

GLEAM



Green Lanes Environmental Action Movement
Patron: HRH The Duke of Edinburgh KG KT

**A NEWSLETTER for those interested in protecting ancient ways
from the ravages of use by motorised recreational vehicles.
SPRING 2003**



Sinking feeling: the 4x4 vehicle of an off-road enthusiast gets stuck on the heavily rutted Mastile Lane in the Yorkshire Dales national park. Reproduced by kind permission of The Guardian. ' Photograph: Kippa Matthews

We are on Mastile Lane, a partly Roman route linking Ribblesdale and Wharfedale , writes Stephen Cook in *The Guardian* (8 January 2003). In 1950, one writer called it a green ribbon of turf between twisting white walls , but now the off-roaders have carved scars up the banks of the beck, and the swathes of tyre tracks on the grass can be a hundred feet wide. Common sense tells you it's not suitable for frequent traffic of large vehicles and powerful trail bikes with studded tyres. So what's a 4x4 Range Rover doing up here in the first place? For the answer you must enter the Alice in Wonderland world of English highway law. Once a highway, always a highway is the watchword. (*See over page.*)

"The growth of off-roading and the damage and complaint it causes means it's now among the biggest issues faced by the Yorkshire Dales National Park Authority. The authorities in the Lake District and near the Ridgeway in Berkshire have co-operated with the off-road lobby, with varying success, but here the park authority has decided to confront them."

It has prompted North Yorkshire county council, the area's highway authority, to impose experimental traffic regulation orders (Etros) on four green lanes, including Mastile Lane. And, for the first time, the orders are being made on the grounds of disturbance of the peace and tranquillity that is the guiding principle of national parks .If Etros prove effective in the Dales, which is by no means certain, they might also be used in other national parks for similar peace and tranquillity reasons .

ONCE A HIGHWAY,

One of the oldest legal maxims concerning the law of rights of way is **Once a highway, always a highway**. Some idea of its age may be gained from the fact that it was quoted by Mr Justice Byles in the case of *Dawes v Hawkins*, on Appeal, in 1860, and even then it was described as an established maxim.

However, in the context of **mechanically propelled vehicles on unsurfaced Byways Open to All Traffic (BOATs)**, and also Unclassified County Roads (UCRs), we would argue that the principle **Once a highway, always a highway is no longer sustainable**. If the maxim were rephrased as **Once a highway for certain classes of user, always a highway for the same classes of user**, it would make more sense.

This proposal has been prompted by the enactment of *Countryside and Rights of Way Act 2000 (CROW)*. Part II of *CROW* is expected to come into effect by the end of 2003. In it there is introduced a new class of highway, the Restricted Byway (RB), carrying a right of way, *inter alia*, for **vehicles other than mechanically propelled vehicles**. This, for the first time, creates two distinct types of byway, with a different range of vehicles permitted to use each.

However, this welcome new provision only deals with Roads Used as Public Paths, in that all remaining RUPPs will become RBs. It does not touch those ways which have already become BOATs; and it is in respect of these, or at least of those BOATs which are unsurfaced, that the problem of vehicular use is most acute.

History of BOATs

The majority of what are now called Byways Open to All Traffic came into being well over a hundred years ago, when there were no motor vehicles. The vehicles that established vehicular rights on these BOATs must have been horse-drawn. Motorists had no rights when there were no motors. It is only during the last 15 years or so that the public use of these old ways has expanded into widespread motorised use, especially for leisure and recreation. This increased user is radically different from what was originally intended, and was only able to happen because, until *CROW*, there had been no differentiation in law between motorised and unmotorised vehicles. A Land Rover, or a maximum-length articulated lorry, or a double-decker bus were the same in law for these purposes as a pony and trap. The widespread availability and affordability of 4x4s has only arisen in the last 15 years or so. This has given rise to the explosion

of the sport of off-roading, which in turn has taken advantage of the lack of legal definition and differentiation. It is only now, with the introduction of Restricted Byways, that a degree of differentiation has been established for mechanically propelled vehicles.

