

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 2006**

Natural Environment and Rural Communities Act 2006

In the eleven years since GLEAM was founded, never have I been able to give such an up-beat a report as this one on the passage of Part 6 of the NERC Bill through Parliament. Indeed, when the Bill was published on 19 May 2005, none of us would have believed that we could achieve the progress and success that we have. Now, with the Royal Assent having been given on 30 March 2006, we realise just how much we have achieved, and how much more there is still to be done. Although only involving five clauses in the Bill, it was an incredibly complex piece of legislation, which I will try to keep simple.

This report is not the place to attribute particular contributions from the Green Lane Protection Group, individuals or organisations. Suffice to say that a small group of people worked exceptionally hard to achieve results that we would not have dreamed possible at the outset.

What we achieved

Our work on the NERC Bill covered a span of over a year, and involved hard-fought negotiations on at least 13 separate issues. For brevity these are shown in tabular form on Page 2. This table shows each issue involved, the original Government position, the GLPG position, and the final outcome. We did not achieve complete success on all issues; but if we were to be marked out of 10, I think we would score between 8 and 9. At the end we had little to be disappointed about.

Vital steps

There were a number of vital steps we took that contributed hugely to our success. Of particular note were:

- the formation of the GLPG of 18 like-minded bodies representing over 350,000 members to speak with one voice to Government (described in our last Newsletter);
- carrying out a written survey of the surge in BOAT claims with 104 Highway Authorities to counter an inadequate Defra telephone survey of 41 authorities (also in our last Newsletter);
- the early and comprehensive analysis of the provisions of Part 6 of the Bill;
- obtaining leading Counsel's Opinion on retrospection and human rights issues;
- infiltrating the TRF's Internet-based Members' Forum and obtaining damning evidence of the true intentions of the off-roaders;
- providing our supporters with arguments to rebut those of our opponents, and obtaining evidence on key issues (e.g. claims statistics; the 'Open Country' charity's letter on disabled access, etc);
- liaising with Defra and explaining our concerns to officials;
- establishing good personal relationships with the MPs Jim Paice (Shadow Minister) and Paddy Tipping, and meeting the Minister, Jim Knight;
- briefing the Minister and MPs before the Commons 3rd Reading. It was this briefing and the subsequent debate that made the Government realise the strength of our case and our support;
- using our relationships with Viscount Bridgeman and Lord Bradshaw and developing a relationship with Baroness Byford to table necessary amendments in the Lords;
- providing our supporters in the Lords with briefings before the 2nd Reading, Committee, Report and 3rd Reading debates, and meeting the Minister, Lord Bach, before Committee;
- obtaining clear Government statements on issues where changes to the wording of the Bill were not appropriate.

A summary such as this does scant justice to the vast amount of work that went into achieving success at each of these stages.

