

# GLEAM



Green Lanes Environmental Action Movement

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

**SPRING 2001**

## **Patron for GLEAM**

**“I am proud and delighted to announce to our members that His Royal Highness The Duke of Edinburgh KG KT has graciously accepted our request to become Patron of GLEAM. We are most grateful to His Royal Highness for this favour, and we look forward with anticipation to his support in the future.”**

**David Gardiner, Chairman.**



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## **HOW THE BILL WAS WON.**

**GLEAM** has now been in existence for six years. During that time we have grown from just a handful of concerned people to a nationwide organisation with thousands of “direct” and “indirect” members, 79 MPs and many members in the House of Lords. We knew from the start that only a change in the law would see an end to the destruction of miles of green lanes. It is a pleasure to be able to report that our work is beginning to show some results.

The workings of Parliament are convoluted, fraught with difficulties and full of traps for the uninitiated or unwary.

Below is an account of how it was only with the determination, first hand knowledge and perseverance of certain members of the House of Lords and the Commons, most ably and skilfully chivvied along by an expert, Graham Plumbe, that the Countryside and Rights of Way Bill finally became law at the very end of the last parliamentary session.

While we have by no means reached the end of our campaign, it was in no small measure due to the expertise of Graham in particular and to others who assisted him that the Government finally agreed to those parts of the Bill which met certain aspects of GLEAM’s objective. Certain indefensible anomalies concerning rights of way are being corrected at last, although we must wait some time before the measures become implemented. A watchful eye will have to be kept to ensure that there are no pitfalls in the small print when the orders are finally laid.. Other measures must still be worked for before we at GLEAM can say that we have achieved what we set out to do.

# The CROW story ~ a lesson in politics

told by Graham Plumbe FRICS FCI Arb, honorary adviser to GLEAM.

Readers will recall the plague of motorists driving on bridleways and cocking a snook at the law, as reported in the Spring 2000 Newsletter. Grimsall Lane in Derbyshire was the focus of this widespread problem. This was because a stipendiary magistrate held that the authorities (police and County Council) had to prove the absence of vehicular rights, as this type of offence was dependent on bridleways having “no other rights”. If there was any reasonable doubt at all (the criminal test) the Road Traffic Act 1988 (the “RTA”), which bans motoring on bridleways, was toothless.

## Along comes CROW

The Countryside and Rights of Way Bill – CROW for short - introduced a new class of highway, “restricted byways”, which are to replace RUPPs, but with the added right of use by horse drawn vehicles. It also envisaged alteration of the RTA to widen the definition of motor vehicles, mainly to include quad bikes. These changes provided a golden opportunity to introduce changes to deal with bridleway abuse as well.. Intense lobbying by GLEAM members and advisers secured the help of MPs, notably Andrew Hunter and Harry Barnes. The Opposition took up the challenge, and a team of James Paice, David Heath, James Gray, Geoffrey Clinton-Brown and Damian Green went in to bat at Committee stage in May 2000. There we met the device called a “probing amendment” - inherently one which will not work, but which serves to flush out Government thinking. We also met the political ploy, summed up by James Paice, who said “This group of amendments includes one which started life as our amendment. The Government usurped it, which is fair enough, because they did not want to be seen to accept our amendment.”

## On the Definitive Map.

In that manner we secured the inclusion of two important changes. The first was that restricted byways were to be swept into the RTA regime of offences. The second was that, together with bridleways, they would be identified by reference to the Definitive Map. Designation on that map is, however, without prejudice to proof of higher rights. The changes secured did not tackle the problem of proving that such rights did not exist. The Government, having accepted that there was a problem, introduced a further amendment on the day of the debate. This was that a way shown on the Definitive Map was “to be taken to be a way of the kind shown, unless prima facie evidence is adduced to the contrary.” This begged the question “What is prima facie evidence?” Our attempts to educate Ministers as to why it would not work, based on elementary kindergarten principles of law, included personal quotes in Committee and a

delegation to the Commons led by Harry Barnes. These did at least produce a promise by the Minister to keep the problem under review as the Bill progressed. By Report stage, no brainchild had appeared, but a further reminder of unfinished business by Andrew Hunter on Third Reading produced a repeat promise of mental activity by the Government.

