GLEAM

Green Lanes Environmental Action Movement
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A NEWSLETTER for those interested in protecting ancient ways from the ravages of use by motorised recreational vehicles.
AUTUMN 2014

The Deregulation Bill

by David Gardiner, Chairman, GLEAM.

Much of GLEAM's work over the last few months has been to get a suitable amendment into the Deregulation Bill (reported at length in our Spring 2014 Newsletter). This Bill has now completed its Third Reading in the House of Commons and its Second Reading in the House of Lords. It is due to start its Committee Stage in the House of Lords on 21st October. Here the Bill will be examined line-by-line, and it is here that most amendments can successfully be inserted. We have a cross-party team of Peers who are ready and able to put this amendment forward. The particular amendment that we are pursuing was initiated by the Peak District Green Lanes Alliance, who are fellow-members of the Green Lanes Protection Group (founded by GLEAM in 2005).

In the original draft Bill, only 7 clauses (Clauses 12 to 18) and 1 schedule (Schedule 6) in a 65-clause and 16-schedule Bill concerned Rights of Way. These generated more correspondence than the rest of the Bill put together. However, as it gave us an opportunity to amend current Rights of Way legislation, we determined to grasp this opportunity which would probably not come again for several years.

For any proposed amendment to be included in this Bill, it must be deregulatory, which is the main purpose of the Bill; otherwise it will stand no chance of being included.

There is one amendment which we are wishing to insert. This, in essence, is that all unsealed Unclassified County Roads (UUCRs) should become restricted byways (RBs); i.e. open to users on foot, on horseback or leading a horse, and to vehicles other than mechanically-propelled vehicles, i.e. open only to horse-drawn vehicles and bicycles. Such UUCRs are on the List of Streets kept by all Surveying Authorities (which does not record the level of rights), but they are not on the Definitive Map and Statement (which does). Such blanket reclassification would put them onto the Definitive Map. It would be deregulatory in that it would save Surveying Authorities the huge task of individually reclassifying all UUCRs as some sort of public Right of Way. Because they are unclassified they carry no specific rights and, by reclassifying them as RBs, anyone with unproven public vehicular rights will lose the chance to prove them, and no public consultation will be needed. There is a precedent for such blanket reclassification when, following Countryside and Rights of Way Act 2000, all remaining Roads Used as Public Paths (RUPPs) were reclassified as RBs in 2006.

Continued from page 1...

One objection to this was raised by the Country Land & Business Association (CLA, member of GLPG). This was that some landowners may have a UUCR running across their land. If this was previously used only as a footpath or bridleway, reclassifying it as a RB would increase the public rights across the land, which some landowners might not wish to do. While we agree that this could be a disadvantage in certain cases, we feel that it is outweighed by the wider advantage of closing all UUCRs to motor vehicular use.

Much as we would have liked to include unsealed Byways Open to All Traffic (UBOATs) in this blanket reclassification, it would undoubtedly remove rights from motorised users. This would require lengthy public consultation to achieve, and at this stage there is simply not time to do this. Also it would have been highly regulatory.

A further point that we are proposing, though not an amendment to the Bill, concerns a Government proposal to set up a second Stakeholder Working Group (SWG). The first SWG, set up late in 2008, after numerous lengthy sittings produced a controversial report two years later in March 2010. This formed the basis for drafting the Rights of Way part of the Deregulation Bill. There remain so many controversial questions which are still unanswered that the Government has proposed a second SWG to resolve them and to achieve consensus. We have firstly questioned the need for such a SWG at all. Secondly, as such a SWG would have some members who want to have motor vehicular rights on Rights of Way, and other members who do not, the chances of consensus lie somewhere between the improbable and the impossible. We are therefore urging that, if such a SWG has to be set up, it should be required to report, even with a minority report, within a very short timescale. The longer the SWG goes on, debating and failing to agree on fundamental issues, the longer the off-roaders will have to use controversial routes, and to cause huge damage to them.

To be [an issue] or not to be, that was the question
(NERCA/Winchester reflections)

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

As in Hamlet, the matter of existence was in itself the issue that was played out at Damerham and Rockbourne in **Hampshire**. Locals and landowners heaved a sigh of relief on 9 September when the drama of a BOAT claim ended after 12 years. A senior member of the TRF had made such an application in 2002 on a footpath connecting both parishes. The fact that he claimed a route that had been partially diverted in the 1980s, and then pretended that it was the same route, was a minor diversion in itself. More important was that he had omitted to copy the evidence relied on when making his claim. At best, from the off-roaders' point of view, this deprived them of exemption from extinguishment of vehicular rights under the NERCA exceptions. At worst it made their claim totally invalid. When agreeing the claim in 2007, Hampshire County Council (HCC) forgot to read NERCA 2006, but later woke up to what it says, having read the Winchester case as conducted by the Green Lanes Protection Group (GLPG, of which GLEAM is founder member). The BOAT order was then put offstage until the appeal decision in 2008, followed by a restricted byway order instead of a BOAT.

Enter GLEAM from the wings. A thorough appraisal of the historic evidence and law was proffered, but the inspector forgot her lines by delivering her closing speech in favour of a BOAT instead of a restricted byway. Defra then suffered the indignity of a quashing order in 2011 as a result. A quashing order normally cancels the Definitive Map Modification Order, so all actors were taken

back to Act One, Scene One. HCC was not aware of the case's own history, and took the misguided view that the original claim remained on the table to be determined. Sensibly it took counsel's opinion as to the merits of the historical evidence. The conclusion was in line with GLEAM's original analysis (which doubtless influenced the opinion), so HCC decided not to make any order at all. The guy from the TRF appealed to the Secretary of State. If he succeeded, all the actors would face a re-showing of the entire drama from start to finish - probably two more years or so of hassle and expense.