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EVOLUTION OF PART 6, NERC BILL			
Issue	Original Government Position	GLPG Position	Final Outcome
Commencement date for Part 6 NERC Bill	Promised deferment of commencement to 12 months after enactment	Immediate commencement on Royal Assent to NERC Bill	As soon as possible after Royal Assent (30.3.06) to NERC Bill
Surge in claims for BOAT status	Inadequate Defra telephone survey of 44 Highway Authorities (Nov-Dec '04) showed small local surges totalling 116 claims	Written GLEAM survey of 104 HAs (Feb-Mar '05) showed 1,064 claims, with thousands more predicted	GLEAM survey accepted as more accurate than Defra. Finally limited to about 800 claims
Does denial of existing claims at commencement amount to retrospection or breach of human rights?	Yes to both	Obtained leading Counsel's Opinion that both are wrong	Government accepts GLPG's view
Whether any claims for BOAT status should be exempted from the new rules, and if so to what date	Exempt all outstanding claims at enactment, plus further claims made during deferment	No exemptions for any outstanding or new claims	Exemption of claims made before: 20.1.05 in England, 19.5.05 in Wales
Extension of exemption where claim has been determined and DMMO made before commencement	Extension should be made	Difficult to justify this provision	Exemption where claim has been determined (but not DMMO made) before commencement
Extension of exemption where property owners seek a public right of access to give legal certainty of access	Exemption should be made-up to commencement	Extension inappropriate. Access to property better secured by a private easement	Extension maintained
Remaining RUPPs to become Restricted Byways (Introduced in CROW Act 2000)	Deferred to such a date as the Secretary of State shall appoint, linked to Part 6 commencement	Immediately before Royal Assent to NERC Bill	As soon as possible after Royal Assent (30.3.06) to NERC Bill
Avoidance of offence when sole access to a property is by a RUPP when it becomes a Restricted Byway	Overlooked in original Bill; measure required to prevent an offence being committed	Specify that it is not an offence for person with interest in that land, but without opening it to unauthorised visitors	GLPG's endorsement of measure agreed, but with doubtful drafting; statement of meaning obtained
Moratorium on BOAT claims promoted by LARA/TRF to develop protocol based on sustainability test for future claims	LARA/TRF proposals encouraged	TRF e-mails intercepted showed LARA/TRF still working on claims, and Minister being deceived. Sustainability test not feasible	Moratorium and LARA/TRF discredited. Sustainability test dropped
Devolved powers to National Park authorities to impose TROs	Not in original Bill	Devolved powers to National Parks and possibly AONBs	Devolved powers to National Parks from 1.10.06.
Vehicular rights attaching to ways on List of Streets	Extinguishment of vehicular rights not applied to ways on List of Streets only	Vehicular rights do not automatically attach to ways on LoS; date when on LoS unclear	Minister's statement that LoS do not necessarily have vehicular rights; date clarified
Validity and completion of BOAT claims for exemption purposes	Not clear that claims should be in prescribed form, with notice served on landowner	Claims should be fully compliant (with Sch 14 WCA '81)	Claims to be fully compliant with first stage only
Onus of proof of balance of user for extinguishment of mechanically propelled vehicular rights (User test)	Onus on person seeking to extinguish MPV rights to show that balance of user is not by MPV, (i.e. to prove a negative - impossible)	Onus on motorists to show that balance was lawful MPV use for a significant period before commencement	Onus on motorists to show that balance was lawful MPV use for 5 years before commencement

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Natural Environment and Rural Communities Act 2006 cont'd from page 1..

What does this mean?

As we see it, the following are the key changes that result from Part 6 of NERC:

- no more new vehicular rights will be created on the back of modern vehicular use. The 20 year rule is finished for the purpose of establishing such public rights;
- no more BOATs will be established on the basis of historic horse and cart use, enclosure awards, etc, except for the specified exemptions;
- BOAT applications made on or after 20th January 2005 will not succeed unless the motorists can prove 5 years' main lawful use by mechanically propelled vehicles prior to commencement – less than 'main' MPV use will still support a Restricted Byway finding. We believe that this will effectively freeze the current Byway network and will prevent thousands of potential future claims;
- an estimated 800 or so claims will still be heard under the old provisions. To be heard, the claims must have been 'complete' before 20 January 2005, and they may not in any case succeed;
- Roads Used as Public Paths (RUPPs) will become Restricted Byways, and it will be an offence to use a mechanically propelled vehicle on an RB, except as narrowly prescribed for access purposes. The Government responded to our main concern in this context, and considers that their amended wording has closed the potential loopholes;
- National Park Authorities will have the power to impose Traffic Regulation Orders on rights of way in their Parks. We believe that a number will be enthusiastic to do so on threatened and vulnerable routes;
- we have obtained a valuable statement from the Government to prevent the argument that any right of way recorded on the List of Streets necessarily carries vehicular rights. The Government has undertaken to issue guidance on this to highway authorities;
- the Government has also undertaken to produce guidance to the highway authorities, the Crown Prosecution Service and the Police to assist with the enforcement of the new Act, including routes which are subject to outstanding BOAT claims.

What does GLPG still have to do?

- We will issue a press release publicising the important steps forward in Part 6 in preserving green lanes.
- We will issue detailed guidance for members covering the changes in law and the practical implications resulting.
- Loose ends of Part 6 need to be tidied up, such as quickly bringing into effect the Commencement Orders for Restricted Byways and for the provisions of Part 6.
- Many Rights of Way issues remain unresolved by Part 6, and a few of the GLPG's objectives were not addressed.
- We will consider the future role of the GLPG.

