

GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

www.gleam-uk.org

**A NEWSLETTER for those interested in protecting ancient ways
from the ravages of use by motorised recreational vehicles.
SPRING 2008**

Discovering Lost Ways: going, going, gone...?

By Alasdair Mitchell

For Natural England (NE), dealing with the Discovering Lost Ways project (DLW) has been like trying to flush a wine cork down the loo - lots of bubbles and gurgles, but no progress. Yet now, after seven years, with £4.5m spent and not a single lost way appearing on the definitive map, it seems that DLW is finally about to go past the U-bend.

Instead of state-funded claiming on an industrial scale, it seems that we are going to get research standards, guidance and perhaps even new legislation aimed at lessening the potential for conflict with the current claims process.

At least, this is according to a paper presented to the NE board on February 13th. This paper cited potential costs as the crunch for DLW. This may well be true, but is it the whole truth?

I reckon NE found it had a tiger by the tail. And at the toothy end of the beast was the vexed issue of byways. Restricted byways are less contentious than BOATs, but both permutations pose problems that set them apart from footpaths and bridleways. Not the least of these are typical legal widths of 40 to 60 feet, if based on enclosure award evidence.

According to one estimate, more than a third of England's 20,000-odd "lost" ways might be eligible for recording as some type of byway. Now, leaving aside such footling issues as property blight, council tax revaluation and the EU Habitats Directive, let us look at lost byways from a farming perspective.

The dismal fact is that DEFRA hasn't the foggiest about the impact of DLW on farm incomes. This is because DLW was being pursued without any objective attempt to assess the implications for farming or rural folk.

Single Farm Payment (or SFP - more properly the Single Payment Scheme, but only DEFRA still calls it that) is part of a wider EU scheme. Yet nowhere else in Europe would ever countenance anything like DLW. Even within the UK, neither Wales nor Northern Ireland were pursuing DLW, and Scottish law doesn't worship the maxim "once a highway always a highway". Arguably, then, DLW was a uniquely English project. But SFP is an EU scheme. Hence the fundamental mis-match.

SFP is designed to reward farmers for producing a public benefit - such as enhanced biodiversity - in return for accepting a lower commercial return from their land. This entails a shift of support from food production to environmental management. To be eligible for SFP, land must be either already in agricultural production, or capable of being put into agricultural production. Non-agricultural land is not eligible.

Furthermore, under the doctrine of cross compliance, farmers in England (but, again, nowhere else in the EU) are forced to accept the burden of domestic rights of way policy, such as paying 75% of the cost of gates, cutting back encroaching undergrowth, and so forth. If a farmer breaches cross compliance conditions, he stands to be fined a hefty proportion of his total SFP.

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Discovering Lost Ways cont'd.....

Another condition is that eligible land must be kept in Good Agricultural And Environmental Condition (GAEC). This has many permutations, but for example it precludes a farmer smashing up the surface of a field by driving a tractor across it in wet conditions, or leaving a meadow unmown or ungrazed. The rule is: No GAEC, no SFP.

Hardcore tracks, whether public or private, are automatically excluded from eligibility for SFP. Official guidance also excludes public ways of any sort, regardless of their surface, that run across energy crops and protein crops (eg field beans). In these cases (and there could be many, with energy crops being encouraged by public policy) a standard width is automatically excluded – eg 2m x length for a bridleway.

In some areas – like East Anglia - much of the farmland is arable. What happens when lost byways (often 40-60 ft wide, remember) are recorded across arable land? Unlike lesser ways, the surface of any public carriageway (including restricted byways) cannot be cultivated at any time. Therefore, the entire legal width of a newly-recorded byway can no longer be used for arable farming – even if it is found running right across a barley field. So in this event a chunk of income is lost to the farmer (far more than the equivalent slice of SFP, incidentally).

