

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 2011**

Peak District Problems

by Dr Karen Hinckley

The Peak District as it should be

Derbyshire is one of the prettiest of all the counties. Wild moors, remote and beautiful, contrast with soft green valleys in the Dales. The Peak District is criss-crossed with trails connecting archaeological remains of the locality's industrial past – lead mining, cotton mills, and salt trails. These drovers' ways were used by packhorses and herds of donkeys carrying lead, pots and pans or salt in panniers. Packhorse trails are charming narrow paths of great antiquity, often paved or cobbled and punctuated with medieval stone bridges. The walled routes are quiet secret places where one can imagine the past; silent and evocative, they are evidence of past lives. Each year, millions of visitors to the Peak District walk in the footsteps of those from the past; but rather than walking with a packhorse, they savour the solitude, relish the scenery and observe the delicate flora together with the sight and sounds of rare birds.

The Peak District as it is

Unfortunately, this idyllic area is at risk, and visitors now are likely to have a quite different experience. The Peak District is threatened by off-roaders who come to the countryside in Land Rovers or on noisy trail bikes to drive all over the county's paths. They come not to enjoy the scenery, but to drive as fast as possible over unsealed routes and the countryside, and other users are of no consequence to them. Off-roaders are increasingly prevalent in North Derbyshire since other National Parks have taken tough measures to stop the so-called 'green laners' in their areas. This action has displaced the mechanically propelled vehicles (mpvs) onto Peak District routes. The last 12 months have seen an exponential increase in motorised use, and the effects are disastrous. Paths and tracks that were once grassy are now worn down to bedrock with 3-foot high 'steps' or deep V-shaped gullies cut out by motorbike wheels. Others are hopelessly muddy and completely impassable in winter months, even to mpvs, and are transformed in summer into deeply rutted rock-hard routes, dangerous to walkers, horse riders and mountain bikers. One lady walker suffered a displaced fracture of her ankle on a bridleway damaged in this way. Horse riders wouldn't contemplate taking their precious mounts over such dangerous routes. Derbyshire paths having Bridleway (BR), Restricted Byway (RB), Byway Open to all Traffic (BOAT) status, and unsealed Unclassified County Roads (UCR) that are on the List of Streets (LoS), are now inconvenient, difficult to use or impassable unless you are in or on a motorised vehicle.



Brough Lane

Not only are the surfaces dreadfully damaged, but the whole experience of using the path is also ruined. If you are a tourist having a walking holiday in the Peak District National Park, your holiday will not be perfect or enjoyable if you have to climb the steep sides or the walls of the path to dodge convoys of Land Rovers or hordes of motorbikes on a newly awarded BOAT. Your experience of the famous routes – Chapelgate, The Roych, Bamford Clough, Stanage Edge – will not be enhanced by Land Rovers winching each other along, even if it is a one way system. In fact your 'quiet enjoyment of the National Park' would be ruined, contrary to the Peak District National Park Authority Charter. Conflicts arise, and non-motorised user groups are sick of it. There is a hardening of attitude amongst these non-motorised user groups. They are hardly willing to try to reach a compromise or negotiate.

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Endless discussions have all been one way, with tolerance by non-motorised users 'rewarded' by only the smallest possible concessions, if any, on the part of the off-roaders. In fact, many of the voluntary agreements and management plans seem to be ineffective in protecting anyone's rights or the environment itself. Proof is needed that these ever work. Any practical offers of maintenance from the off-roaders are made for their own advantage; no-one else would benefit. For example, to suggest cutting down blackthorn hedging and trees along a route to make it wide enough for Land Rovers, when the blackthorn provided a harvest of sloes for local residents and the verge is a nature reserve, is heartbreakingly inconsiderate. The smiling falsitudes of the off-roaders, especially of the TRF who are well practised in it, no longer wear, if indeed they ever did. No-one believes what the TRF says. No-one believes that there is a 'rogue element' doing all the damage, while all the others are smooth talking 'nice guys'. With only a few exceptions, they are all the same – they say one thing and do another. Their very presence in a National Park is debatable.