We have come a very long way, but we have not yet reached the end of the road. It is one thing for new legislation to be enacted. It is quite another for it to be observed and enforced.

If any GLEAM member would like a copy of the full GLPG report (11 pages) on the passage of Part 6 of the NERC Bill through Parliament, and on the influence of the GLPG on its final form, this can be obtained on request from: Ian Ritchie, The Limes, Oxford Street, Ramsbury, Marlborough, Wiltshire SN8 2PS, Tel:01672 520090.

David Gardiner – Chairman, GLEAM

Classification of “unsurfaced” lanes and the Law.

GLEAM members and others fighting to save green lanes from damage by motor vehicles are often bogged down in a morass of laws, sections of laws and different interpretation of laws which makes legal procedure a fertile ground for lawyers, but a ground for despair for citizens who see lanes used and abused by a minority who ruin them for all others.

John Riddall lives in Derbyshire and is the co-author of Riddall & Trevelyan: “Rights of Way: a Guide to Law and Practice” (now third edition). The book is “the Bible” of rights-of-way law. He writes:

“The proposal made by the Ramblers Association that routes churned up by motor vehicles in the countryside should simply be classified as ‘restricted byways’ will not work.

“The anomalies and injustices would be legion, and the uncertainties attaching to the definition of ‘unsurfaced’ enough to make a defence lawyer’s mouth water. There is, in any case, no chance of the government going down this line.

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Classification of "unsurfaced" lanes and the Law. Cont'd from page 3....

"Each route needs to be tackled on its merits. The law is in place. The Road Traffic Regulation Act 1984 gives power to highway authorities to prohibit the use by motor vehicles of any way (other than for access) where it is expedient to do so for the purpose of preserving the character of the way in a case where it is specially suitable for use by persons on foot or horseback, and for preserving the amenities of the area through which it runs.

"The law is there. The trouble is that the authorities won't use it. Finding themselves as piggy in the middle, they prefer to sit on the fence and talk about 'consultation' and 'management' and 'voluntary restraint'.

"The gap in the law is that there is no means of compelling the highway authority to exercise its power. Instead of backing Early Day Motions by sympathetic MPs in Parliament, the RA should be pressing for legislation that would provide a procedure for appealing to an independent inspector at public inquiry against a highway authority's refusal to make a Traffic Regulation Order. Having heard the arguments and inspected the route, it is then up to the inspector to decide, in the light of Section 1 of the 1984 Act and any guidance the government chooses to issue, whether it is expedient that an order should be made and, accordingly, the authority required to make it.

"At present we are wasting our time and energies barking up the wrong tree. All the while everything stays exactly the same, which is just what the motor lobby wants."

A Cry for help from Derbyshire.

(No comment is needed on the following letter. The situation described is replicated in parishes all over the country.)

***Ashover Parish Council,
Nr Chesterfield
Derbyshire***

Dr K Jones,
Country Land and Business Association,

14.03.06

Dear Dr Jones

..... I am writing to you for advice relating to the use of bridle paths and footpaths by motorised 'off road' vehicles.

The motorcyclists have inundated the County Council within the last two years with a barrage of applications for Modification Orders to upgrade all bridleways and some footpaths into Byways Open to all Traffic (BOATS). There are twenty such applications in this Parish alone. The applications cover all bridleways and continuous paths within the Parish; if granted, there would not be one single path that horse riders or cyclists could use without meeting motorised vehicles. County and Parish Councils are overwhelmed by the applications which we believe were submitted because of proposed changes in legislation. Apparently, neighbouring Parishes are in a similar situation with a massive increase in applications. Nobody has the money to challenge them legally.