Enter GLPG from the wings. It was pointed out to the SoS that, although HCC was less than clear in its statements at the time, it had in fact (on the evidence) rejected the claim in 2008 as being invalid, not simply failing to qualify for exemption. The order had been made purely in exercise of its duty to keep the definitive map under review. GLPG argued that as the claim was regarded as invalid, it did not exist at all and no right of appeal therefore attached. Full marks to the inspector who understood the point and agreed. The appeal was dismissed and the curtain fell.

The TRF is very ready to post deprecating comments about the 'antis' (a practice in which GLEAM does not indulge in reverse) including frequent reference to 'G£EAM' (which in fact operates on a shoestring). Perhaps in future the better term would be the 'GLEAM TEAM'.

Other matters

TRF v Dorset CC - This relates to five BOAT applications in **Dorset** (a number of others are also affected) which were rejected as being non-compliant. This was because the applicant had used enlarged 1:50,000 maps instead of maps 'drawn to a scale of not less than 1:25,000' as stipulated. It is quite obvious that the legal requirement was to ensure an appropriate level of detail or information. The Court of Appeal judgment, which some might say showed a disdain of common sense and basic knowledge of mapping and digital reproduction (not to mention the evidence from the Ordnance Survey which was ignored), was clearly flawed. It is astonishing that a simple matter of this sort can reach the Supreme Court. The sinister aspect is that the TRF, which has been seeking an opportunity to argue that Winchester was wrongly decided, intends now to do so.

DCC is represented by George Laurence QC, who has been co-operative with GLPG. The group is represented personally by your correspondent, application having been made to continue as 'intervener' - hitherto known as 'interested party'. The decision on that is expected in October and the case itself is listed for 15 Jan 2015.

One of the cases affected by the decision (also in **Dorset**) is a bridleway in the Piddle Valley. In this case the application was non-compliant in two respects - map scale and lack of copy documents. Rejection by DCC was appealed by the TRF and the inspector's report in July 2008 took notice of Winchester (handed down a few weeks earlier) and advised restricted byway status on part of the route. An order was duly directed by the Secretary of State and made (reluctantly) by DCC. The TRF objected and the matter reaches public inquiry in November. The case is being made by the TRF as DCC is taking a neutral stance. GLPG has suggested deferment of the decision pending the Supreme Court decision and it remains to be seen whether any notice will be taken.

At Healey in **Northumberland** a BOAT claim was held to be non-compliant and so was rejected as being totally invalid, thereby losing any motor vehicular rights. A restricted byway order was made by NCC in Dec 2011, in exercise of its freestanding duty to keep the Definitive Map under review. Since then the case has been the subject of unbelievably pedantic argument (including a public hearing) by a senior adviser to the TRF, simply as to the exact historic route. The decision is awaited.

TRF legal advice - The TRF have now appointed a legal director, Jonathan Dingle, a barrister (senior junior) who specialises in catastrophic claims, complex fraud and demanding pain. An interesting prospect!

Deregulation Bill - This subject is covered more fully by David Gardiner in another article. In brief, GLEAM and GLPG have both been supporting the **Peak District Green Lanes Alliance** (PDGLA; a member of GLPG) in attempts to win an amendment to the Bill to resolve the problems of vehicular use of unsealed unclassified green lanes. Although so far unsuccessful in that objective, the initiative has stirred up a great deal of awareness of the issue and debate, even to the point where a Joint Parliamentary Committee recommended Government action, and Defra has in consequence decided to refer the matter to a future Stakeholder Working Group. Whether that is an appropriate route is a matter of debate, and there is clearly more to come when the Bill comes before the Lords in October.

One good example of the problem is on Bradley Lane at Pilsley and Hassop in **Derbyshire.** A BOAT order was made by DCC in 2010 in response to an application, and vehicular rights were not extinguished by NERCA as the way was not on the Definitive Map. The historic evidence was therefore thoroughly analysed by all parties, with PDGLA being represented. The inspector concluded in an interim decision following a public inquiry that the correct status was bridleway, and he stuck to that conclusion in his final decision in June 2014 after a second inquiry triggered by objections from the TRF. The TRF was very upset and appealed to the High Court under Sch 15 to the 1981 Act. The case rests on six grounds, all of which relate to interpretation of the evidence rather than any question of law, except to the extent that case law relates to such interpretation. The courts are very reluctant to intervene when the issue is simply a matter of considering evidence, as unless the entire case is re-run before the court it is not in a position to make a proper judgement of the balance of probability. It is only if the findings can be shown to be irrational that interpretation becomes a point of law in its own right. That is the theme of the TRF's case, but it has a mountain to climb if Defra defends its position properly on behalf of the Planning Inspectorate.

Unlawful changes to the Definitive Map - An apparently unique situation exists in that **Staffordshire** CC has been unlawfully changing the Definitive Map by deleting footpaths and bridleways and allotting vehicular status to ways, simply because they were (in part) on early versions of the County's List of Streets and because SCC considered the ways to have vehicular rights. That practice shows an astonishing ignorance of the law by a surveying authority, and efforts are in hand to achieve rectification. The interesting question has arisen as to how to correct a Definitive Map that has been unlawfully changed in the first place. The best opinion is that, as the changes have been simply a matter of erroneous administrative process, the errors can be rectified in the same way. The true status of any right of way is conclusively defined by the latest adopted map that was correctly drawn.

GLEAM aims to protect public paths from wanton and illegal damage.
If you would like more information or wish to assist please write to:
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