

GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT.

www.gleam-uk.org

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

AUTUMN 2015

Hopes for New Legislation to Protect Green Lanes in England and Wales

By Diana Mallinson, GLEAM Committee Member

Readers will recall from previous issues of the GLEAM Newsletter that GLEAM, the Peak District Green Lanes Alliance, the Yorkshire Dales Green Lanes Alliance and other organisations in the Green Lanes Protection Group (GLPG) have been using the opportunity for changes to rights of way legislation in England in the Deregulation Act. This has been to press for improved legal protection for green lanes, for both Byways Open to All Traffic (BOATs) and Unsealed Unclassified County Roads (UUCRs). UUCRs are routes which are publicly maintainable, but where the level of rights (vehicular, bridleway or footpath) is not known, because they are not on the definitive map of public rights of way. UUCRs are often (but not always) shown as Other Routes with Public Access (ORPAs) on Ordnance Survey maps. This article describes what is happening in England and in Wales, due in large part to pressure from GLPG and its member organisations.

England

The Deregulation Act became law in March this year, but the guidance and rules which will give effect to the rights of way legislation in the Act are still being developed. This is being done by the Department for the Environment, Food and Rural Affairs (Defra) together with the Stakeholder Working Group (SWG), the group made up of representatives of farming, land management and business interests, local authorities and rights of way users which developed the proposals included in the Act. The main changes affecting green lanes will, in my view, be:

- Fixing the cut-off date (between 2026 and 2031), after which no further claims for public rights of way, based on historic evidence, can be made. This means that it will not be possible to make a claim that a UUCR should be added to the definitive map as a historic footpath or bridleway (and thereby protected from recreational motor vehicle use) after the cut-off date.
- It will not be possible to use historic evidence to prove that a BOAT is in reality only a footpath or a bridleway, or not a public right of way at all, after the cut-off date.
- Owners and occupiers of agricultural land will be able to ask local authorities to authorise the erection of gates to control livestock movement on restricted byways and BOATs, in the same way as they can for gates on bridleways, and gates and stiles on footpaths.

During the passage of the Deregulation Bill through the House of Lords, the Defra minister, Lord De Mauley, said that a new Stakeholder Working Group (SWG2) would be set up as soon as possible after the Bill became an Act, to examine the costs, burdens and benefits of recreational motor vehicle use of green lanes. He said that, unlike the first SWG, SWG2 could make majority and minority recommendations if it could not reach a consensus. SWG2 would have a similar balance of interests

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to the first SWG, but also include representation from National Parks, Areas of Outstanding Natural Beauty and National Trails, and from pro- and anti-vehicle organisations (GLPG hopes to represent the latter).

Defra has yet to get SWG2 up and running. The need to do so has become more urgent as highway and National Park authorities are struggling to protect green lanes from the adverse effects of recreational motor vehicles, e.g. to cope with the need for repeated repairs or to make traffic regulation orders (TROs), because their budgets have been cut due to reduced funding from central government. They do not have the financial resources to repair these damaged green lanes, even though it is their statutory duty to do so. After the cut-off date it will not be possible to protect those UUCRs which do not have public vehicular rights, other than by individual TROs. Central government needs to realise that a small investment in providing Defra and Natural England support to SWG2, and in consultation on its recommendations, should pay dividends in the protection of green lanes. This is a task which local government cannot manage alone within the current legal and financial framework.

Wales

Rights of way legislation is devolved to the Welsh Government and the National Assembly for Wales. The rights of way sections in the Deregulation Act do not apply in Wales. The Welsh Government issued a Green Paper on improving access to the outdoors for responsible recreation in July 2015, with a closing date for responses of 2 October 2015. Most of the topics and consultation questions in the Green Paper are about improving non-motorised access (e.g. extending the right of access on foot to CRoW Act access land to allow access for all non-motorised users, allowing horse riders and cyclists to use public footpaths where practicable and sustainable) and simplifying rights of way legislation. But there is also a question about recreational motor vehicles in the countryside: “How could legislation better strike a balance between the various demands of motorised users, landowners and the natural environment?”. This question was included in the Green Paper because of Assembly Members’ interest in the problems caused by recreational motor vehicles using green lanes and open countryside. The question fails to ask about the problems caused for non-motorised users such as walkers, cyclists, horse riders and carriage drivers, but the consultation is an opportunity for GLPG and its constituent organisations to raise this issue and call for changes in the law to protect green lanes and their non-motorised users from recreational motor vehicles.

Timetables

The UK Government says that when SWG2 has reported to ministers, i.e. by 18 months from the date it starts work, there will then be a period of public consultation on the proposals before they are considered for English legislation as part of a Bill.

The Welsh Government says that the results of its Green Paper consultation will not form part of legislation until the next Assembly term, i.e. after the Assembly elections in May 2016.