Off roaders are a tiny minority of all visitors to the countryside but are hugely destructive to the environment. The paths used are totally unsuitable in every way for motorised traffic. Often motorbikes pass pedestrians at great speed, showering them with mud and stones and legitimate users and local residents are frightened by them. Trail bikers are abusive and threatening towards residents who attempt to stop them. Every weekend trail bikers are reported to the Police who are at a loss as to what to do. Now the surfaces of the paths are so damaged and muddy that many legitimate users have given up their favourite walks and rides and there are fewer visitors. Sadly, these are the people that make a real contribution to the local economy in pubs and shops. The trail bikers contribute nothing but their damage is huge - the estimate for surface repair for just one local bridle path is £40,000 and no-one can afford it.

Please, let me know if anything can be done.

Yours sincerely,
Dr. Karen Hinckley

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Editor's Notes:

This issue of the Newsletter has been slightly delayed so that we could include a report on the progress of the important NERC Act – see David Gardiner's article on pages 1 to 3. Heartiest congratulations and thanks are due to David and his colleagues for the extremely hard work they put in briefing supporters in the Commons and The Lords during the Bill's passage. This involved detailed supporting evidence on highly complex aspects of law running into hundreds of pages of notes, and many face-to-face meetings with MPs, peers and the Ministers concerned.

Fans of "The Archers" on BBC Radio 4 will have noticed with considerable satisfaction that the characters in the very popular soap opera do not approve of off-roaders messing up their local byways and bridleways. The storyline during February and March included many mentions of severely damaged green lanes. GLEAM's experts were among those consulted for the broadcasts. It seems that DEFRA's Penny Fox briefed the BBC on the government's policy on rights of way and 4x4s, including the Natural Environment and Rural Communities Bill. Probably more people heard about the problem via The Archers than had ever done before. Well done BBC!

Unfortunately, there is no room to show photos of the appalling state of a BOAT known as the Devil's Highway which David Gardiner describes as having "about the worst rutting I have seen...a prime candidate for a permanent TRO." The Devil's Highway is on the Hampshire-Berkshire borders on an old Roman road running from Silchester to London. The stretch in question runs from Butlers Lands, Mortimer to Fair Cross, Stratfield Saye.

*"Arncliffe in Littondale,
Yorkshire Dales" (undamaged).
"This is what it should be like..."*



"...but this is what can happen"



Yorkshire Dales

or this



The Candovers, Hampshire.



*Peak District near Buxton, Derbyshire.
or this.....*

Consistency Guidelines for Inspectors concerning Rights of Way. “What exactly is a road?”

“When it is argued at a public inquiry that a certain lane is a road, it is necessary to determine first what exactly is meant by the word ‘road’ in this context.” So writes **Richard Stobart**, one of GLEAM’s experts on rights-of-way matter, who found that inspectors had not been given precise guidelines for clearer definition of the term.

Arguments were put forward by applicants at an Inquiry as to the precise meaning of the term. Mr. and Mrs. Fry, who appeared to represent the British Horse Society, submitted a “background paper” on the meaning of the words “road” and “cross road”. It appears that the Oxford English Dictionary gives a very different view of the development of the word “road” and of other related words such as “carriage”.

Perhaps with tongue in cheek, Richard Stobart suggested to the Planning Inspectorate that the correct course would be for them to commission a monograph from an etymologist of good standing who is expert in the semantics of the period.

There is another difficulty with the guidelines. The development of wheeled transport between the 16th and the late years of the 19th centuries is not well understood. There is, for example, an incorrect assumption amongst some rights-of-way officers and others that wheeled transport was common in the first half of the 19th century....I am fairly sure that at that time it was only the direct highways between adjacent market towns and the cartways between villages and their local market towns that were used by carts and wagons with the sort of regularity that would give rise to highway rights. Carted goods such as corn, coal, salt and wine were taken to and from the nearest water transport, not across country. The assertion put forward by some who purported to represent the interests of various groups at public inquiries, that all roads that were not main roads were nevertheless public carriageways, is not supported by work of authorities such as Beatrice and Sydney Webb. There is a need for authoritative guidance on this subject, so that inspectors who are faced with the development in road traffic, which is affected by time and place, can start out with a framework within which to assess the evidence tendered to them.”

