

GLEAM



Green Lanes Environmental Action Movement

www.gleam-uk.org

A newsletter for those interested in protecting ancient ways from the ravages of recreational motor vehicles.

AUTUMN 2022

Early indications of the government's response to the public consultation on the Landscapes Review

GLEAM members will recall that this wide-ranging consultation included a few questions on the issue of recreational motoring on green lanes. DEFRA has not yet issued its formal analysis of the public's responses, so we don't know whether the public at large responded in the way that all GLEAM members will have responded (ie, in essence, *question*: 'Should green lanes be closed to all non-essential vehicles? *answer*: 'Yes, everywhere'.) In their responses, AONBs and national parks tended to say much the same thing, also emphasising their fundamental obligation to defend protected landscapes from harm and nuisance.

But whatever the response, we have been given to understand that the government is not, at present, proposing to legislate, thereby making green lane recreational motoring illegal. It recognises the problem, but rather than changing the law, it proposes two things.

First, it says it will strengthen the TRO system so as to make it easier for authorities to impose restrictions on green lanes used by 4x4s and motorbikes. Anything that simplifies the current, unwieldy, expensive and unfair TRO system will be welcome. For example, at present, if vehicle user groups dislike a TRO proposed by an authority, they can formally oppose it, right up to the High Court. But if a parish council, concerned about the damage and nuisance inflicted on a local green lane by 4x4 and motorbike users, applies to its highway authority, requesting that a public consultation be launched on the desirability or otherwise of a TRO, the highway authority is under no obligation even to respond, no matter how well-supported the parish council's request.

Second, DEFRA proposes to sort green lanes into two categories – 'sustainable' and 'unsustainable'. The unsustainable lanes will be restricted, either wholly, or by seasonal or permit TROs. The notion of a clear distinction between supposedly sustainable and unsustainable green lanes seems to us to be fundamentally mistaken. The term 'sustainable' tends to be applied only to the durability of the surface of any particular green lane, whereas considerations of the beauty of the lane, its intrinsic character (eg narrowness, blind bends), the peace and tranquillity it embodies, and the needs and safety of non-motorised users, are just as – and often more – important elements that

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must be taken into account. It would be instructive if the very term 'sustainable' were abandoned and replaced by 'suitable', or 'appropriate'. Moreover, if the classification process is imagined as a collaboration between vehicle users and non-motorised users, and that they will all meet to decide whether a particular lane is 'sustainable' (or suitable, or appropriate) for vehicular use, the collaboration is unlikely to succeed, for the parties to the collaboration start from very different premises.

We must wait until DEFRA formally issues its analysis of the consultation, but if our current understanding is correct, GLEAM will not be able to dissolve itself, job done. We will have to continue our work, making the very most of the opportunities that DEFRA is likely to present.

Off-roaders' challenge to the 5 year main user test in the Natural Environment and Rural Communities Act (NERCA) 2006 fails

In January 2022 the off-roader organisations, the Green Lane Association (GLASS) and the Trail Riders Fellowship (TRF), launched a crowd-funding campaign to support their High Court challenge to an order adding a lane in the village of St Mawgan to the definitive map and statement for Cornwall as a restricted byway. The crowd-funding campaign only raised just over one quarter of its target of £60,000. Despite this shortfall GLASS and the TRF continued their challenge, saying that overturning the restricted byway decision, as confirmed following a public inquiry, would protect public motor vehicular rights on many minor roads in towns and villages. This statement ignored the fact that private motor vehicular rights (e.g. for occupiers of and visitors to houses on the lane) are provided by the NERC Act for restricted byways.

In fact, their challenge went beyond "*protecting*" minor roads such as the lane in St Mawgan; it was an attempt to rewrite section 67(2)(a) of the NERC Act, a section which is designed to preserve public motor vehicular rights on highways used mainly by the public with motor vehicles. Section 67(2)(a) says that such rights are preserved on highways where the main lawful use by the public in the 5 years preceding the commencement of the NERC Act in 2006 was with motor vehicles. Defra guidance on the NERC Act says that the highway authority (Cornwall Council in this case) must judge whether this criterion is met or not.

