

# GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

[www.gleam-uk.org](http://www.gleam-uk.org)

**A NEWSLETTER for those interested in protecting ancient ways  
from the ravages of use by motorised recreational vehicles.  
SPRING 2010**

## **A Gleam on the Horizon Problems but Progress in Derbyshire**

*by Dr Karen Hinckley*

Motorbikes first appeared on the bridleway through my woods in the mid nineties, in common with most other tracks in Derbyshire. Off-road motorbikers were few in number, considerate to walkers and horseriders, and were not a problem. They caused little or no damage to surfaces or to other users. If only things had remained that way. But the numbers rapidly increased, often as a result of off-road holidays being advertised on the internet (£60/head/day to use my land without permission!), and increased numbers caused problems. Initially, this was confined to the destruction of the surfaces. Many of these, like my own bridleway, had a cobbled surface laid in medieval times that had stood several hundred years of equine use without harm. River crossings became deep and muddy. Skidding tyres cut deep V-shaped gullies into what had once been genuine green grassy lanes. To make matters worse, often the motorbikers would go off track into the bluebell woods, completely oblivious to the damage that they caused.



*Trail riders in the Peak District  
near Buxton*

When a Definitive Map Modification Order (DMMO) application to upgrade the Bridleway to a Byway Open to All Traffic (BOAT) was pinned to my gate in 2003, something had to be done. The surface damage which I had been repairing (costing £2-£3,000 p.a.) was now too widespread to be continued. I mounted a challenge to the use, stopping each group of bikers and politely informing them that they did not have permission to go onward. The first time I stopped them they listened, with smirks on their faces. Subsequently, they simply drove straight at me, telling me to “get out of their f\*\*\*\*\* way”. I blocked their path in my Landrover. They then told me to let them pass onto my land or they would smash up the car with me inside it. My farm manager was held down by two bikers whilst a third drove over him, fracturing his thumb. I photographed this, and managed to get the registration of one bike at great personal risk; but the Police said there were three statements against our two, so assault charges could not be made. No wonder so few landowners show ‘a lack of intention to dedicate’. Notices lasted less than 24 hours before they were smashed up, often with the gate or post too. Whereas initially the bike riders had been mannerly, now nearly all were in the ‘thug’ category. As one Police Officer put it, “the aggression is part of the game”. In motorbike suits, helmets and visors and with number plates false, missing or deliberately obscured, they were incognito and beyond the law.

Safety could not be raised as an issue during the BOAT process. Inevitably accidents were bound to happen as groups of 12–16 motorbikes, with no consideration for other users, met walkers and horseriders on narrow paths. There have been some terrible stories, both told to me and reported in the press: A rider was left after a fall, semi-conscious with a suspected broken pelvis; another was left tangled in barbed wire while her horse bolted with the remainder of the fence trailing behind; and finally, a fatality, a lady dentist was thrown from her horse after an encounter with a group of motorbikes. None of the motorbike riders stopped or called the emergency services.

**Contd page 2**

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

*Contd from page 1.....*

Landowners and residents were in despair as it seemed nothing could be done; indeed it was difficult to find a lawyer with knowledge of this part of the law. So, individual landowners and residents began to learn the legal process for themselves. They grouped together to form action groups for support, although they were nowhere near as organised as the formidable Trail Riders Fellowship (TRF) representing the motorbikers. Contrary to what the TRF say, most of the motorbike riders I met told me they were members of the TRF, and that they had been given maps and instructions by the group.

The problem seemed insurmountable, especially as there had been blanket coverage of all Derbyshire tracks, including bridleways and restricted byways - well over 200 applications. GLEAM membership for anyone opposing BOAT DMMO applications was essential. It helped many residents pursue the legal process by themselves, and provided much-needed moral support. In each Parish, there is usually at least one person who is interested in doing the historical and legal research that is required. Such details are required as evidence. One by one the BOAT applications have been opposed at consultations, Council meetings and Public Inquiries.

