

# 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 recreational motor vehicles.

**AUTUMN 2017**

## **The Natural England/DEFRA Forum on vehicles in the countryside: an update**

*By Michael Bartholomew*

The Forum, whose origins and purpose were set out in the last newsletter, has met a further couple of times. It is unlikely that vehicle user groups and groups that want green lanes to be freed from the blight of 4x4s and motorbikes will reach a consensus on green lane management. But we have to participate. We will keep members updated if there are any unexpected breakthroughs.

## **A House of Lords committee reviews NERCA**

*By Michael Bartholomew*

When an Act of Parliament has been in operation for a few years, Parliament sets up a committee to find out if the Act is achieving what Parliament intended. The Natural Environment and Rural Communities Act (NERCA), which was passed in 2006, has now come up for review. GLEAM members will know that part 6 of NERCA was a giant step forward: it stopped the hitherto relentless expansion of the network of green lanes open to recreational motors. So far so good. But NERCA has a flaw, a flaw that leaves over 4000 miles of green lanes in England and Wales vulnerable to misuse by 4x4s and motorbikes. These green lanes, known as 'Unsealed Unclassified County Roads' (UUCRs), are the tracks that are entered on local authorities' 'List of Streets' – the registers of routes that are maintainable at public expense.

UUCRs were exempted from the provisions of NERCA, because they include all sorts of tracks, a small number of which are necessary for the public's day-to-day business. This small number are, to use a term devised by DEFRA, part of 'the ordinary roads network', even though they are 'unsealed' – ie have no tarmac or concrete surface. The removal of motor vehicular rights from these routes would cause the motorists who depend on them significant inconvenience. But the need to preserve vehicular rights on these few routes has had the unintended consequence of leaving the far larger number of UUCRs that are genuine green lanes – ie rural, unsealed, historic tracks – open to 4x4s and motorbikes.

GLEAM and GLPG have, together with other organisations interested in green lanes, submitted written evidence to the House of Lords committee. These are published at

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<http://www.parliament.uk/business/committees/committees-a-z/lords-select/nerc-act-committee/publications/>. GLEAM has asked the committee to advise the government that new legislation is necessary to protect UUCRs (plus new guidance on using and making traffic regulation orders), and to allow the Motoring Stakeholder Forum (see article above) to produce majority and minority reports on these issues, if necessary. GLPG reiterated the need for new legislation to protect UUCRs, either by extinguishing unrecorded motor vehicle rights (with exceptions for access to premises) or by reclassifying UUCRs as restricted byways or BOATs according to suitability (a solution put forward by Cycling UK, one of GLPG's members).

The committee reports in March next year.

### **Current rights of way issues on routes on the list of streets**

*By Diana Mallinson*

As discussed in the article above, those green lanes which are on authorities' lists of streets (i.e. publicly maintainable highways), but not on their definitive maps of public rights of way, are not protected by the NERC Act 2006 if they have historic public vehicular rights, derived from their use by horse-drawn vehicles. Defra's justifications for this loophole are that it guards against unintended consequences for the '*ordinary roads network*' and on access to properties by unrecorded rights. The only exception to BOAT status for green lanes on the list of streets with public vehicular rights is where the lane was (e.g. by mistake) not on the list of streets at the date in 2006 when the NERC Act came in effect.

GLEAM is aware of only one case (in Northumberland) where the whole length of a green lane on the list of streets and with public vehicular rights has become a restricted byway, but knows of several lanes (e.g. in Derbyshire, Northumberland and Powys) which have become part BOAT and part restricted byway. The restricted byway part arises because the alignment of the definitive public right of way is not the same as the alignment of the lane on the list of streets; either part of the lane was not on the list of streets in 2006, or part of the lane was shown on a different alignment on the list of streets, e.g. due to a mistake in digitisation or in recording a diversion. Whatever the reason, these sections of restricted byway may protect the whole lane by making the BOAT section a cul-de-sac, and therefore less attractive to recreational motor vehicle users.