The public inquiry heard that the parish council (St Mawgan-in-Pydar) had sought to have the lane maintained (by the adjacent landowners) and had made an application to add it to the definitive map and statement as a byway open to all traffic (BOAT) in 2011. This application was triggered by the erection of signs at each end of the lane "*Private Lane Residents Only No Horses*", i.e. the parish council wished to ensure that public rights to use the lane were preserved. The inspector's decision following the public inquiry was that public vehicular rights existed, but they were limited to non-motorised vehicles, i.e. restricted byway, because the NERC Act exemptions claimed by the parish council and the TRF did not apply. For example, with regard to the 5 year main use exemption (s67(2)(a)), over 100 user evidence forms were available, most of which had been submitted in support of the application in 2011. These showed that there was less use with motor

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vehicles than by any other means in the 5 year period ending with the commencement of the NERC Act on 2 May 2006. The decision is available at <https://www.gov.uk/guidance/2020-rights-of-way-order-information-decisions-and-maps#cornwall-council>.

In their challenge to the inspector's decision, GLASS and the TRF argued that the s67(2) (a) exemption should not be construed narrowly and is primarily concerned with the character of the potential BOAT. They also claimed that non-motor vehicle use should be preponderant, not marginally greater for the exemption not to apply, that there might be insufficient evidence for a decision to be made and that pedestrians would tend to use the verge of the lane, not the central part of the carriageway. The judge rejected all four claims. She said that the words of s67(2)(a) "*make clear that what is required is a factual assessment of whether the main [i.e. chief or predominant] lawful use by the public of the Order Route during the five-year period to 2 May 2006 was for*" motor vehicles or not, and that the character of the way is not a mandatory consideration in assessing the main use, let alone a primary consideration. She said that it would not have been open to the inspector to have declined to decide whether the s67(2)(a) exemption applied, because it was one of the issues in the public inquiry. She rejected the argument that the centre of the way might have been mainly used by motor vehicles, saying it was "*pure speculation*". The judgment is available at <https://www.bailii.org/ew/cases/EWHC/Admin/2022/1804.html>.

This judgment is important for confirming that the decision-maker must make a factual assessment of main use in the 5-year period, if the s67(2)(a) exemption is claimed. This should be an easier assessment than the more nebulous character test required to decide whether a lane where public motor vehicular rights exist is a BOAT or an ordinary road.

Damage to the verge and surface of Back Lane, Derbyshire, July 2021. This is a BOAT which the TRF argued has the character of an ordinary road.



NERC Act exemption no longer claimed in Wiltshire

In the Spring 2022 newsletter we noted the failure of GLASS and the TRF to persuade Wiltshire Council that three public rights of way in Steeple Langford should be recorded as BOATs, rather than restricted byways, on the basis of s67(2)(a) exemption.

Since then, the TRF appears to have given up on claiming NERC Act exemption for BOAT applications made by its members in Wiltshire. A decision in June 2022 (available at https://www.wiltshire.gov.uk/media/9409/GRAF29-29A-30-31-BURB1-CKIN34-2004-07-Order-Decision/pdf/GRAF29_29A_30_31_BURB1_CKIN34_2004_07_Order_Decision.pdf?m=637920194063070000) on a BOAT application made by a TRF member in 2004 indicates that the TRF did not challenge Wiltshire Council's and the inspector's decision that the route is a restricted byway, not a BOAT, by arguing for exemption.

But there are still many BOATs in Wiltshire for off-roaders to damage.
Marlborough Downs, May 2022



The supposed economic benefits of green lane motoring

The organisations that represent 4x4 and motorbike users who motor along green lanes are devising tactics that are designed to improve their public image. This shows that organisations, such as GLEAM, that are mobilizing and expressing the public's opposition to 'green-laning', as it known, are having an effect. Green-laners are rattled. One of their tactics is to assert that their pastime benefits the economy. The alleged benefits range from the revenue that flows to the exchequer from the taxes paid on the purchases of 4x4s and trailbikes and on the fuel they use, to the income earned by proprietors of cafes and filling stations patronized by green-laners. The contention that underlies this tactic is that if green-laning were to be prohibited, a significant hole in the nation's economy would open up.

GLASS, the organisation that represents 4x4 green lane drivers, and which has close relations with the motorcyclists' organisation, the TRF, has produced a document that seeks to show that green lane motoring puts a great deal of money into the economy. Measuring the economic benefits of any activity is notoriously difficult, but GLASS has had

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a go. Necessarily, they make numbers of untestable assumptions, but, for what they are worth, here are their conclusions.