## In the Upper Chamber...

And so we progressed to the Lords, where we needed friends. The sun shines on the righteous, and the Gleam of sunlight in this case was a coincidental cry for help from Lord Williams of Elvel, who had a problem of abuse of common land in Wales. E-mail contact with the author of this article was established (and flogged to death!), with the consequence that we had a champion in the Upper House, with an assembled cross-party team of supporters. In spite of a volatile relationship (your author was twice sacked as correspondent for trying to “run the Lords from outside”), and in spite of serious diversions in the form of ill-considered wishful thinking by a lawyer acting for the Ramblers Association, the Government was kept under intense pressure to deliver the goods.

## The race was on.

Part II of the Bill (the relevant part) was reached in Committee on 9 October, with Report stage and Third Reading still to come – not to mention subsequent consideration by the Commons of all amendments made in the Lords. This was serious stuff given that Parliament was due to be prorogued at the end of November, and any significant amendment lost on division in the Lords would have to be reversed in the Commons and then referred back to the Lords, for which there simply was not time. Any serious setback for the Government would therefore have prejudiced the entire Countryside Bill. Tactics were therefore paramount, and a “Sword of Damocles” strategy was conceived. This involved a GLEAM amendment as a group of peers led by Lord Williams held the Sword over the head of Damocles, i.e. the Government. They were willing to call a division on the amendment, and had enough support in the Upper House to defeat the Government if it did not produce the goods.

## Face to Face.

Again we met the unworkable “probing amendment”. Again we met the recognition of amendments being acceptable only if introduced by the Government, thus avoiding problems in the Commons. Again our amendment was withdrawn, given yet another promise of resolution of the problem – this time by Lord

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## GLEAM - Working to protect peaceful and quiet enjoyment of the countryside

### The CROW Story Contd.....

Whitty, Parliamentary Under Secretary of State in the Lords. Committee stage came and went, and so did a series of briefing papers produced for the benefit of peers who were new to the subject, but used also to convey our reasoning to the Government. On 25 October Lord Whitty accepted that the burden of proof must be on the defendant, and he proposed replacement of “prima facie evidence” with “unless the contrary is proved”. He was swiftly told that those words would not work, and on 13 November Lord Williams tabled an amendment on behalf of GLEAM. Lord Whitty agreed to meet us in the Lords to discuss the problem, and on 15 November, after taking tea with Lord Williams to discuss tactics, a GLEAM delegation (your Chairman and this author, accompanied by the Ramblers’ solicitor) met Lord Whitty leading a high-powered team of six from the DETR. The arguments ended in a draw at 6.0 pm, which was nail-biting, given the fact that Report was due the following day, and the fact that Lord Whitty still accepted the need to resolve the problem.

### Time nearly ran out.

Report came and went. The arguments from both sides were competently debated, and ended with the withdrawal of our amendment by Lord Williams in the face of yet another promise of Government resolution. Third Reading was scheduled for 23 November. But on the evening of the 21st, Lord Whitty said the Government “was not ready”. So, at 11.0 am on the 22nd, Lord Williams tabled a revised version of the GLEAM amendment which met the Government’s principal difficulties. At 12 noon, Lord Whitty announced that a Government version would be preferred, and this was tabled at 4.55 pm. The wording of this actually gave away more than our own amendment would have done. The Sword of Damocles had produced the desired result, and our own amendment was withdrawn.

### And the upshot.

The effect of the change (the introduction of s34A into the RTA) is that the decision regarding the possible existence of higher rights remains with the magistrates, although, as Lord Whitty pointed out at our meeting, the magistrates will pay regard to the Definitive Map when considering the matter of rights. The position now is that, for RTA purposes, a way is to be taken conclusively as being of the kind shown on the Definitive Map. The only exception to this is that, where an alleged offender can satisfy the court that he has need for access, he may offer as a defence that, on the balance of probabilities, public vehicular rights exist. This “access” qualification depends, however, not only on use of the way being needed for that purpose, but also on the fact that (a) the user has an interest in the land, or (b) he is a lawful visitor.