The effect of this large-scale variation and intensification of user of byways by motor vehicles has been the enormous and widespread damage that has been caused to unsurfaced BOATs. In places this can make them almost impassable to other legitimate classes of user, be they on foot, on horseback, on pedal cycles or in horse-drawn vehicles, and can cost huge sums of public money to repair. It is to counter the effects of this that our proposals are made.

The term Byway Open to All Traffic was first coined in the *Countryside Act 1968*, and is a modern creation. The age of the term is therefore a great deal less than the age of most of the byways themselves. When the term was first introduced, it is fair to say that the craze of off-roading, and the consequential over-use and damage to byways that it causes, was not anticipated. Otherwise the term Open to All Traffic would never have been introduced.

Reclassification of Unsurfaced BOATs

If BOATs which are unsurfaced for any part of their length were now to be reclassified as Restricted Byways, they would be open to use by exactly the same classes of user (plus possibly pedal cycles) as would have used them in the 19th Century. Thus:

Once a Byway in or before the 19th Century (with a right of way on foot, on a horse or leading a horse, and in a horse-drawn vehicle), if still unsurfaced, then always a Restricted Byway from the 21st Century onwards (with a right of way on foot, on a horse or leading a horse, and for vehicles other than mechanically propelled vehicles).

Mechanically propelled vehicles would thus be excluded from unsurfaced byways, and the damage caused to these byways would be reduced to a small fraction of what is caused today. The 20th Century is excluded from this amended maxim, as it was the one century in which the anomaly of the take-over of unsurfaced byways by mechanically propelled vehicles occurred.

By proposing this reclassification of unsurfaced BOATs, we raise the question of the definition and difference between surfaced and unsurfaced highways. In law these are still undefined and undifferentiated. The result is that an unsurfaced BOAT is the same in law as a 6-lane dual carriageway.

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Several attempts have been made to define surfaced, such as sealed against ingress by water, composed of materials that bind together stones or similar objects, etc. These have generally been unsatisfactory, and have failed for one reason or another. We propose that surfaced should be defined, not by the properties that it has, nor by the materials of which it is composed, but by the purpose for which it is intended. Thus a **BOAT** or a **UCR** (which could be combined under the same classification) would be defined as:

A road that has been surfaced, resurfaced or repaired at public expense throughout its whole length within the last 20 years with the intention that it should be used without significant damage by mechanically propelled vehicles in any weather conditions, or has a natural surface that is capable of such use .

Comments

Seven comments should be made about this definition:

1. The requirement of at public expense is necessary to exclude roads with private vehicular rights
2. The requirement of throughout its whole length is necessary, because even a short length of unsurfaced road in the whole length of a surfaced BOAT can be damaged in such a way as to make the BOAT as a whole unusable by certain classes of user.
3. The onus would be on the local Highway Authority to provide a Certificate of Maximum Intended Use whenever a BOAT or UCR is surfaced, resurfaced or repaired, and to keep at least 20-year records of such work.
4. The intended use by mechanically propelled vehicles keeps a BOAT open to all traffic, as the name implies. If any specification of vehicle is unsuitable for the BOAT in its surfaced state, e.g. vehicles over 2.5 tonnes gross weight, it should be prohibited by means of a permanent Traffic Regulation Order.
5. The 20-year time constraint is needed to exclude roads that were built by McAdam, Telford, General Wade or the Romans, and have since been abandoned.
6. The any weather stipulation removes any seasonal consideration of the suitability or unsuitability of the BOAT for use by mechanically propelled vehicles in winter or

7. The natural surface eligibility caters for those BOATs (admittedly rare) on which a hard surface exists by virtue of the natural geology of the terrain, and where there is no need for any artificial surfacing.

Any existing BOAT or UCR that does **not** satisfy the above definition would be reclassified as a **Restricted Byway**. However, such a major change in the law of rights of way would require primary legislation to achieve.