There are, they say, approximately 49,000 green-laners, including both 4x4 and trailbike users. Green-laners, it is claimed, spend an average of £5,500 each per year on their hobby. This figure covers fuel, maintenance, equipment, vehicle modifications, technology/maps, membership fees, and tourism expenditure – eg food, hotels, campsites. However, the £5,500 does not cover the costs of the vehicles themselves. The most commonly-used 4x4s, GLASS says, cost £35,000 new and £10,000 second hand, and GLASS members buy a replacement 4x4 every 5 years on average. Two difficulties arise. First, how do we calculate the proportion of the £5,500, and the costs of the vehicles used, that finds its way to the Exchequer? This is important, for green-laning is not an activity that is cost-free for society at large. Large sums are required, from the public purse, to repair the damage inflicted on green lanes by green-laners, and to pay the legal costs incurred in making orders (TROs) to restrict their activities. Secondly, how much of the money laid out by green-laners is actually spent on green lane motoring? Green-laners do not live at the ends of green lanes, getting their vehicles out solely to motor back and forth along the adjacent green lane, and then to return their vehicles to local storage. (A possible exception is the practice of some motorbike users who transport their trailbikes to the green lanes in the back of vans, but the owner of the van has to pay for the van itself and its running costs.) But typically, green-laners motor from their homes, often long distances, to reach the green lanes that will be the destination and purpose of their trips. In this respect, they are, like millions of vehicle users, paying their taxes and motoring on the ordinary tarmac roads. The distance green-laners travel on green lanes, as a proportion of the distances they travel on ordinary roads is small. And if green-laning were to be prohibited, GLASS and TRF members will continue to own, tax, insure, and maintain motor vehicles: maybe not the modified, or specialist 4x4s and trailbikes that they currently use, but motor vehicles all the same. The Chancellor of the Exchequer will not notice the difference, and neither will the café proprietors, who will serve ex-green-laners, born again as non-motorised enjoyers of green lanes, as they return from walks, cycle rides and horse rides along the green lanes that they profess to love.

The most colourful, eye-catching statistic conjured by GLASS is the sum of £116,625 supposedly spent by green-laners for every mile of the green lane network available to them. But it is entirely unclear what is the precise relationship between the miles of green lanes and this impressive-sounding sum. Maybe it's no more than a rhetorical flourish. In any case, what it notably doesn't do is supply any estimates of the costs of green-laning borne by local and national park authorities. These authorities are funded, inadequately, by the Treasury and from local taxation, and the funds have to pay for repairs to green lanes that have been damaged by green-laners, for the preparation of the traffic regulation orders (TROs) necessitated by both the damage inflicted by green-laners, and the loss of amenity to farmers and non-motorised green lane users, and for the litigation that invariably follows any attempt to curb the activities of green-laners. Figures produced by Cumbria County Council and Hampshire County Council, for example, show that they

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spent around £45,000 per mile on repairs to particular green lanes in their areas that had been ruined by green-laners.

Additionally, the legal costs of TROs, and the time spent by authority officers in gathering and analysing the information from public consultations, and paying the costs of defending High Court challenges mounted by green-laners, are considerable. It is difficult to see how a hard-pressed local or national park authority, trying to drum up the money needed to repair a ruined green lane, or to respond to a call by the local public for a TRO, will benefit from the tiny fraction of the Exchequer's revenue that reaches the unsealed roads maintenance budgets of local or national park authorities, and the even tinier fraction of the Exchequer's funds that derive from green-laners' taxes. Furthermore, if local cafes, filling stations, and hotels significantly benefit from the custom brought by green-laners, it is surprising that the parish councils that represent local businesses are in the forefront of the organisations that call for traffic regulation orders on their local green lanes. (Anecdotally, we know of two pubs close to the end of a green lane whose proprietors will not serve green-laners. 'I'd like to wring their bloody necks' one of the landlords said.)

Whether Government or local authorities will be impressed by GLASS's document is anybody's guess, but we doubt if the calculations it contains would survive scrutiny by Treasury officials. But from GLEAM's point of view, what the document suggests is that green-laners are on the back foot. So when a convoy of 4x4s on a green lane is encountered by a farmer, or a party of people seeking quiet recreation, it is doubtful that they will be mollified by a driver who winds down his window and tells them how much he has spent at a local tearoom, or how much he has spent on his vehicle, and how much he spent on the diesel fuel that, as he speaks, is being turned into smelly, polluting exhaust fumes.