It will be interesting to see, assuming GLPG’s proposals win public support, which country enacts them first.

(This article is compulsory reading, leading to a Deregulation Act happy ending. Editors)

Grim Fairy Tales

By Andy Dunlop, GLEAM Committee member

A long time ago, O Best Beloved, in a land far far away, a man who dreamed of being a farmer purchased a large piece of unproductive moorland, and cleared it of rocks. Over many years he toiled and set up walls, creating pasture so he could breed cattle. In the middle of this he built himself a farm and a farmhouse. He was happy, and all was good.

Some years later a nearby stonemason approached the man and asked if he could quarry stone from part of the farmer's land. Deals were done and it was agreed. The stonemason built a new road from the other side of the farmer's land so he could get his new stone. He did this for many years until he had all the stone he needed. Then he filled in the hole and left.

Many years after that the farmer, fearing his land might become subject to death duties, put the land into Trust so that it would be safe from the Government taxes. Over time the two tracks joined and the farmer had two ways to get to his home.

Our tale now moves on 100 years. The original farmer had died and left his land, via the Trust, to his son, and he to his son, and he to his son, and so on; when one day a man from the Council claimed that he had walked the now-through track (the one in Trust), and wrote that it was a public footpath along a private track. We say "claimed", O Best Beloved, as on the day he said he had walked down the track he also said he had walked down many hundreds of other tracks, and he failed to mention in his writings any of the gates, stiles or gaps. Nor did he tell the farmer what he had written; and the land was still in Trust.

A few years later, another man from the Council took what the first man had written and changed the description from "public footpath" to "Carriage Road Footpath". He also didn't tell the farmer what he had done either.

Another few years passed and another man from the same Council took what the second man had written and changed it, again without telling the farmer, to "Road Used as a Public Path" (RUPP); but as he didn't publish what he had written, no one was any the wiser.

In the time of Government upheaval, known as the 1980s, the Council reviewed what they had previously done (in secret) and decided that they should reclassify all the paths they had marked on their map as RUPPs as something else. They looked at their secret map and saw the farmer's RUPP, and they decided it should now be a public bridleway. They drew up a large Order that covered all the paths they wanted to reclassify, and said they told everyone it affected what they intended to do. They didn't tell the farmer though and, to make matters worse, they forgot to add his RUPP and a number of others to their Order. All was quiet and no one came along the farmer's path, as it didn't lead to anything apart from his home and his farmyard. He, his young wife and child played happily on their lands.

A few years later, someone at the Council saw that the path had been missed off the Order; so they changed the map by drawing a heavy black line along it – a black line like no other on their mystical map, and like none featured on its key. They also altered the Statement that accompanied the map

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to describe the way as a “Byway”. But as their map was secret and hidden in their office, no one saw this, and no one was any the wiser, not even the farmer.

But the man from the Council then wrote to the powerful men in Southampton who make all the Queen’s maps, and told them that the way was a BOAT, and that they should show it as such on their maps.



In 2006 people in large cars and on motorbikes, who enjoy exploring ancient roads, purchased the map from the men in Southampton and tried to drive up the farmer’s lane, through his farmyard, past all his cattle and out the other way. The farmer was surprised and annoyed when these people arrived. These people scared his cattle, and in any case they couldn’t drive all the way as, 10 years earlier, he had put large boulders at one end to stop travellers from the East coming onto his land with their caravans. The drivers challenged the farmer, showed him their map and said the farmer must let them through. Tempers got frayed.

The farmer went to the Council and asked how his path had come to be shown this way, and why. The Council said they did not know, but as it was on their map it must be so, for the map does not lie, and what it shows, it shows. But they were a little bit sympathetic and didn’t make him move his rocks that stopped cars, for they too had the same problem with travellers from the East, and had put rocks across many of the other paths in the area. They advised the farmer that he could apply to have the route regarded as a bridleway if he wished, and sent him away to research. He set his wife about this task as he was busy looking after his cattle.

After years of researching and spending much money on men with legal knowledge, the farmer put in an application to downgrade the path to a bridleway. The Council said thank you, we will look at it very soon... and put it in a pile with many other applications. There it gathered dust... and the boulders remained, blocking the lane.

Some years later, the farmer asked the Council when would they look at his papers, as he was getting more and more people trying to get through his farmyard, each holding the map from Southampton and demanding he move his cattle, open his gates and remove the boulders. The Council said “When it gets to the top of the pile”. The farmer looked at the pile and saw it was even deeper now, and his papers kept getting moved further down as more important papers, as the Council thought, arrived. It became clear to all that the farmer’s papers would not be looked at for 40 years.

