

# 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 use by motorised recreational vehicles.  
AUTUMN 2011**

## **A Lot Is Happening On Chertpit Lane (or Paradise Lost?)**

*by John Poulter*

### **Chertpit Lane as it was**

There used to be a tranquil lane in the middle of the Peak District National Park in Derbyshire, safe and ideal for walkers, cyclists, horse riders and particularly for children and the less active. For the more energetic it provided popular access to Longstone Moor, a rare limestone heath of botanical and archaeological interest. There are breathtaking views over the White Peak and beyond.

In happier times the Peak Park recognised the special qualities of Chertpit Lane by creating a modest picnic site and a roadside nature reserve, and by improving dew ponds for newts and other wildlife. Scrub clearance took place nearby to encourage rare butterflies. Until recently the lane was regularly used to reach a prehistoric burial mound on the moor for the special pleasure of watching sunsets. In spring and autumn the progress of the seasons was marked by the movement of the setting sun on the western horizon, following a tradition as old as time itself.

Centuries of use by farmers, who had respect for the environment, and by other users caused few problems and minimal damage. Paradise indeed it was, to be shared with all considerate visitors, and a valuable heritage to be passed on undamaged to future generations.



*Destroyed stone wall on Chertpit Lane*

### **Application for BOAT status**

Then in September 2003 a member of the Trail Riders Fellowship (TRF) was asked to “claim” Chertpit Lane for the off-roaders as a Byway Open to All Traffic (BOAT). He signed the (pre-prepared?) claim form. Perhaps he collected his £250 “Byway Bonus” from the TRF, if it existed then, and then almost certainly forgot about this remote lane many miles away. From that time the danger, disturbance and destruction from off-roading intensified.

Derbyshire County Council, as Highway Authority, was overwhelmed with hundreds of claims from the TRF to create motoring rights on footpaths and bridleways. The County Council worked quietly through these claims in a leisurely way. This allowed off-roaders to convince the police that the status of very many routes was sufficiently in doubt that prosecutions would fail. This permitted a continuation of their anti-social activities throughout the Peak District. Residents of our hill village were blissfully unaware of the organised threat that was about to afflict our small rural community. To our shame we also failed to realise that other villages in the Peak District were being

picked off one by one by aggressive legal tactics exploiting every possible loophole in the legislation, particularly in NERC Act 2006.

### **The ensuing Inquiry**

In early 2010 Chertpit Lane’s opportunity to be made into a dangerous motor road came round at a Public Inquiry into the TRF’s claim for it to be a BOAT. By then the numerous local objectors had been whittled down to four after official advice in writing was received, warning of a possible award of costs against us. Four remaining objectors (now known as the “Maverick Four”) were so angry at this invasion of our patch that the threat of costs was not a deterrent. We four, supported by nearly 100 villagers, went to the first day of the Inquiry in blissful ignorance of relevant law and practice. We had done a lot of preparatory work, but now realise that without good expert advice this would not have helped us very much. Fortunately heavy snow and the illness of an expert witness (theirs, not ours) led to a month’s adjournment. During this period of respite much hard work was put in with helpful support from GLEAM, the Ramblers’ Association and the British Mountaineering Council.

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When the Inquiry resumed, the burden of contesting the BOAT claim fell upon two “Mavericks”, assisted by GLEAM’s Andy Dunlop. We were encouraged again on Days 2 and 3 by having almost 100 villagers present, all of them very puzzled and very angry. The off-roaders’ side was supported by a legal team of three from the County Council, Alan Kind for the TRF, and a full supporting cast: an impressive line up of professional talent against us amateurs.

At the Inquiry the Inspector did not handle the day-to-day proceedings very well. Consequently the public there gained the impression that the Planning Inspectorate and the County Council, both publicly funded, were quite clearly on the side of the off-roaders. People felt cheated. The Peak District National Park Authority, supposed guardians of the environment, gave no input whatsoever.