Objections

It may be argued that such a reclassification of BOATs would deprive certain classes of user (i.e. those in mechanically propelled vehicles) of their legal rights. Against this we would argue that, by their use of unsurfaced BOATs, mechanically propelled vehicles can and do cause such damage to these roads as to make them virtually impassable to other perfectly legitimate classes of user, be they on foot, on horseback, on pedal cycles or in horse-drawn vehicles. While this does not **legally** deprive these users of their rights, it **physically** deprives them of the ability to exercise their rights. Furthermore, one horsepower and $\frac{1}{3}$ tonne weight transmitted through four shod hooves inevitably causes less damage to a wet unsurfaced track than 150 horsepower and $1\frac{1}{2}$ tonnes transmitted through four wheels.

It is for these reasons that we consider that the old legal maxim of Once a highway, always a highway, created in the 19th Century or earlier, should be brought up to date for the 21st Century in the light of the technological changes that have occurred during the 20th Century.



**GLEAM aims to protect public paths from unnecessary damage. If you would like more information or wish to assist please write to:
GLEAM. P.O. Box 5206
Reading RG7 6YT**

From The Rambler Magazine Patrons at odds?

"Keep motorised polluters off green lanes" says Janet Street Porter, editor-at-large of the Sunday Independent, Vice President of the Ramblers Association and an honorary member of GLEAM.

In the Yorkshire Dales, "the British Horse Society seems to be in favour of continuing to allow off-road vehicles and motorbikes to rip up and destroy these ancient routes As the Queen is patron of the BHS and the Duke of Edinburgh the patron of GLEAM, the sooner they thrash is out over the cornflakes the better."

And at a public meeting last November about the state of the Ridgeway, the Berkshire County Access & Bridleways Officer of the British Horse Society suggested that the whole of this National Trail should have a hard surface so that motor vehicles could continue to use it. Was she joking? Perhaps she had forgotten that off-roaders positively like deep mud to test their driving skills in difficult terrain, and that horses and their riders prefer a grassy surface without deep ruts — as do walkers.

And furthermore .Whither the BHS?

At the Bramshill Inquiry in north-east Hampshire, reported by Graham Plumbe in our last newsletter, the Hampshire County Access & Bridleways Officer of the BHS strongly supported the County Council's Order classifying Sandy Lane as a BOAT. This was despite a petition to the Inspectorate by over 200 local riders and carriage drivers, many of them members of the BHS, that the lane should be a bridleway.

Has the Access & Rights of Way Department of the BHS totally lost touch with its members?

The Yorkshire Dales Off-roading in the National Park

With quotes from *The Dalesman* by kind permission of the Editor.

The green lanes which criss-cross the Yorkshire Dales are rightly considered among its finest gems. Linking valleys and traversing fellsides, they were trodden into existence over centuries by ancient man, Roman legions, monks, drovers and pack-horse men. Later, they became the highroads of walkers and cyclists.

But over the last few years these tracks have been carved up and wrecked by 4x4s and trailbikes. These off-roaders deny that they are, indeed, off road, claiming that they are on a road, albeit not a tarmacked one, and they are adamant that they have the law on their side. GLEAM has, however, made the point again and again that off-roaders cause serious damage to such roads; and nobody is permitted to do that.

Now North Yorkshire County Council is considering banning non-essential vehicles from four popular routes to see what effect such a ban would have on the condition on the 100 or so green lanes across the Dales. Not surprisingly, and in GLEAM's view quite misleadingly, LARA, the off-roaders organisation, opposes this move.

Among other contentions, they say that with careful management the lanes can be repaired and maintained.

Michael Bartholomew, chairman of the Yorkshire Dales Green Lanes Alliance (GLEAM's offspring in the Dales), says When people describe the damage they have seen, they are amazed to be informed that off-roading is, in most cases, perfectly legal, and that the authority, however much they might desire it, cannot simply ban traffic. Off-roaders are taking ruthless advantage of archaic laws that make no distinction between horse-drawn carts, for which the tracks evolved, and convoys of 21st century off-road recreational vehicles.