Originally, it had been thought that the motorbike riders were young, local lads from disadvantaged areas. In my experience, 98% are middle-aged men often travelling from all over the country to Derbyshire, bringing their own bikes in trailers. Any sympathy for their needs evaporated as their behaviour worsened and public opinion turned against them. Eventually, national opinion led to the Natural Environment and Rural Communities Act 2006 (NERCA) that extinguished new rights for mechanically propelled vehicles. But there was still a problem. Not all applications fell under the axe of NERCA, since many were put in before the arbitrary cut off date of 20th January 2005. These were subject to exemptions and exceptions under s.67 of the Act. Such details are argued at length at Public Inquiries and in Court. The outcome of judicial review on one point, s67(2)b. is eagerly awaited. GLEAM members will remember the so-called Winchester judgment that made such a difference to the number of applications. In essence, if the applications are not accompanied by copies of supporting evidence and maps to the correct scale, then the application is sent back to the applicant, and NERCA prevents another BOAT application being made. Similarly, it was successfully argued that off-roaders' aggressive behaviour and intimidation amounted to Public Nuisance creating a precedent for other Public Inquiries. So a mixture of statute and case law precedents enable quiet progress to be made in the fight against misuse of public Rights of Way.

The effects have certainly been seen in Derbyshire. My bridlepath has its status unchanged, the Council have repaired the surface beautifully, along with several other historic paths. A combination of barriers, neighbourhood watch and Police co-operation means that there are no longer any motorbikes on this wonderful route. Numerous walkers, horseriders and cyclists use it again.

At the moment, there are about 80 pre-cut-off date DMMO applications for BOAT status still pending at the Council, although some are subject to the Winchester case. These paths are a problem to local residents, as off-roaders use the routes while the application is processed. Surely it would be better to decide the status first? The legal department at Derbyshire County Council do an excellent job of sorting through the applications, and the Rights of Way officers work tirelessly on practical aspects; but it all takes time. Despite the Peak District National Park Authority having new powers, Traffic Regulation Orders are seemingly impossible to create in this County; endless consultations – taking years; discussions about useless unenforceable voluntary agreements; priority lists ..... and nothing happens. Residents feel that no-one is listening or helping. Even Councillors who are sympathetic and motivated seem unable to move the political or administrative machinery enough to get a result. The public feels impotent.

Particularly frustrating are situations where Police responses seem to depend on the attitude of the local officer. They can be completely ineffective in protecting the public. For example, those motorbike riders who do not have insurance, who use threatening behaviour, who drive dangerously, who damage property, whose exhausts are too noisy, who are driving where they are legally not meant to be, should be warned or prosecuted. A friendly chat won't do. Would a car driver be treated the same way? In some areas, the Police force no longer has respect or support because of this approach. In others, the Police are heroes when they work with the community.

Residents feel they rarely have an effective 'voice' in Rights of Way matters, or worse, that their opinions are disregarded. Similar feelings are held by horseriders, who are often terrified to use Public Rights of Way and, as the roads are much too busy and unsafe to use, they just ride at home in the manège.

Horseriders, legitimate users and residents, should know that those who represent them work constantly on their behalf to address the problems. Although much remains to be done, the progress in recent years has been nothing short of extraordinary. This is largely due to the efforts of GLEAM members and representatives, who should be congratulated.

An enormous amount has been achieved in recent years, and this is heartening for the future. We will surely succeed.

*Dr Karen Hinckley is a Committee Member of GLEAM and Regional Access and Bridleways Officer for the British Horse Society, (East Midlands). She also serves on numerous local access committees.*

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*The following article of 4th March is reproduced by courtesy of the Editor of the Derbyshire Times.*

### **RIDER DEATH SPARKS CALL TO BIKERS**

'It's been an accident waiting to happen'

*By Jennifer Ivers.*

A pony rider is calling on off-road bikers to face up to their actions after the death of a woman who fell to the ground when her horse was believed to have been spooked by the vehicles.

Elizabeth Shaw (71) of Nether Handley said the tragedy should serve as a wake-up call to the bikers who have been causing a nuisance on farmland and woods in the area for years.