What did not come across was the absurdity of the current legislation and case law. This obliged the Inspector to determine that Chertpit Lane should be a BOAT (maximum width at the narrowest part is 1.85 metres – most 4x4s are wider than this). As the law stands, it would be lawful but foolish to attempt to drive a double-decker bus down Chertpit Lane at 60mph!

The Inspector’s recommendation that Chertpit Lane should be a BOAT was confirmed by the Secretary of State, and the decision was published on 4th March in the record time of 16 days from the end of the Inquiry. A request for a short extension to enable more time for an appeal to be considered was refused.

### “Rocking the BOAT”

This simply added to the general feeling of unfairness, and the great anger and deep frustration in the local community was remarkable and sustained. This led directly to the formation of the campaigning group “Rocking the BOAT”. This is an outward-looking local organisation with supporters from all over England, one of the consequences of being located in the middle of a very popular National Park. Co-operation with other villages under siege from off-roading brought the realisation that Chertpit Lane’s problem was merely one example of a Peak District-wide problem that the National Park Authority and the County Council were failing to tackle effectively. The destruction of the Peak District continues today.

“Rocking the BOAT” members and supporters started a quiet but intense campaign to change attitudes at the Peak Park Authority and County Council. A piece by Roy Hattersley in the *Observer* brought both welcome and unwelcome national attention. More support came from outside the Peak District, but there was also a large increase in noisy and dangerous trail riders roaring up and down Chertpit Lane. We took this as an attempt to intimidate us for opposing off-roading. The result was that the community became even more resolved to counter off-roading in the Peak District. Correspondence and serious conversations took place with our MP, County and District Councillors and Peak Park Board Members.

Officials, senior and junior, at both Derbyshire County Council and the Peak Park were not spared. We found both obstruction and lethargy, sympathy and help in both organisations, sometimes in the most surprising places. We built on the positive responses and criticised, privately and publicly, the negative aspects of our contacts with the “Authorities”.

### Problems of enforcement

Policing off-roading is difficult in our busy rural area, which is surrounded by large urban populations. Five years ago a voluntary approach to persuade off-roaders to act responsibly and stay within the law seemed to offer possibilities. A joint police, County Council and National Park scheme set up in 2007 called Blackbrook was meant to change the off-roaders’ attitudes by “Information, Communication, Education”. Vehicles were stopped and advice was given. Good aspirations five years ago were overtaken by events as a flood of off-roaders descended on the Peak District. When we talk to off-roaders they tell us that they come here from all over England because of increasing restrictions elsewhere. They feel that the Peak National Park Authority welcomes their presence on our green lanes.

Satisfactory meetings with the police resulted in “Enforcement” being formally added to the aims of Blackbrook, and the scheme included public meetings. This provided a forum for letting off steam – comforting but ineffective. It also gave isolated communities the chance to hear of the problems of others, and to start to work with each other. Friends of the Peak District, the Forum for Ancient Byways, an existing grouping of parish councils and “Rocking the BOAT” were soon joined by Peak Horsepower, an equestrian group.

Richard Macer, a respected documentary film producer, noticed the wide interest in the conflict between off-roading and residents and other users. BBC4 now expect to show an hour-long film on the topic in October.

### Formation of PDGLA

An initiative by the Ramblers' Association in summer last year led directly to the formation of the Peak District Green



*Not easy if you meet this on foot or horseback!*



*.....or this!*

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Lanes Alliance. This was modelled on the very successful Yorkshire Dales Green Lanes Alliance. It brings together national and local organisations and communities which are opposed to off-roading on unsuitable or unsustainable routes.

### Why not more TROs?

The situation in the Peak District is dire. However, the organised protestors and independent villages are beginning to co-ordinate their activities. This is beginning to have an effect on thinking by the County Council and the Peak Park Authority. Policy changes and action may follow. There are a few encouraging signs. After years of refusal, the Peak Park has just used its new powers to impose its first Traffic Regulation Order (TRO) on environmental grounds.