### But when?

The only other matter now is timing. This is because the provisions introducing restricted byways, as well as the offence of driving on them, are dependent on secondary legislation to bring them into effect. Another probing amendment put forward on behalf of GLEAM had the purpose of teasing out of Lord Whitty some indication of when all this would happen. As he gave an assurance that this would be as soon as possible, and suggested the time lag might be a year to eighteen months, our amendment was withdrawn.

**We have won the battle. The experience will help us win the war.**



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## Credit in Parliament.

During the final stage of the Countryside and Rights of Way Bill in the House of Commons on 28 November, Damian Green MP made the following statement:

*“I’m grateful to the Minister for his explanation of the amendments and for mentioning our lengthy debates on the Grimsall Lane case. This is an opportune moment to pay tribute to one of the groups that has provided so much information for our debates, GLEAM - the Green Lanes Environmental Action Movement - which is quite rightly concerned with the preservation of green lanes. I declare an interest as a GLEAM member.*”

*“The measures that the Minister has described sound adequate. However, the rt. hon. Gentleman will be aware that GLEAM itself has said that, although progress was made in the Bill’s early stages, it was not at all convinced that sufficient progress had been made in protecting green lanes from inappropriate vehicular use. We shall have to see how the legislation pans out in practice. Although I am aware that the Minister has strengthened many of the provisions, I suspect that, at this stage, we can only hope that enough has been done and that we will not have to revisit the issue in future legislation.”*

It is most gratifying to have confirmation that GLEAM is having an influence in places where it really counts. We have written to Mr. Green to thank him for his kind words.

....and further evidence of the valuable work of one of GLEAM's honorary MP members comes from John Riddall. He writes about the Grimsall Lane case which has made history.

"All those who value peace in the countryside are in debt to Harry Barnes MP for his part in securing changes to the new Countryside and Rights of Way Act that will help to keep motorcycles from using footpaths and bridleways.

Members of GLEAM know to their cost the trouble caused by motorcycles and four-wheel-drive vehicles using green lanes unsuitable for them. In Derbyshire we experienced a particular form of this problem. Motorcyclists used a way, near Chesterfield, shown on the definitive map as a bridleway, claiming that it carried vehicular rights. But they declined to submit an application for a modification order to alter its status to a BOAT.

When a prosecution was brought, the defendant cyclists relied on the then existing law under which, because of the definition of a bridleway in the Road Traffic Act 1988, the onus was on the prosecution to show that no higher rights existed. Because the prosecution was not able to prove beyond all reasonable doubt that this was so (and how could they?), the six defendants were acquitted.

Harry Barnes, the local MP, recognised the problem and worked hard to persuade the government that a change was needed. It is in no small measure due to his efforts that the Bill as proposed by the government was changed. Under the new law, as soon as the relevant section is brought into force, if a route is marked as a footpath or bridleway, then that is what it is until its status is altered by a modification order. The Ramblers' Association in the locality has sent a press release to local newspapers expressing their thanks to Mr. Barnes for his contribution towards the achievement of this change.

(John Riddall is a member of GLEAM and is the Countryside Secretary of the Derbyshire Dales Group of the Ramblers Association. He is co-author with John Trevelyan of *Rights of Way: a Guide to Law and Practice*.)



## **ADVANCE NOTICE**

**PLEASE MAKE A NOTE IN  
YOUR DIARY NOW.**

**The Annual General Meeting of  
GLEAM will take place on  
Friday, 19th October 2001  
at the Newbury Rugby Club.  
Formal notices will be sent to  
members with the next  
newsletter**

## **Life Membership of GLEAM.**

GLEAM's finances are still in pretty good shape, thanks to very careful housekeeping. But members will be aware that constant lobbying of MPs in person and by correspondence, sending out information on progress made, and the large number of enquiries we receive and deal with does not come cheap.

More and more old and new members are opting to become "life members" by making a one-off donation of at least £30. Some have indeed been most generous. If you pay annually at present and would prefer not to have to take the trouble to send in your subscription every year, and to save GLEAM printing and postage costs etc., you may like to consider life membership.

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Executive Secretary and Editor: Elizabeth Still

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