and national politicians of the issue.

The second phase of our campaign has centred on gathering hard evidence of the problem. In addition to putting together a comprehensive set of photographs of the trail, showing the surface conditions in wet and dry weather, we have been aided by research undertaken by the National Trails Office. The 1996 survey of users contained valuable information on the dissatisfaction of most users with the state of the surface. More recently, the National Trails Office defined acceptable surface condition standards, and then commissioned an audit of the trail against these standards. The findings are fascinating, with over half the Ridgeway failing to meet the accepted standards, and with the figure rising to nearly 70% for those sections open to motor vehicles. Another survey of landowners and farmers gives the lie to the commonly held view that a lot of the damage is done by farm vehicles - we

can now prove this is not so. In addition we have accumulated scientific research papers which prove the detrimental effect of motor vehicles on the bio-diversity of Green Lanes. We now believe that we are in good shape to represent our case in any future inquiry or debate on the issue, without having to fall back on subjective opinion.

We are still in the third phase of our campaign, representing our views to local and national government and trying to get them to take action. We are very encouraged by our progress so far. At national level, our vice-president MPs and our representative in the House of Lords, Lord Avebury, have certainly got the attention of Alun Michael, the Rural Affairs Minister. He has had to respond to an Adjournment Debate in the House introduced by Robert Jackson MP and supported by three other of our vice-presidents (David Rendel, Boris Johnson and David Lidington). He has promised to meet some of us on the Ridgeway later this year, and he has had a recent meeting to be briefed on the findings of the surface audit by the National Trails Office of the Countryside Agency. Our message appears to have got across.

With great assistance from another of our vice-presidents, Julia Drown MP, we have just achieved a major breakthrough with Swindon Borough Council, the first local authority to introduce a Traffic Regulation Order banning motor vehicles from a section of the trail. The TRO is a temporary one for 6 months and the section involved is very short. But we regard this as a significant step in the right direction. More recently, West Berkshire Council has voted unanimously to work towards a complete ban on off-road vehicles on the Ridgeway in their area. Needless to say, we are delighted and are following up to see how best we can work with the Council to achieve this aim.

It is an exciting time for us. Although our battle to save the Ridgeway is still in its early stages, we are confident that, within the next twelve months, we will see steps taken that are the beginning of the end for recreational motor vehicles on this priceless national asset.

If you wish to find out more about the Friends of the Ridgeway, please contact Ian Ritchie at The Limes, Oxford Street, Ramsbury, Wilts. SN8 2PS.

Tel: 01672 520090. e-mail: ian.ritchie@ukonline.co.uk

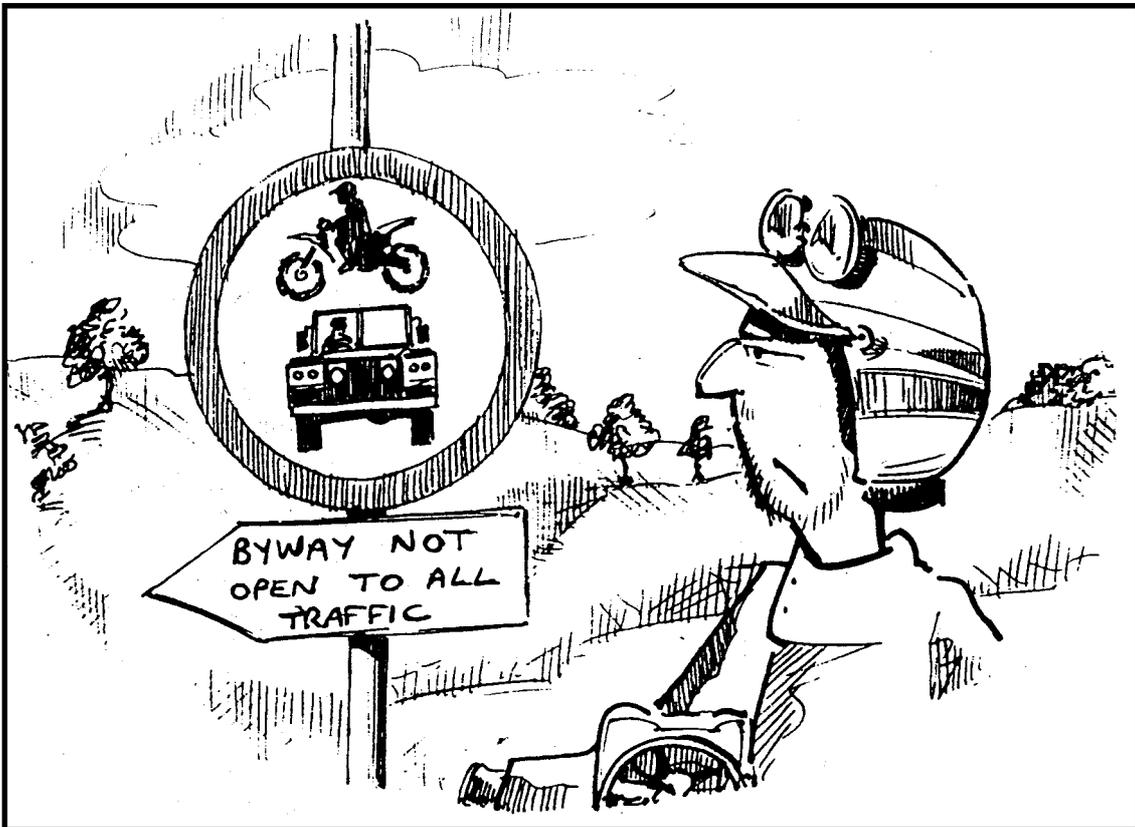
GLOSSARY.