Derbyshire County Council is still extremely reluctant to go down the path of TROs, despite clear evidence of abuse by off-roaders and danger to other users. A request for a TRO can take years to emerge as a proposal, and then, after public consultation, it may disappear into an administrative black hole for months. Disturbing rumours of further private consultations and pressure from the TRF then inhibit urgently needed action. The campaigning continues.

### Putting things right

What of Chertpit Lane? A campaign to have a TRO banning all recreational motoring is well under way and has support from far and wide. County Councillors, senior County Officials and Peak Park officials regularly seem to visit the lane. Minor works have been undertaken, and there has been a police road block on the lane on three recent occasions. A voluntary scheme of traffic restraint is in place. At almost every meeting in the Peak District there seems to be some reference to Chertpit Lane.

Unpleasant members of the off-roading fraternity still come to disturb and intimidate residents and visitors. Speeding trail bikers create acute danger, and the 4x4s still drive on top of the remains of field walls which they have destroyed to permit their access along the narrow sections. Chertpit Lane is not the worst example of environmental destruction in the Peak District, but it is probably the most dangerous BOAT of them all.

The passion that fuelled "Rocking the BOAT" members to oppose off-roading throughout the Peak District has not diminished and has infected other local communities. The unfairness of the law, the insensitive handling of the residents at the Public Inquiry and the realisation that some off-roaders are intent on driving everyone else off green lanes and quiet byways means that the issue of Chertpit Lane and other quiet places will never go away until there is an effective remedy.

A paradise lost? Temporarily perhaps; but just wait and see!

*John Poulter is Vice-Chairman of the newly-formed Peak District Green Lanes Alliance*

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## NERCA and Winchester – a Summer Harvest

by Graham Plumbe (Hon Adviser to GLEAM; Vice Chairman GLPG)

### Natural Environment and Rural Communities Act 2006 (NERCA)

**List of Streets (LoS):** Anyone mastering the 350 page judgment in the Fortune case in **Wiltshire**, reported here in March, deserves an endurance medal. To avoid taxing an inspector's mind too far, a summary was provided for a case in **Leicestershire**. It worked. A 2-metre stretch (yes, 2 metres) of a way to church has now been declared to have restricted byway status, reversing the first decision that it should be a BOAT, because the claim (made many years ago) was not excepted by s67(2)(b) NERCA, which relates to inclusion on the LoS. GLPG makes no apology to the Good Lord or his worshippers; the latter can walk the last few yards, or the vicar can work on motorised access by other existing means. In **Powys** another BOAT decision has been reversed on a seriously long track out of Builth Wells. The muddled history of maintenance records was looked at more carefully, and the inspector agreed that the way was not on the LoS at the relevant date, so restricted byway status is confirmed. **North Somerset** has now appeared on the battlefield with a series of BOAT claims by a local bridleway association (!), the first of which is clearly without the LoS protection. GLPG has objected, and expects to do so in respect of five other claims, either on LoS or other grounds. An interesting case may be developing in **East Yorkshire** where a landowner has been told to remove an obstruction to the highway. The question arises whether the track is in fact a highway at all, as there is no evidence of entry on the LoS or on the Definitive Map. If so, NERCA has struck; the question, however, goes deeper, as there may be no public rights at all.

**Pre-1930 vehicular use:** This testing exception to NERCA extinguishment of motor vehicular rights, which involves everyone doing a U-turn as to whether vehicular rights existed historically (failing which they need to have come into being solely because of motor use before December 1930), was argued by the Cumbria TRF. As previously reported, a **Lake District** decision on Walna Scar (a delightful fell pass leading west from Coniston) went wrong, was challenged, was quashed and was replaced with another restricted byway order. Although the 1930 issue was not in the event the central issue, it may surface yet. Objection to the new order has been lodged by the CTRF on the mind-bending ground (only) that it agrees with the first decision. Watch this space.