Rider Mary Chapman (58) of Sheffield died on Sunday following the incident at West Handley the previous weekend when she suffered serious head injuries.

Police said they believed the horse had been spooked by people riding motorbikes on the land.

Mrs Shaw said: "It's been an accident waiting to happen. It should be laid at their door that something really serious has happened".

"They don't have any responsibility for what they're doing. They're arrogant, rude, and quite determined that the local people are not going to put them off".

Mrs Shaw, who regularly rides her Dartmoor pony Sally-Ann in the area, said: "It's very frightening when you hear this awful story. It's not putting me off but I have a number of children who come and ride Sally-Ann and I worry for them."

A spokesman for Derbyshire Police said they were no longer investigating the incident because it did not involve a collision. He said the case had been referred to the coroner who would carry out an inquest.

He added: "Off-road biking is an issue that has been acknowledged as a priority by the neighbourhood team. They are carrying out operations to target the problem." Anyone with information should call Derbyshire Police on 0345 123 3333.

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### **Claim by Disabled Horse Rider is Settled Out of Court**

A claim by a Sussex horse rider who sued the motorcyclist she said caused the animal to bolt, has been settled out of court.

The claimant, an experienced rider, broke her back in the fall in 2006 which left her paraplegic. She claimed that the noise from the trail bike's engine spooked the horse when the defendant rode his trail bike towards her. Being a trail bike, it was designed to be ridden off-road and generated a decibel noise level higher than bikes designed for road use only.

The rider and her companion tried to wave at the biker to warn him to slow down. He failed to do so but continued downhill at speed before turning in front of the riders into a car park.

The horse became frightened, spooked and bolted into the entrance to a bridleway opposite, where it attempted to jump a gate at the entrance. It hit the top of the gate and fell, causing catastrophic injuries to the claimant.

The horse rider claimed that the trail bike rider was negligent because he did not look out for horse riders, and continued at speed when he ought to have seen her and slowed down.

## The NERCA and Winchester Rumble On

by Graham Plumbe (Hon Adviser to GLEAM; Vice Chairman GLPG)

The aftershocks of the Winchester judgment continue to spread, and some authorities still have difficulty in applying it. Members are reminded that the judgment can be viewed at <http://www.bailii.org/ew/cases/EWCA/Civ/2008/431.html>. Will members please report any difficulties known to exist regarding implementation of the NERC Act and points arising regarding exemption in local cases.

### Defective BOAT Applications

Even as this note is being written, the Court of Appeal has generated another shockwave - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/280.html> for the judgment in Maroudas v SoSEFRA (18 March). An **Oxfordshire** claim in 1997 was unsigned, undated and without map. In subsequent correspondence these defects were taken by an inspector to have been made good and a BOAT was ordered. This was endorsed by the High Court, although the case was still useful to us in identifying what fell within the “de minimis” rule allowed in Winchester. The Court of Appeal has now quashed the order. One main point is that a defective application can be made good but only if done so within days, 10 weeks being too long. Another is a repeat of Winchester in saying that the “form” of the application as a whole must be met; not just the “prescribed form”. Also of importance is that later evidence must be shown to have been within the original intent if it is to be regarded as part of the original application - but in that event it fails to qualify for exemption.

### Copies of Evidence

**Non-compliance** with the statutory requirements continues to prevail. Every BOAT claim made before 20 January 2005 (19 May 2005 in Wales) must be in the prescribed form; must be accompanied by copies of all the evidence relied on; and must attach a map drawn to a scale no smaller than 1:25,000. Members need to be diligent in asking to see exactly what accompanied the application. Research on cases in **Dorset** has revealed that the applicant expressly relied on evidence which he did not identify, let alone copy, until after the cut-off date. The claim was expressly being made to head off the impending NERCA legislation. According to Leading Counsel’s opinion, such a “holding operation” would disqualify the claim from exemption. The relevant claims are being challenged.

In **Northumberland**, the applicant told the inspector that he had never intended to adduce or rely on certain documents that were identified, but had not been copied. The claim was therefore not caught (he said) by Winchester. The inspector accepted the argument and decided on BOAT status, but without telling other parties about the argument. In the process he unilaterally, wrongly and without consultation applied the Public Inquiry Rules to written representations. That case is being challenged both as to an unlawful decision and also as to breach of natural justice procedurally.