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The farmer and his wife discussed this, and decided they needed help. They scoured the land for people who could help, and eventually found a handsome prince who was used to fighting fire-breathing dragons, ogres and Councils. (Let's just be clear here, O Best Beloved, the man they found wasn't a prince, or handsome, but it fits in with the tale). They spoke to the man and asked for help. He looked at their papers and used the mighty sword of FoI to find out more. After a while he declared that the path wasn't shown on the mystical map as a BOAT, that there was jiggery-pokery afoot, and just a little bit of it was a public footpath. Based upon these wise words, and lots and lots of documents, the farmer and his wife went to the Council and said "We were misled by you... your mystical map is wrong, and we would like to change our paperwork to "add a footpath" rather than "downgrade to bridleway"". The Council became scared and said, mysteriously, "You can't do that... you have to start again". So the farmer did, he put in a fresh application, and at the same time put up signs to tell the people with maps from Southampton: "No public right of way". He added helpfully that people could walk or ride the path with his permission if they asked nicely, unless they were from the Council, then they couldn't. He explained to the people who came with maps from Southampton what was going on, what the Council had done, and they all agreed that he was right. The farmer then let them through his farmyard (unless they were from the Council).

The Council were annoyed and put the farmer's new papers at the bottom of the big pile. They said they wouldn't read them till they got to the top, in another 40 years, and added "In the meantime, take down those signs, remove the gates and get rid of those rocks". The farmer said "No, I won't", and the Council got even more annoyed.



Legal papers were sent to the farmer which said the boulders and gates were illegal, and he must remove them. He said "I will not, your legal papers are wrong". He asked the Council to "put the matter in front of a Magistrate to see who is right"; but they said "No, we know who's right. We are, for we are the Council. Now do as you're told!" The farmer was worried as he couldn't do what the Council demanded, his farm and animals were at risk, and the only way to challenge them was to go to the highest court in the land...and that was very, very expensive. So he waited...

One day, when it was raining very hard, five council workers and three (very nice) policemen arrived. They brought with them a BIG tractor and a lorry and lots of cars. The Council tried to push past the farmer to get onto his land, but he, his wife, his son and the man (who isn't a prince or handsome) stood in their way and stopped them. The Council pleaded with the Police to do something. After much talking and showing of papers, and the arrival of lots of the farmer's friends on tractors, and more policemen (and even nicer police ladies), the man (who isn't a prince or handsome) was taken away for a very short holiday for a few hours in the Police Station. Then a very serious and senior policeman arrived and told the Council to stop it. So everyone went home.

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The farmer and his wife and the man (you know, the one that went for a short holiday) waited for the Police to take them to stand in front of a Magistrate on the very serious charge of obstructing the highway. They waited and waited and waited. Eventually the Police told them that they wouldn't need to go to Court as the Council had decided that they could not prove the path was in fact a highway, and that their mystical map might not be quite as good as they thought it was. The Council said the matter would have to go to Bristol (in 40 years time), and a man there would decide who was right. The Council also suddenly discovered that it was their policy, and in fact had been all along, not to try and move rocks and gates and signs from paths that might not be public paths, and especially if a person, like the farmer, had put in papers saying it wasn't.

So, O Best Beloved, that should be the end of my tale. The path is blocked, the Council won't tell the men in Southampton that their map is wrong, and the farmer has to wait 40 years until he can live happily ever after.

But wait, there's more.....

Whilst all this was going on, across the land there were complaints about men from Councils not doing their jobs properly. All over the place errors with the mystical maps were being found. Councils were all pleading poverty, that they hadn't got the time or were doing other things they weren't required to do, but they thought were way more important, like poetry lessons and Bear Walks. Because of this, paths which were public paths were being forgotten, and people who had claimed paths across their lands weren't able to sell them while the Councils dithered. Worse still, people who had paths marked across their land on the mystical maps where none really existed were being invaded by all sorts of ne'er-do-wells and Council men. And even when the Councils did look at the applications, 40 years after they had first got them, they often then rejected them and said things like "You've used the wrong map" or "You haven't ticked this box" and sent them away saying "Start again". This was seen as unfair and very bad. The Government was approached and listened to all these complaints and decided it was time to take action. The rules the Councils were meant to follow were being misused or ignored. So they changed the rules in something called the Deregulation Act 2015.

This says, O Best Beloved, at Section 26(1) and Schedule 7 Part 2, para 6, sub-paras 2(1) to 4(4) , that Councils must review applications within 3 months and assess them for the chance of reasonable success. If they do pass this test, they must process to determination within 12 months. At each stage the applicant can challenge the Council (via Magistrates) if they fail to comply, and the Magistrates can order the Council to comply.

Joy for the farmer, Rambler, horse rider and motorist.... At last, someone is listening.

Read it here... <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

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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Views expressed are those of the contributor and are not necessarily those of GLEAM.

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