Grassed-over byways, or verges, that run through permanent pasture might still be eligible for SFP if they are managed in accordance with GAEC – but who has the authority to graze or harvest the herbage on the surface of an enclosure award byway? Would the farmer have to negotiate a herbage rental licence from the local highway authority? The Rural Payment Agency says it hopes commonsense will apply – but where else is commonsense allowed to override the dogmatic interpretation of rights of way law? Indeed, isn't legal rigidity the cornerstone of lost way claims?

If a farmer poaches up the surface of a grass field with cattle, he breaches GAEC. But if a lawful public user with a vehicle or a horse smashes up the surface of a green lane running across the very same field, that's a matter for highway maintenance, it seems.

If the farmer tried to discourage the public from using a cross-field byway with vehicles in wet conditions, he could be fined under cross compliance for hindering the use of a right of way. Yet if he allows it to be smashed, it will fail GAEC. And if the local authority were to tip stone onto the surface of the byway, it would very definitely cease to be eligible for SFP.

It gets worse. The law does not allow a farmer to place (or even to keep) a gate across any sort of carriageway (including byways) for stock control if that gate wasn't present or authorized when the vehicular rights were originally awarded or dedicated. The relevant statute for authorizing stock control barriers, HA1980s147, applies to paths only. It doesn't extend to carriageways.

In practice, this means that most enclosure award carriageways, when newly recorded, should be doubled-fenced along their length, with all the existing gates and field boundaries being treated as unlawful obstructions.

Now, quite apart from the eye-watering cost implications, the desecration of cherished landscapes, the infringement of SSSI conditions and the impracticality of farming the resulting oddments of land, consider this: does the public really want to be fenced into channels of barbed wire?

And in case you think the scenarios I have listed are merely theoretical, let me assure you that I have personal knowledge of current examples. Take the Northumbrian hill farm where the line of a 60ft enclosure award carriageway – completely invisible where it crosses stewardship meadows – runs smack through five pre-1860 drystone field walls. A splendidly splenetic account of this route in an activist journal concluded: "Before anyone says, 'Ah! But the Derwent Reservoir sits on part of the southern continuation', well so it does, but that is not insurmountable."

I think that neatly illustrates why Natural England has cold feet about Discovering Lost Ways.

Alasdair Mitchell is a farmer, freelance journalist and marketing consultant. He is not a member of GLEAM, and the views he expresses are his own.

Elizabeth Still 1922-2007

It is with great sadness that we record the death of Elizabeth Still, co-founder and Honorary Executive Secretary of GLEAM, at the age of 85. She died peacefully in the Royal Berkshire Hospital on 26 October 2007, the eve of the GLEAM AGM, nine days after a bad car accident in Reading.



She was born Elizabeth Westman on 16 September 1922 in Berlin, the daughter of two doctors. The family moved to London as soon as Hitler came to power in 1933, and Elizabeth was sent to a boarding school in Sussex. The family had become naturalised Britons before the war broke out.

In 1940, Elizabeth joined the Women's Auxiliary Air Force and soon discovered that German-speakers were needed in the Y-Service. This was a highly secret arm of the intelligence service whose job was to listen to the pilots of German bomber aircraft and relay their movements to Bletchley Park. Two incidents from this time deserve mention. Once, on a foggy night, she "talked down" onto Manston airfield in Kent a lost German pilot, although his controllers on the other side of the Channel were urging him to disregard her instructions. On another occasion on the Norfolk coast, when there were no aircraft flying, she tuned into a German naval frequency and heard, loud and clear, the words "good hunting" in German. She managed to persuade the naval authorities to investigate, and they took out a U-boat lurking in inshore waters.

In 1944, she met and married the composer Robert Still, who was serving in the army. They moved to Bucklebury in 1949 with their growing family, which consisted eventually of four daughters. There followed peaceful domestic years, but the seeds of Elizabeth's later activities were planted when she volunteered for the Citizens Advice Bureau in Newbury. Later, she was proud to become a Justice of the Peace and sat on the Newbury bench for many years.

Elizabeth had always wanted to go to university, and in 1962, having acquired the necessary A-levels by correspondence, she became an undergraduate at Reading, and later started teaching at Reading College. This development was to prove a blessing when her husband died of a sudden heart attack in 1971. Widowed at the age of 48, Elizabeth spent the next years teaching at the college and at the university.