“It also seems to me”, wrote Richard Stobart, “that the present arrangement of having different and duplicated items of information in the Notes and Guidelines is especially likely to cause difficulties when the guidelines are so little known. There must be a strong case for only one body of advice, even if some parts are prescriptive while others are more loosely advisory. All objectors should have their attention drawn routinely to any advice given to inspectors.”

The Planning Inspectorate was not sympathetic to these ideas. It does not commission etymological monographs and does not necessarily agree or disagree with definitions and comments put in evidence by Mr. and Mrs. Fry. The simplest way to be made aware of the current Guidelines would be to download the relevant leaflet from the internet – <http://www.planning-inspectorate.gov.uk>

(Note: There appears to be a strong presumption on the part of the Planning Inspectorate that any walker, rider, cyclist, farmer, householder who is bothered by damaged lanes, pollution, and wants to get the classification of a lane confirmed or downgraded to a bridleway is able and willing to consult the Department’s website as well as being able to make sense of what they may read there.)

Richard Stobart comments: “My approach was not productive. The idea that the OED might be a useful source of the meaning of the word “road” was disregarded. The further suggestion that it would be better to have authoritative papers about “road” and about the usage by wheeled traffic in the 18th and 19th centuries, so often put forward by claimants for byway status of a lane, was dismissed rather grandly with “it is not the role of the Inspectorate to commission research”. Why ever not? It seems to me that Inspectors often have a difficult task in sorting out the merits of an argument on these subjects, and are entitled to the best professional information available.

Threat to Northern Pennines Habitat. Rare species of plants and birds endangered.

by L.M. Robinson, R.W.M. Corner and F.J. Roberts.

In the past few hundred years the Pennines have been used by farmers for grazing their animals and managed by land owners for grouse shooting. The farmers and keepers have always accessed this isolated area via footpaths, bridleways and farm tracks on foot or on horseback up to around the 1930's and 1940's, when motorised transport began to be used such as tractors and 4-wheel-drive vehicles and, more recently, quad-bikes. Alongside, there have always been motorcyclists venturing upon the fells. Dr. Corner can remember seeing groups on the summit plateau of Cross Fell twenty years ago, tearing around and churning up the shallow peat.

The formation of the Pennine Way opened up the area to fell-walkers, and as a result in the 1980's parts of this long-distance path between Cross Fell and Little Dun Fell, Little Dun Fell and Great Dun Fell and parts of Knock Fell had to have paving stones laid to stop the quite serious erosion caused by the walkers' feet. The motorcyclists unfortunately don't keep to the paved way, which effectively negates the whole points of laying down these slabs. Erosion is one of the most damaging features of the bikers' activities, as the rainfall on these fells is considerable.

Since 2000 damage by motorbikes and quad-bikes has increased dramatically. There are now organised groups who arrive in cars and vans with low-loaders in tow and up to twenty scramble bikes on board. They access the open fell via farm tracks, foot paths, bridleways, the Pennine Way, Maiden Way and Hartside summit. They come from as far away as Bolton and Liverpool. When challenged, the bikers maintain they have the right to be there. One group causing damage to a farmer's allotment above Ousby stated that "we have the right to roam".

The authors go on to describe in detail the damage done and the danger posed to various rare and very rare botanical species and many protected birds, often extinct in other areas, arising out of the off-roaders' riding over vulnerable habitats.

The area described is almost all under NNR, SSSI or SAC designation, and is also in the AONB. We think English Nature need to review their position here. They don't seem to realise the serious damage being caused to this important habitat. Ultimately, the County Councils are legally bound to protect these areas, so perhaps it is time for a reminder to them also. Their failure to prevent the illegal Melmerby and Ousby Fell road from forming a circular route with the Pennine Way has left the area very vulnerable.

The Parish Councils together with the Commoners along the fell bottom are keen to stop these motorcyclists after numerous complaints of damage. They are actively encouraging members of the public to report bikers to the police and ask for their calls to be "logged". Some members of the public are already photographing and videoing these bikes and attempting to note number plates. One farmer is going to lock his private access gate and provide farmers using it with keys. This was after he lost a horse and foal traumatised by the motorbikes. Bridleways are another matter, as horses need to access them. Children who ride horses in Melmerby have been stopped by their parents from going up Gale Hall Lane, an access point to Melmerby Fell because of the motorcycles problem.