He insists that the claims made by off-roaders about their rights, preservation of green lanes, giving access for the disabled, regulating their own activities by voluntary schemes, and so on are all quite false. Their "pleasure" is an intrinsically damaging activity, indulged in by people who love their motorbikes and their 4x4s more than they love the Dales, and who will twist and turn in order to shake off any responsibility for the destruction and nuisance they cause.

The Campaign to Save Durford Heath.

By Anne Judd on behalf of the Campaign Action Team.

The Path.

Durford Heath Path is near Rogate in West Sussex on the eastern borders of Hampshire. The route is almost two miles long and winds its way through an exceptionally rich and beautiful AONB of mixed woodlands, commonlands, fields and scrub. When one emerges from the wooded valley into open farmland, breathtaking views of the South Downs appear. Full of all kinds of wildlife and some rare mosses, the air is clean, the peace and utter tranquillity tangible.

Just as important, this part offers access to miles of commonland paths to land owned by the National Trust and private individuals — quiet countryside open to the public to explore and escape from the hustle and bustle of their lives. While immensely popular, one can walk for an hour and not meet another human soul. I often recall the words nearer to God in the garden ; only for me I would add and in the woods . I am sure this is true for many.

The Campaign is Launched.

In August 1997 discreet notices were posted at both ends of the Path by West Sussex County Council, advising that this route RUPP 3290 was to be re-classified under the Wildlife & Countryside Act 1981, as a BOAT. ..Any objections should be sent

What on earth did it all mean? Few had even heard of RUPPs and BOATs. Despite consultations from 1993 on, the locals such as myself had no knowledge of any of the earlier discussions and research about reclassification. Five years later I can still feel the rush of total outrage and shock which flared up on discovering what all this means for our beautiful retreat, our path.

In conjunction with trying to contact every conceivable knowledgeable or even remotely linked organisation/body by phone or letter, a handful of us local protesters called a public meeting in September 1997 at Rogate Village Hall. The place was packed. From this our band of nine Team Members was formed, all of us pretty ignorant about rights of way (RoW) issues, but all fired up with the determination to fight this reclassification proposal. Amazingly, each team member came with distinct talents to offer and to make a team to be reckoned with — still enduring to this day. Gradually we learned what was going on and were able to plan some embryonic strategy.

Action Stations.

One of our many sources of information about the system, Hampshire County Council, advised us of the existence of an expert witness on RoW issues who could give us an opinion on WSCC's case. We employed him to look at the papers that had been offered to WSCC's RoW sub-committee in 1996, leading to their recommendation of reclassification to BOAT. He reported back that, on the basis of what he had read, the Council's case was very strong. Spirits sank.

Another public meeting was called, again well attended. Somehow at this stage the British bulldog spirit arose, and we vowed we would battle on. We were like soldiers continuing on into battle armed only with wooden guns and a brave heart and strong conviction — against the well-equipped armies of the County Council and the off-road lobby.

Lucky Break/Miracle Number One.

Back in September 1997, during the desperate ring-round, I had called the Department of Transport in London and got a lovely lady (since thanked profusely), who tried to calm me with softly spoken words try GLEAM.

This was our number one little miracle. We discovered Andy Dunlop at GLEAM's October 1997 AGM. Like a knight on a white charger, Sure, he said, I'll look at your case.

The Campaign Case begins.

I was dispatched to the West Sussex Records Office to get copies of strange documents on Andy's shopping list Enclosure, list of streets, etc. Andy assessed the evidence, and his words again were like the cavalry coming over the hill. In his view the Council's case was fatally flawed, and we can fight this and perhaps win. Spirits soared!

The historical hub of the debate centred on the 1801 Enclosure Act and the local (Wenhan) Award of 1820. Briefly, RUPP 3290 — our path — was described as southern half ancient public road, leading into Public Right of Road (RoR) number 13. This RoR was to be only 20ft. wide, not fenced, and was mapped as gated. All this was contrary to the requirements of the Act and Award, in which the carriage ways must be set out at 30ft. wide, fenced on both sides and not gated. The Council held that the 20ft. mentioned was a mistake, and ignored the gating and lack of fencing, assuming RoR and Public meant carriage way, especially joined to that ancient public road.