When Elizabeth retired from teaching she was appointed to the Council of Reading University, a role which she filled most constructively for many years. Following this, she served for many years on the Executive Committee of the Friends of the University.

Also, when she gave up teaching, energetic as ever, she was elected as a County Councillor in the Royal County of Berkshire. She served her parishes for 15 years, more and more convinced of the need to conserve the countryside.

By 1994 Elizabeth and a few others had become increasingly aware of the damage being done to rural green lanes by "mud-pluggers" in 4-wheel drive vehicles. This started a campaign to protect the green lanes of Berkshire, in which the then County Council were very supportive. However, they soon realised that if this campaign was to have any real influence, it had to be wider than just Berkshire.

So, in 1995 she and a small group of like-minded individuals, some from other parts of England, founded GLEAM, determined to have the laws changed to stop motorised vehicles ruining green lanes for walkers, riders, cyclists and carriage drivers. The movement spread nationally as they recruited members from both Houses of Parliament, as well as hundreds of other individuals and organisations. Assisted by expert Honorary Advisers, GLEAM was very influential in the Countryside and Rights of Way Act 2000. In 2005 GLEAM was instrumental in assembling the Green Lanes Protection Group, a group of 17 like-minded organisations, some large and national, others smaller and more local, which gave the campaign even more clout. This then had immense success with many successful amendments to the Natural Environment and Rural Communities Bill when it was passing through both Houses of Parliament in 2005-06.

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Elizabeth Still 1922-2007 Cont'd.....

In the middle of all this, Elizabeth also found the time and energy to chair the Berkshire branch of CPRE for four years, although GLEAM always remained her first love and concern. Her energy and determination belied her years.

This account of Elizabeth's life cannot end without mention of her wonderful late-life love affair (for this it was) with Professor Emeritus Gavin Townend from Durham. They met on a cruise in 1999 and quickly became a devoted couple, to the delight of their respective families and many friends.

Elizabeth will be sorely missed by her huge circle of family and friends, not least by her fellow members of GLEAM. On the afternoon following her death the GLEAM AGM stood for a minute's silence in her memory.

Two Legal Test Cases

GLEAM, through the Green Lanes Protection Group (GLPG), has been very active in two legal test situations. These are of vital concern to anyone trying to protect green lanes and to prevent them from being wrongly classified as Byways Open to All Traffic (BOATs). The current state of play on these two cases is as follows.

1. Morchard Bishop, Devon.

This case involves an old (1983) BOAT claim that was rejected without appeal in 1987. Vehicular rights were subsequently found to exist. The Trail Riders Federation claimed that the 1983 application, being pre-cut-off (20 January 2005), should under the NERC Act give rise to exemption from extinguishment, and vehicular rights should be confirmed. This argument is based on the fact that the Act does not explicitly say that such claims, to be exempt, still have to be **outstanding and undetermined**. Advice from Defra supported that argument. The Inspector at the Morchard Bishop Public Inquiry followed Defra's advice, and upheld the TRF claim for BOAT status. Clearly, if this was correct, a very large number of ways that were the subject of pre-cut-off BOAT claims that were either rejected or had become lower-than-BOAT entries on the Definitive Map & Statement, and that we thought had been protected by NERCA, could now become BOATs. Such original claims could date back as far as the invention of BOAT claims in the 1981 Wildlife and Countryside Act, and potential new claims could extend indefinitely into the future. An Opinion, funded by local residents, was obtained from George Laurence QC supporting our view. Under pressure from us, armed with this Opinion, Defra reversed its advice, following which the Inspector has now reversed his decision. Assuming that there is no appeal against the Inspector's reversed decision, which is unlikely, this is a very satisfactory outcome to this case. Although such a decision does not carry general legal authority, it is unlikely that the same argument will be pursued or could succeed elsewhere.