GREEN LANES: A DISABILITY CHARITY'S PERSPECTIVE

by David Shaftoe

Open Country was set up in Harrogate in 1990, with the aim of helping people with disabilities to access the countryside. We are a registered charity with two members of staff and 60 wonderful volunteers. Our Countryside Activities include walking, cycling, nature study, outdoor pursuits and practical conservation working parties. These welcome over 200 different people annually. Thousands more benefit from our range of publications covering the whole of Yorkshire, and our *Countryside Advice Service*, which offers advice on improving 'access for all'.

In recent years, we have become evermore concerned at the impact that the increasing and unregulated use of green lanes by recreational vehicles has had on the enjoyment of the countryside by disabled people. We were dismayed to find the off road lobby using disabled people to legitimise their activities. **Open Country** has encountered only two disabled people who benefit from vehicular off roading. To counter this, we have often had whole group activities jeopardised by a speeding 4 x 4 or group of trail bikers. Latterly, we have thrown our lot in with such organisations as the *Yorkshire Dales Green Lanes Alliance* that seek to restore sanity to our green lanes.

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GREEN LANES: A DISABILITY CHARITY'S PERSPECTIVE Cont'd.....

It is the lack of physical restrictions which attracts disabled people to green lanes. Now these lanes are often rutted, rock-strewn quagmires, making an enjoyable walk or cycle ride impossible. Thus the two camps - off road drivers and most disabled people - are inexorably drawn into conflict with each other.

It is impossible to neatly pigeonhole all disabled people. However, our experience has shown many learning disabled people are often unaware of the dangers of speeding traffic in rural settings. Both hearing and visually impaired people may be caught out by the rapid approach of recreational vehicles. The solace the countryside gives to people with mental health issues is also often overlooked. Even on those rare days when we do not encounter recreational vehicles on one of our forays onto green lanes, there has often been the constant thrum of engines in adjacent dales. The threat of a dangerous encounter is, therefore, ever-present, and a source of anxiety to people who have already made a huge investment of their time and physical resources in getting out onto the hills.

The devastation caused by the off-road brigade means many lanes which previously afforded a reasonably good surface, suitable for the less able, are now utterly despoiled. In practical terms, our forays onto green lanes can resemble a forced march to a labour camp, with volunteers having to be appointed as out-riders to spot signs of danger. On occasions, members are unceremoniously bundled out of the way of vehicles. It all adds up to a diminished countryside experience that is hardly relaxing!

In the Yorkshire Dales, things are so bad that, until recently, we were actually advising members to avoid the area on safety grounds. Unwilling to thus be deprived of our birthright, we are now adopting a more positive tack. 2006 is our *Year in the Dales*. Instead of avoiding the area, we are now actively targeting it, hoping that in doing so we can stimulate a renewed interest in improving disabled access to this wonderful corner of England. We would be delighted to hear of the experiences of other disabled people when visiting the Dales.

Without wishing to sermonise, our experience is that disabled people want the same access rights as anyone else. They rarely expect to campaign for special privileges. They should certainly not seek to justify, nor allow themselves to be used to justify, activities which are so clearly anti-social and damaging to our countryside. We believe that motorised transport is not a precondition for disabled people being able to access a countryside experience.

Whilst the activities of the off road lobby are largely at odds with 'access for all', it is also important that countryside managers appreciate the general dearth of accessible greenspace. In Harrogate District, one of the largest rural districts in England, a wheelchair user could comfortably cover every accessible path over a long weekend. Therefore the campaign to reclaim our green lanes is but one important part of the struggle to ensure that the 20% of people who have a disability are not forever marginalised from enjoying and contributing to the countryside.

For information, contact David Shaftoe on (01423) 507227, info@opencountry.org.uk, or visit www.opencountry.org.uk



**GLEAM aims to protect
public paths from
wanton and illegal
damage.**

**If you would like more
information or wish to
assist please write to:
GLEAM, P.O. Box 5206
Reading RG7 6YT**

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