### Wrong Scale of Application Maps

Also in **Dorset**, maps accompanying 11 claims were all 1:50,000 maps blown up to the larger scale. It is obvious to any sane person that a map drawn to a smaller scale and photo-enlarged or computer zoomed does not produce the required map, because the lack of detail is simply enlarged. That argument succeeded in the **Buckinghamshire** case reported previously, but Dorset CC officers refuse to see sense. Initially they refused to state their position, then ducked the issue at Committee last year, and finally mis-advised the Committee at a meeting in March this year. The Committee rejected the claim, not on compliance, but on user evidence - which was legally irrelevant. Steps are being taken at senior level to overcome officer irrationality. That refusal may well be appealed, so the case has a long way to go.

Meanwhile, the matter arose in another **Dorset** case where the application had been rejected by Committee and appealed by the applicant to the Government Office for the North East (GONE), where such appeals are heard on behalf of the Secretary of State. The inspector reported in July 2008, having been told that the application map was to the wrong scale, but she accepted the enlarged version without considering this point. She did however find against exemption because of a lack of copy documents. The decision maker at GONE accepted that report, but ignored a detailed explanation about map scales, supplied together with confirmation from the Ordnance Survey between report and decision. Although a restricted byway order was directed, the matter of map scales now has to be argued all over again when the order is made and objected to by the appellants.

A complaint has been registered with Defra as to the disregarding by GONE of vital information in plenty of time for the final decision. Defra has met with GONE, and the outcome is awaited.

### Procedural Effect of Non-Compliance

**Derbyshire** CC has been agonising over how to treat a large number of pre-cut-off BOAT claims, many of which have been defeated by Winchester. GLPG has been offering its views, and current Derbyshire CC policy is that makers of non-compliant claims across the board are invited to make good the claims in cases where this could lead to restricted byways rather than BOATs. Where the ways are already RBs however, and non-compliance has

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Contd from p4.....

knocked out vehicular rights, the claims are being rejected outright. We await news of reaction to this policy.

### Public Nuisance and pre-1930 Motor Vehicular Rights

**Public Nuisance** became a highly relevant factor when well-presented arguments from GLEAM members, with help from a parish councillor and GLPG, resulted in a landmark win in **Derbyshire** last year. The issue of public nuisance is now attached to a claim of **pre-1930 motor vehicular rights** which, if proved, wins exemption from NERCA extinguishment. We reported last year that two important routes in the **Lake District** have been claimed on this basis by virtue of hill climbing on motorbikes in the 1920s. That argument will not succeed if it can be shown that historic rights already existed, derived from earlier horse and cart use. GLPG has made submissions on both claims, arguing firstly that historic vehicular rights existed (which have now been extinguished by NERCA); and secondly that the hill climbing could not in any case succeed, because there is clear evidence of public nuisance. In both cases representations are at an advanced stage and the result will be reported in due course. **A paper on Public Nuisance is now on the GLEAM website.**

### List of Streets

One of the exceptions to NERCA is where ways are not on the Definitive Map, but are on the **List of Streets** (LoS – the list of highways of any sort that are maintainable at public expense). There has been a good deal of debate as to what constitutes a LoS, given the lack of statutory process for their creation and the muddled approach by many authorities. We have objected to a BOAT decision in **Leicestershire** on the ground that the LoS exception could not lawfully be applied where the way was expressly recorded as being privately maintained. A High Court case in **Wiltshire** is focusing on a different aspect of the same problem. Judgment is expected shortly and will be published on the GLEAM website.

### Authority's Application to Itself

We reported last year that an **application made by an authority to itself** does not rank as an application under s53 Wildlife and Countryside Act 1981, and so cannot qualify for exemption (confirmed by Counsel). Defra listened to us and reversed its previous advice, which had been to the contrary. We achieved success on this point in both **West Sussex** (willingly) and **Nottinghamshire** (by challenging several decisions). The situation in **Northumberland** appears to involve the same point, but has been obscured by the fact of changing responsibilities between authorities and nominal redating of “applications”. The matter has yet to be pursued to a conclusion.