2. Twyford Down, Hampshire.

Schedule 14(1) Wildlife and Countryside Act 1981 requires that any application must be accompanied by **copies** of any documentary evidence that the applicant wished to adduce in support of his claim. This case involves BOAT claims on a restricted byway in the parish of Twyford and a bridleway in the parish of Chilcomb. The Chilcomb claim was made by the TRF prior to the cut-off date, and the Twyford claim was potentially exempt from the provisions of NERC Act for a different reason. However, both were made without copies of **any** supporting documentary evidence, merely **lists** of documents. We consider, therefore, that the applications were incomplete and were not valid. In its general guidance on NERC Act, Defra has (we believe) wrongly advised local authorities on the level of detailed evidence needed to support BOAT claims. Hampshire County Council therefore determined this double application as a BOAT. Fortified by another Opinion from George Laurence QC, we are supporting litigation which, if successful, will overturn the Defra guidance and the determination made by Hampshire County Council.

The case went to Judicial Review in the High Court in November, but unfortunately the judge ruled against us and refused leave to appeal. The two landowners involved, Winchester College and Humphrey Feeds Ltd, sought leave from the Court of Appeal instead, and this was granted. The Winchester College Governing Body has now agreed to pursue the appeal. The date of the hearing has been expedited. It will be between 15th and 17th April 2008 and has been listed for 2 days. If it is successful, it could eliminate a significant number of the 800 or so outstanding pre-cut-off BOAT claims around the country. In the interim, no-one should place any reliance on the High Court judgement, which can be read (18 pages) at –

<http://www.bailii.org/ew/cases/EWHC/Admin/2007/2786.html>.

Planning Inspectorate Consistency Guidelines - Section 2.

THE MEANING OF "ROAD"

by Tricia Newby

At a Public Inquiry in 2004 I was made aware that Mr. Alec Fry's hypothesis as to the meaning of 'road' and 'highway' featured in the Inspectors' Consistency Guidelines. At para:2.39 it was stated.... "*Sections of the publication 'Road and Way' by the British Driving Society analyses the expressions used to describe ways on foot, on horseback, driving livestock, by horse drawn vehicles and by motor vehicles, all in the context of the relevant Acts of Parliament c.1500-1920.....A reasonable assumption is that, until 1929, the term 'road' unless qualified (eg. bridle road) has a vehicular connotation. A similar inference can be drawn from the use of the term 'highway' in pre-1835 evidence*". This statement was being relied on by the County Council to support its claim for BOAT status - the phrase 'public road' had been mentioned in one document.

When researching archival material for a Definitive Map Modification Order the unqualified term 'road' is frequently found referring to the path/track which is in dispute. As stated to the Inspector at the time "*we [as objectors to BOAT Orders] might as well roll over and die if the analysis was given any credence and the advice adhered to*". The Inspector [who had coincidentally chaired the Consistency Guidelines Committee] advised us to take our concerns to the Planning Inspectorate. Consequently Colonel Henry Starkey, Graham Plumbé and myself wrote to the Inspectorate. In the meantime the BDS had disclaimed any connection with the article 'Road and Way'. As a result, the Guidelines were altered - the "*assumption*" as to the meaning of 'road' has been deleted and Halsbury's meaning of 'highway' has been inserted. BUT the paragraph still opens with reference to Mr Fry's analysis and Inspectors are told that they "*may find it useful in reaching a general understanding of the topic. It is also a useful compendium of extracts from Acts of Parliament*". Mention in the Guidelines of the availability of 'Road and Way' through the Byways and Bridleways Trust may have much to do with its apparent increased circulation.

I am familiar with the article as it has been on the Hampshire/West Sussex circuit for some years and I remain concerned that 'Road and Way' is, as Graham Plumbé expressed it, "*interlaced with matters of interpretation that are wholly biased in favour of vehicular use*". As a result I have researched the topic in greater depth and, as advocated by the Guidelines, have exercised a "*critical approach*" and "*judgement*" which has resulted in a critique of Mr Fry's paper, entitled "Road and Way - Correcting the Camber". This paper was sent for review to the Planning Inspectorate in January 2007. I have recently heard from the Inspectorate that it is considering re-writing that section of the Guidelines but before making any changes it will be seeking comments from its Inspectors and Defra.