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The Campaign to Save Durford Heath Cont d.....

Andy set about preparing his case. We continued publicising the campaign and accepting donations.

The Campaign grows Legs and Miracle Number Two.

The three local papers gave us more good coverage, and one day the phone rang. Miracle number two was on the other end, having seen a campaign article in the paper. I was a little uncertain about the lady's motives when she roared up my drive in her 4x4; but she seemed keen to help us, and sounded clever and knowledgeable. Having seen all our evidence and the Council's case, she was hooked. Tricia Newby had joined our team. I was immediately apprenticed as clerk, and she disappeared on hunting forays into all the surrounding Record Offices and to Kew. The huge amount of information Tricia gathered and applied to our case was staggering. The essential bones of Andy's case were fleshed out by Tricia in depth, and revealed fascinating insights into the social history of the area, land owners records and family tales: stories of wills, tenants, village hierarchy, insanity, children born the wrong side of the blanket and local authority records that I don't think even the councils knew much about. We pored over road maps, microfiches, little exercise books, estate maps and wills. Andy remained on the end of the phone to listen and guide, especially when I panicked. Sometimes research can raise issues — and doubts.

Our case now had a rounded feel to it. There were some absolute gems in all this that would be hard to argue against. How could a public carriage way be mapped coming out of a cottage garden at the top of the Path? This was the case illustrated in the Estate Book based on an OS map of 1873.

We had continued publicity efforts: e.g. a mass Walk the RUPP in November 1998, when over 100 protesting public turned out. The press reported, and our supporter base grew like Topsy.

We appealed to the Council's solicitor, the RoW Committee individually, and their Chairman personally during a site visit at our request. We asked them to halt the reclassification process and look at our evidence. All to no avail.

Miracle Number Three.

In about January 2000 Andy contacted us to report the Buckland Case. This was extremely good news for our cause, as here the Judge had ruled that where there was an Enclosure Award stipulating e.g. width and fencing etc. regarding the setting out of carriage ways, they were not legal if they did not

conform to these rules. We saw this as further fuel to our case concerning the 20ft. width etc. What timing! This decision came out in January approximately, and we were due to go to our Public Inquiry on 4th April 2000.

The Public Inquiry.

We decided to opt for a barrister to represent us. Much as we felt hopeful about our evidence, we didn't want to risk not giving it our best shot.

Peter Towler (Southampton Chambers) agreed to look at our case. He had RoW experience of a similar nature and had won that case for the locals. Fundraising was now our top priority as he agreed to take on our case. Posters were posted in every available public area for miles around (people travelled to work in the Durford area), people were accosted in the woods, telephone canvassing skills were honed, and every body or group that had the slightest connection with our Path was informed and asked.

The money flooded in. We were blessed again. So many people had a heart for our endeavour. In all, we raised about £7,000 for the Inquiry (in total the campaign has raised about £9,500), so we had our barrister.

Tuesday, 4th April 2000 dawned sunny and warm. The Inspector allocated to our case was Alun Morgan. The hall in Midhurst was packed, and the Inquiry extended until late Thursday afternoon. We all know Inspectors are individuals. We were blessed (again!) with the ultimate. Mr. Morgan was totally professional, gentlemanly and patient. He made everyone on all sides feel included and was, in all, an excellent ambassador for the Planning Inspectorate.

When it comes to evidence presented at the Inquiry, mentioning only the Enclosure Award is a gross oversimplification. All areas were examined and haggled over. The list comprised all the usuals, e.g. tithe maps, OS maps, estate maps, highway records, Finance Act 1910, Dedication of Rights, user evidence; but due to Tricia's research we were able to quote dollops of real life in those days, which gave authenticity to our interpretation of the evidence.