To help those members who may not be familiar with the various classes and types of “green lane”, here is a summary. Note that the term “green lane” has no legal status whatsoever, and is used as a generally descriptive term to describe unsurfaced rural roads, often of some antiquity, and often bound by hedges, walls or fences. Rights which exist upon a lane may be either public or private.

Wildlife and Countryside Act 1981: (WCA81) Section 53 of this Act sets out the duty of each highway authority to keep the definitive map and statement, showing all highways in its area, under continuous review. Section 54 sets out the duty to reclassify every RUPP as a BOAT, a bridleway or a footpath.

CROW Act *The Countryside and Rights of Way Act 2000*, which, among many other measures, created “Restricted Byways”.

Restricted Byways. Under the CROW Act all rights of way previously classified as RUPPs will be open to the pedestrians, horse riders, pedal cyclists and horse drawn vehicles only. But this will not preclude challenge under S.53 to permit motorised vehicles also.



Highway: Best defined at common law as “a way over which all members of the public have the right to pass and repass. The use of the must be as of right, not on sufferance or by licence. May be surfaced or unsurfaced.

Public Right of Way: As for Highway, though by convention excluding roads normally used by motor vehicles. Strictly, there is a distinction in that the right is an abstract thing, whereas the highway is a strip of land.

Road: Any length of highway or any other road to which the public have access, and includes bridges over which a road passes. The public may access as of right or by permission of the landowner.

Footpath: A way over which the right of way is on foot only.

Bridleway: A way over which the right of way is on foot, on horseback and on pedalcycle, possibly with an additional right to drive animals.

GLOSSARY. Cont'd

Carriageway: A way over which the right of way is on foot, on horseback, on pedalcycles and in or on vehicles (horse-drawn or motorised).

Drove Road or Driftway: A way over which there is the right to drive animals. A carriageway carries the right of driftway, but a driftway does not carry the right of carriageway.

RUPP: "Road Used as Public Path". A way conclusively with bridleway rights unless vehicular rights can be proved to exist upon it. Every RUPP is required under the Wildlife & Countryside Act 1981 to be reclassified as a BOAT, a bridleway or a footpath. Where it is still shown as a RUPP, the reclassification has not yet been carried out. See Restricted Byways above.

BOAT: "Byway Open To All Traffic". A carriageway, i.e. a right of way for vehicular traffic, but one which is used mainly for the purpose for which footpaths and bridleways are used, i.e. by walkers and horse riders.

UCR: "Unclassified County Road". A highway maintainable at public expense, other than a way such as an A, B or C road. Further evidence from elsewhere is needed to establish conclusively the existence of vehicular rights on a case-by-case basis.

Vehicular Rights: The right for wheeled conveyances (horse-drawn or motorised) to pass and repass over a way. It may be public or private. Public vehicular rights may be based on the "balance of probabilities" of historical use; using evidence from archive documents; they may have been created by Inclosure Awards from 150 to 250 years ago; they may have come from express dedication by the landowner; or they may have been created by at least 20 years of continuous public vehicular use, provided the whole of this 20 year period was prior to 1st December 1930.

TRO: "Traffic Regulation Order". A very flexible order that may be made by the local highway authority to control traffic on highways of any kind.. May be applied to any section or length of a highway to control width, weight or speed of vehicle or to forbid vehicular traffic altogether. Can be temporary, permanent or seasonal.

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GLEAM

is delighted to welcome as members both the President and the Chairman of the Council for the Protection of Rural England, Sir Max Hastings and Sir David Ford.

Published by GLEAM.

Chairman:

David Gardiner.

Executive Secretary and Editor:

Elizabeth Still

GLEAM aims to protect public paths from unnecessary damage. If you would like more information or wish to assist please write to: GLEAM. P.O. Box 5206, Reading RG7 6YT.