Meanwhile Mr Fry's paper still circulates and is being used in support of BOAT applications as far afield as Yorkshire. "Road and Way - Correcting the Camber" has been used at a couple of public inquiries to counter Mr Fry's assertions with acceptable results.

If anyone would like a copy of "Road and Way - Correcting the Camber" to assist in any research or objection to a DMMO, I have it in pdf format and can e-mail it. I hope that at some stage we can make it available on our GLEAM website. My phone number is **01730 262647**.

[It is hardly surprising that the ordinary member of the public has difficulty dealing with such labyrinthine matters. A true professional's paradise, for experts only, it seems. Ed.]

A Satisfied Member

[In early January your Chairman received this letter from Mrs Maggie Hills, leader of the Middlecott-Weeke Action Group which successfully fought the Morchard Bishop situation in Devon – Ed]

2 January 2008

Dear David,

Middlecott-Weeke Lane or Morchard Bishop 55.

We want to thank you for so many things it's hard to know where to begin. We were in the depths of despair and frantic with frustration last May when we received our Order Document – being thrown in at the deep end with not a water-wing in sight comes to mind. Fortunately for us PINS were incapable of sending a document we had requested, producing instead the Joint Opinion January 2007 containing the mysterious words 'Green Lanes Protection Group'. We put this into Google and found something else completely new to us – GLEAM. Your website told us we were in the right place. Chris Marriage listened patiently to our problem and immediately gave us your phone number.

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A Satisfied Member - cont'd from page 5.....

It was while making those calls to you that a ray of hope appeared somewhere in the distance, and I remember so clearly going to see the others and saying 'I think I've found someone to help us – and he understands what's happened'. Your kindness, understanding and expertise at that very stressful time were such a comfort.

You and Elizabeth Still were so brave to decide to fight the situation you found yourselves in – it took two special people to do what you did. And just look at what has been achieved as a result. From our point of view our lane would be churned up by the TRF by now if it hadn't been for GLEAM, because there was certainly no-one else to turn to. It's a wonderful example of 'Grey Power' as well as what can be achieved by the individual – well, two of them! You must be delighted.

Your initial advice gave us the direction and impetus we needed. We formed our group, decided what we wanted to achieve and what we thought we needed to do to begin to achieve it and, as you suggested, set about delving into the history of the lane from 1983 onwards. We made phone calls, sent e-mails and asked questions; people were only too pleased to help by making statements relating to various stages in the lane's history.

Then came Graham Plumbe, and the work he has put in on behalf of our lane in order to protect countless others is legend. George Laurence's Morchard Bishop Opinion, followed by the unbelievable U-turn executed by Defra, were real highlights and gave us the opportunity to be part of something previously outside our collective experience. These achievements have grown from that first conversation you and Elizabeth must have had, probably standing knee-deep in mud somewhere on the Ridgeway.

GLEAM's generous donation to our lane fund was wonderful – all this was new to us and we were bowled over by the kindness and encouragement given to us by GLEAM and GLPG members. Please pass on our heartfelt thanks to everyone at GLEAM for such a kind and extremely welcome donation.

We now await the inspector's decision 'early in the new year'. We are prepared for disappointment and will fight on if we need to, but there's also a controlled optimism among us, although we won't even think about celebrating until the magic words 'confirmed RB' are with us.

Thank you for everything David. We are so lucky to have found you, and what you have achieved is an inspiration to us all.

With our very best wishes for a Happy New Year.

Maggie, Tony, David, Jenny, Karen and Andrew.
Middlecott-Weeke Action Group – MWAG

[Members can read on page 4 about the very successful outcome of this campaign. The determination of MWAG not to be beaten should be an inspiration to all other members of GLEAM – Ed]



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

**If you would like more
information or wish to
assist please write to:
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