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Also in the **Lake District**, the battle for Garburn Pass (another delightful fell pass running east from Troutbeck to Kentmere) has been won, subject to a final decision on a minor technicality. It is to be a restricted byway. Again, the pre-1930 use was not in the event the central issue, but GLPG's U-turn on existing vehicular rights proved to be a sharper U-turn than that of the CTRF – despite the inspector's strange preference for guidebook evidence over legal history.

It is understood that pre-1930 use is also arising in **Dorset**. GLEAM does not advise placing bets on the applicant's case.

**Created expressly or with intent:** Little used NERCA exceptions to extinguishment of motor vehicular rights are where the way was created either expressly for motor vehicles in a legal instrument, or by the road builders with a clear intention that the road would be used by motor vehicles. Stretching credibility to the limit, the latter was claimed in desperation by the failed applicant in the Winchester case, on the argument that the way was originally created for use by steam carriages; but he failed again – lamentably. **Hampshire CC** threw it out. Steam carriages on rough, steep country tracks were simply not in contemplation by Inclosure Commissioners in the early 1800s. The same absurd argument appears to be emerging again in **Dorset** – where else?

**Sectional treatment:** Continuing to clutch at straws, the TRF advanced convoluted arguments as to the distinction between a way and a public right of way. That was first thrown out by an inspector in a **Northumberland** case last year, where the route was correctly considered on a sectional basis, so that NERCA applied to part of the route – effectively extinguishing vehicular use on the whole route. The same argument was used more recently on Cam High Road which runs through several parishes in the **Yorkshire Dales**. Again the inspector took a sensible view, and the route is now effectively blocked to vehicles by sectional treatment.

### The Winchester Case

The consequences of non-compliance with the strict legal requirements of Schedule 14 Wildlife and Countryside Act 1981 continue to take their toll, both as to wrong map scales and lack of copied evidence.

**Map scales:** In Dorset, the Committee's decision to throw out five claims using small scale maps has been challenged by the TRF in the High Court. The TRF appear to have more money than commonsense. The judge at first instance held that the case was not even arguable, but a "renewal" application seeks a review of the matter at an oral hearing – listed for early November. GLPG has applied to be an "interested party", armed with complete contradictions by the applicant and with support from clear statements on mapping by the Ordnance Survey. A very timely decision by the Planning Inspectorate on two other claims results in a dismissed appeal on exactly the same issue. The appeal was against Dorset's earlier decision to throw them out on the grounds – so obvious to most sane people – that computer zooming does not change the scale of the original map.

GLPG succeeded in **Buckinghamshire** some time ago in getting a BOAT application from the TRF Chairman thrown out, having convinced both the inspector and the rights of way officer that an enlarged map is the same as the original in terms of scale, and that the first decision should be reversed. That has been followed by three more "wrong map" cases where GLPG has objected, and where it is assumed that consistency will prevail.

**Copy documents:** Lack of copy evidence was the central theme in the Winchester case. The same defect has occurred elsewhere, including **Dorset** where it is an alternative theme to the map scale issue. It is now emerging in **Durham** where the landowners are taking the point with legal help. Various claims in **North Somerset** are also in the firing line.

### GONE has gone to PINS

Budget cuts axed the Government Office for the North East, the responsibilities being transferred to PINS from 1st February. In spite of pressure from their own workload and budget cuts, early signs are that PINS are producing answers to Schedule 14 appeals (against refusals by Councils to make orders) more quickly than GONE – although they could hardly be slower! The main factor is that decisions are now made by inspectors, instead of leaving them to a decision-maker with a propensity for sitting on her hands for many months. GLPG still has a bone to pick on policy, however. Here decisions are made taking into account changes in law, but without reference to interested parties or to new evidence – including as to facts which may relate to changes in the law. That is particularly relevant in cases of compliance under Winchester.

**If you would like more information or wish to assist please write to:  
GLEAM, P.O. Box 5206, Reading RG7 6YT. [www.gleam-uk.org](http://www.gleam-uk.org)**

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**Chairman: David Gardiner. Co-Editors: David Marr & David Gardiner**