### 5-Year User Test

Another exception to NERCA arises through main use by the public in motor vehicles for 5 years before May 2006, known as the **5-year user test**. Last year we reported useful order decisions in Yorkshire and Derbyshire. Links to both decisions are on the GLEAM website within the paper on User Evidence under the Guidance tab.

### Straw Clutching

In a number of cases, **the TRF are clutching at straws**. In **Devon** they have appealed the rejection of a claim to upgrade bridleways, simply in the hope of getting RB status and finding something in the future to justify exemption from NERCA. In **Lincolnshire** the Council has been busily rejecting non-compliant BOAT claims; but a whiskered one is causing debate, having been made in 1990 by a Parish Council which now wants to withdraw it. As the application was a complete muddle as to the route and copy documents, and as the user evidence was for bridleway or less, this could be interesting. In **Warwickshire**, GLPG's success in getting a BOAT order quashed led to a new restricted byway order. This has been objected to by the TRF simply in the hope of finding something to litigate!

### Yorkshire Dales TROs

On the **Traffic Regulation Order** front, and as reported last year, **Yorkshire Dales NPA** took the lead in using powers given to National Park Authorities and made 13 important TROs. LARA took the Park to the High Court and won on a technicality which resulted in four orders being quashed. Our understanding is that the consultation process is now being repeated, and it is hoped that LARA's success will prove to be a hollow victory.

### Enforcement Difficulties

The wide-scale problem of **enforcement difficulties** is one that has yet to be seriously tackled. We have previously reported shortcomings by the Crown Prosecution Service which have pervaded Somerset and Wales. The police are now being more positive in Somerset, but adverse reports are being received from other areas, including **Derbyshire** where the TRF has openly defied the law by riding on bridleways, justifying this by the delay in determining claims which in their view are valid. **Members are asked to report any known difficulties as to enforcement in other areas.**

## GLEAM's Fighting Fund

Members will recall that after the Annual General Meeting in October I wrote appealing for donations to the GLEAM Fighting Fund. This was in order to build up a fund from which to finance any future cases which GLEAM may have to fight for the protection of Public Rights of Way from damage – knowing that legal costs do not come cheap!

This appeal has been very successful. It has raised a substantial amount, with some very generous donations, and these are still coming in. Among them was a large and totally unexpected donation from Her Majesty The Queen. We have written to Her Majesty's Agent asking him to convey our deep and sincere thanks to Her Majesty for her generosity. How gratifying it is to have recognition and support from the very top!

If any members feel that they are still able to contribute to the Fighting Fund, their donations will be gratefully received. Their cheques, payable to 'GLEAM', should be sent to GLEAM, P.O. Box 5206, Reading RG7 6YT. Thank you in anticipation!

*David Gardiner*

### John Withers

It is with great sadness that we record the death of John Withers. He was a long-standing member of GLEAM, and was founder-Chairman of the South Wiltshire Rights of Way Preservation Group, which became a member of the Green Lanes Protection Group. John was a determined fighter for the protection of rural Green Lanes from damage by off-road motor vehicles in his part of the county. He was always a source of sound and gentlemanly wisdom. In his death we have lost a true friend and ally.



## GLEAM Subscription Rates to Rise

At GLEAM's Annual General Meeting in October it was decided that our subscription rates would increase from 1st April 2010. This is the first time that GLEAM will have increased its subscriptions since it was founded 15 years ago.

Annual subscriptions for individuals and households will increase from £6 to £10, while for organisations they will go up from £10 to £15. For Life Membership the required donation will rise from at least £30 to at least £50. Compared with other organisations, these rates are still felt to be very reasonable.

Readers will appreciate that this increase will only affect Annual Members and new Life Members. The great majority of Members, who are Life Members already, will not be affected.

**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  
[www.gleam-uk.org](http://www.gleam-uk.org)**

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