Clearly Mr. Towler, with Tricia as the expert witness, convinced Mr. Morgan to the extent that on 19th May 2000 he gave his decision. He ruled that the southern part of the route, roughly half, should be confirmed as BOAT, while the top half should be reclassified as Bridleway. Only half a victory you might say? The BOAT leads into the bridleway and is therefore only a cul-de-sac. There is no turning space available there for cars (ironically, there is a huge beech tree at this exact spot at the edge of the

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The Campaign to Save Durford Heath Cont d.....

track — historically, trees were planted to mark boundaries and gates); so what's the point of driving up to a dead end?

While obviously we didn't agree with Mr. Morgan's decision re the BOAT, we accepted it with good grace. Crucially, the Path was in essence saved.

Written Representations.

Inevitably, the off-road lobby took advantage of their right to appeal. The Council accepted the ruling. We were off again. We had to gather more evidence to rebut their additional claims (which could have been made during the April Inquiry), and to reassure Mr. Morgan he was correct in his judgment, at least about the Bridleway.

Mr. Morgan confirmed his final Decision on 8th February 2001. The southern part was a BOAT, the northern a Bridleway, and the southern is a cul-de-sac.

The Outcome.

We have had the route signposted and extra advice boards carefully worded to avoid any misunderstanding by path users — all provided for us by the most helpful South Downs Conservation Board. The bridlegate at the top of the route is in place. For motorbike riders who can't see the signs at the southern end of the route prohibiting them

from proceeding beyond the big beech tree, the Sussex Police have a first warning letter ready prepared on their computer. All the police require is a number-plate and witness, and the rider will be warned. The police assure me they will prosecute. Eight riders have recently had a letter each. We don't anticipate much trouble.

We are retaining adequate remaining funds just in case the off-road lobby put in a fresh claim, as they have threatened they may do. We will be ready and prepared to deal with this should it arise.

A Postscript.

Tricia Newby, mentioned above, who has become an expert on Rights of Way matters and related historical research, has recently achieved another major success in the battle to establish the true history of RUPPs and their rights of way.

Following networking between the Durford Heath Campaign and some nearby West Sussex parishes, Tricia produced irrefutable evidence for the Public Inquiry in August 2002 regarding three other RUPPs. The Inspector rejected the claim by West Sussex County Council, which had been supported by the off-road lobby, and decided that all three routes had bridleway status only.

Another corner of our beautiful countryside protected. Well done again, Tricia.

Helicopters over Salisbury Plain.

From the Salisbury Journal 2 February 2003

Sites of Special Scientific Interest (SSSIs) and important archaeological remains on Salisbury Plain are suffering increasing damage because of thoughtless and illegal motoring activities, reports the *Salisbury Journal*. MoD staff have had to fence off an SSSI to prevent further damage to the internationally important home of the rare adonis blue and marsh fritillary butterflies. Some offenders have been fined by magistrates, as were two motorcyclists who delayed artillery firing after ignoring red flags and entering a restricted area.

The situation is being treated so seriously that MoD police now regularly use army helicopters to spot illegal bikers and off-roaders, according to Pc Mogford of the MoD Police. Catching them red-handed is the best way to bring them before the magistrates.



4 x 4s on The Ridgeway at Several Down, East Ilsley - 1/1/2003.

4 x 4s on The Ridgeway at Gore Hill, East Ilsley on 29/12/2002. Continuous morass across the 27 yards width of the Trail.



On The Ridgeway

These 4 x 4s have clear, legible number plates, and are identifiable.

- a. They are driving on a RUPP, which does not have vehicular rights anyway.
- b. They are churning up the whole width of the National Trail (here 27 yards wide) into a continuous morass, thereby severely damaging a public highway, and making it almost impassable for users on foot, on horseback or on pedal cycles.
- c. Many of the trail bikes have no number plates, and presumably are driving on a public highway unlicensed and uninsured.

Why do the Police not do something to control this abuse? There are so many off-roaders using The Ridgeway on wet weekends and Bank Holidays that to apprehend them would be as easy as falling into a muddy rut.

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