Judge for yourself. You can find GLASS's document at <https://glass-uk.org/menu-resources/publications/glass-publications/the-economic-value-of-recreational-motoring-on-unsealed-roads/viewdocument/251.html>.

Off-roaders' ideal lanes

Many off-roaders post videos and photos of their trips on green lanes on social media and YouTube. Many of these emphasise the challenge of the lanes they prefer – lanes which are muddy, rutted, eroded down to an uneven surface – to convey their pleasure in their ability and that of their vehicles to drive routes which an ordinary motorist would not contemplate using. They complain to their representative organisations such as the Green Lane Association (GLASS) when these challenges disappear when the lane is repaired. GLASS and the TRF have tried to encourage their members to use other lanes and not to overuse those which are popular on social media, but these attempts to spread the load do not seem to work, as the same challenging lanes recur on YouTube. The TRF are currently not setting a good example; the banner photo on an adventure bike trail riding

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Facebook page, a photo which also includes the TRF name and logo, shows two motorbikes throwing up clouds of dust on a green lane.

Part of the economic benefit of off-roading, as claimed by GLASS, is attributable to businesses which organise guided tours of green lanes, many of which have started in the last few years. These businesses claim on their websites that they and their customers use green lanes in a responsible manner, but this is not always the case. The Lake District National Park Authority noted in 2005 that commercial companies concentrated on the more challenging routes because this attracted customers, and some did not comply with voluntary restraint (e.g. driving a lane in one direction only or only in good weather) or codes of conduct. This summer, a 4x4 belonging to a tour guide business (affiliated to GLASS) was seen leading a convoy of five other 4x4s on a highly sensitive lane in the Yorkshire Dales National Park, breaching the GLASS and Yorkshire Dales NPA codes of conduct. Photos on this business's website confirm that it routinely uses groups of six 4x4s on this lane and others.



The junction of the highly sensitive BOAT in the Yorkshire Dales, used by the tour guide business and other off-roaders, in the foreground and to the right, with another highly sensitive BOAT which is protected by a TRO, on the left.



Close-up of the TRO sign and of the surface of the BOAT it protects.

These tour guide businesses do not have to pay the costs of maintaining and repairing the green lanes which they use, unlike businesses which provide facilities for 4x4 and motorbike drivers to test their vehicles and driving skills away from public rights of way. Another tour guide (a member of the TRF) advertised his "*Adventure bike trail introduction day*" on the trail riding Facebook page mentioned above with the comment "*Why ride a boring man-made obstacle course all day when this looks far more fun and beneficial*". Beneficial for his business and fun for his customers, but not beneficial for local taxpayers and non-motorised users.

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A former GLASS representative for Powys (the county with the greatest length of BOATs in Wales) complains that most of the BOATs there are not available for recreational motor vehicle use because they are tarmacked, not through-BOATs, out of repair or obstructed. He goes on to try to enlist disabled and carriage users on his side of the argument, arguing that the tarmac and not through-BOATs are also not available to them.

Cycling UK launched a long-distance cycling route in Kent earlier this year, the Cantii Way. The route was originally planned to include a green lane near Ashford, but the test ride, as reported in Cycling UK's magazine, *Cycle*, found that this "byway through some lovely woodland ... was so muddy it was unrideable and a challenge enough just to slither along pushing the bikes." Cycling UK has decided "to remove this bit from the Cantii Way and use the road instead." Another example of how recreational motor vehicle use makes green lanes unpleasant or unusable for non-motorised users.

David Marr (1931-2022)

It is with great sadness that GLEAM announces the death of David Marr on 12th April at the age of 90. David was recruited as Treasurer of GLEAM at the time of its foundation in 1995 by Elizabeth Still, one of its co-founders. As a former company secretary he was ideally suited to the job. David and Elizabeth knew each other well as they lived in the same parish of Bucklebury, Berkshire. David later took on the roles of Secretary and Editor of the Newsletter following Elizabeth's death in 2007. He held these roles until he retired in 2017. GLEAM will always be grateful to David for his efficient administration and wise advice on finance, membership and the newsletter. Committee members who worked with him since 1995 will always remember his fantastic ability and for being such a nice man.



*Published by GLEAM, PO Box 159, Otley, LS21 9BT, www.gleam-uk.org.
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