However, a judgment (*Trail Riders Fellowship v Secretary of State for the Environment, Food and Rural Affairs*, [2017] EWHC 1866 (Admin)) given in July 2017 by the High Court will reduce the number of green lanes which become restricted byways in whole or in part because of inaccuracies and anomalies in the list of streets. This case was about an order made by Hertfordshire County Council (HCC) in 2009 following an application by the British Horse Society in 2006 to add a green lane called Oakridge Lane, which is on HCC's list of streets, to the definitive map as restricted byway. HCC found that historic public vehicular rights existed but that there was a mistake in its map of its list of streets such that part of the line of Oakridge Lane was shown, not on the line of Oakridge Lane, but on a parallel access road and therefore made this part of Oakridge Lane restricted byway in

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its order. The Trail Riders Fellowship (TRF) objected to HCC's order twice and on both occasions the inspector appointed by the Secretary of State agreed with HCC. The TRF challenged both inspectors' decisions in the High Court. The first challenge in 2012 succeeded, apparently on a question of whether HCC had considered all the historic evidence, and the order was considered by the second inspector, followed by the second challenge by the TRF. In this latest challenge, the judge agreed with the TRF that the inspector's conclusion was "*perverse and which Parliament cannot have intended*". That is, he considered that Parliament had intended to exempt all green lanes with public vehicular rights on the list of streets from the extinguishment of motor vehicle rights, even if their alignment was recorded incorrectly on the list of streets.

But Oakridge Lane does not meet the criteria used by Defra to justify Parliament's exemption of green lanes on the list of streets in the NERC Act. There is the parallel private road for property access; furthermore most of Oakridge Lane is described as a "*foot track*" on HCC's list of streets, i.e. it is not part of the '*ordinary roads network*'. Did Parliament really intend that such green lanes should become BOATs and not restricted byways, in whole or in part?

The boundary between North Yorkshire and Redcar and Cleveland runs along the centre of a green lane, for over 2 miles, in the North York Moors National Park. In the photo below, the motorcyclist is on the Redcar and Cleveland side of the lane, which is not on the list of streets. The other side of the lane, in North Yorkshire, **is** on the list of streets. If this lane has public vehicular rights, the Redcar and Cleveland side would become a restricted byway while the North Yorkshire side would become a BOAT - an absurd and unenforceable result of current legislation.



***Stoxla Road, North York Moors National Park. Copyright Trevor Littlewood, 2011. Licensed for reuse under [creativecommons.org/licenses/by-sa/2.0](https://creativecommons.org/licenses/by-sa/2.0)***

A second case where a legal challenge by the TRF has had the effect of delaying or thwarting an application to add a green lane on the list of streets to the definitive map is

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in West Sussex. Upper Beeding Parish Council and the British Horse Society had worked together to get Smugglers Lane, a narrow green lane which is on the list of streets, and which had been blocked for many years, reopened, by making a successful application to West Sussex County Council (WSCC) for an order to have it added to the definitive map as a bridleway. However the bridleway order has been quashed following a challenge by the TRF, which argued that there was evidence for public vehicular rights which WSCC had not considered.

The TRF is one of the user organisations which authorities usually consult before making such orders, so it could have submitted its evidence at the time of consultation. It could also have objected to the order so that the Secretary of State's inspector could consider all the evidence submitted by all the parties involved. However it chose to do neither, but instead obtained a High Court decision, which quashed the order by consent between itself and WSCC, a decision which the applicants for and supporters of the order could not get involved in.

Before and immediately after the NERC Act was passed, the TRF participated in the process of adding green lanes to the definitive map and thereby establishing their public rights of way status and alignment, by making its own applications. The TRF's actions in the High Court cases reported here and in trying to withdraw its applications (GLEAM Newsletter, Spring 2017, page 4) indicate that the TRF is now more interested in keeping green lanes on the list of streets in a limbo in which their status and alignment are undefined, than in conserving public rights on green lanes by defining status and alignment by adding them to the definitive map.

### **Stop Press – a TRO on Kirby Bank, North York Moors**

We occasionally send items of news and information by e-mail to those members who have agreed to receive such communications by e-mail. Last December, we e-mailed these members to tell them about a public consultation on a proposal to make a permanent traffic regulation order (TRO) to stop recreational 4x4s and motorbikes using an ancient green lane, Kirby Bank, in the North York Moors National Park. Part of Kirby Bank is a scheduled ancient monument, an embankment with a line of causeway stones on top, constructed during the middle ages for pack horses and humans to cross the moors. The ancient monument and the narrow track continuing up Kirby Bank from it have both been damaged by recreational motor vehicles. We are pleased to let you know that, following the public consultation, North Yorkshire County Council has approved the making of the TRO, as proposed. Many thanks to all members who wrote to support the TRO.

It would be very helpful, for appeals such as this one on Kirby Bank and for sending out other information, if any other GLEAM members, who are happy to receive communications by e-mail, could inform [info@gleam-uk.org](mailto:info@gleam-uk.org).

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