How did it get like this?

How did Derbyshire get into this situation? The Natural Environment and Rural Communities Act 2006 (NERCA) was supposed to prevent new rights being awarded for motor vehicles. The problem is that there are still outstanding BOAT Claims on a multitude of paths and tracks across Derbyshire. While these Claims are outstanding, the off-roaders use the routes with complete impunity from Police action, even on a Public Bridleway or Restricted Byway. Claims by the TRF for Definitive Map Modification Orders for BOAT status were put in as blanket coverage of nearly all BRs, RBs and unsealed UCRs when the NERC Bill loomed. The Applications were very poor, usually with little or no evidence, and 51 (out of about 200) were subsequently axed by the famous Winchester judgment. If only this case had applied to the routes that are on the List of Streets.

All the other Claims await processing, including some on Bridleways because a section of the route is on the List of Streets. The process is desperately slow as each batch of cases goes to Committee, and the County Council takes the utmost care that its quite justifiable actions are immune to judicial review prompted by the TRF. Many of the worst affected routes are those on the LoS. When the Definitive Map was created under the National Parks and Access to the Countryside Act 1949, many of the best known routes in the Peak District were already maintained by the local authority, and Parish Councils didn't bother to claim them. No-one could have envisaged the trouble that has arisen because of this. The off-roaders insist (incorrectly) that the LoS denotes vehicular rights, and has even suggested that dual status routes (ones where the BOAT Claims have failed and have remained BRs) should be altered on the Ordnance Survey maps so that they are shown as green dots (Other Routes with Public Access, or ORPAs, which they incorrectly allege carry vehicular rights). Clearly, this is nonsense, but if it is said often enough and vigorously enough, someone might believe it. It is legally without foundation.



Chapel Gate (now being repaired by Derbyshire CC)

The shortcomings of NERCA

Everyone celebrated when NERCA was enacted after much hard work, lobbying, negotiation and persuasion from Graham Plumble, Ian Ritchie, David Gardiner and others. Everyone thought our lovely routes would be protected forever. So why didn't NERCA protect Derbyshire? The Act extinguished rights for vehicles, but there were exemptions. S67(3)(a) gave exemption to pre-cut-off date Claims – those submitted before 20th January 2005 – and s67(2)(b) gave exemption to those routes that are on the LoS but not on the Definitive Map. All the claimed routes in Derbyshire are in one or the other of these categories. Historic Inclosure Awards are relevant to some LoS routes and, despite NERCA,

motor vehicular rights are being awarded on the basis of horse-and-cart evidence from 200 years ago. It was the intention of NERCA to prevent this, but some of the most spectacular routes in Derbyshire have been, and will be lost as quiet, traditional routes. The Maroudas and Fortune judgments, so eagerly awaited, have not helped. Meanwhile, the legal processes continue, with each BOAT application inevitably going to two Public Inquiries. There is no defence when Inclosure Evidence is strong, despite the inadequacies of the Application itself, and the case is conceded.

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If documentary evidence is thin, then the TRF produce reams of User Evidence (from Internet campaigns among its members), and the same leather-clad gang of witnesses that tour the Public Inquiry circuit grinningly give their evidence with self-satisfied smugness. It is difficult to counter. Residents that give evidence to say that motorbikes only appeared in bulk and with any frequency in the mid-nineties are countered by rather threatening witnesses who say they have ridden the route every week for the last 40 years. They say that at every Public Inquiry. The residents are outnumbered. Sometimes there are only about 30 on the electoral roll, and they are simply outnumbered. Another problem is the 'intention to dedicate' question. How can a landowner (who is often an elderly farmer) pull on his boots, rush out of his house at the sound of motorbikes and explain to 16 helmeted trail bikers roaring past at 30 mph that he is challenging them? They will say they never saw him. And notices? Even Police notices are torn down within 12 hours. How can a landowner show lack of intention to dedicate? Maybe this part of the law should have less emphasis. Overall, is this legal process fair and correct for everyone? Is this the only defence we have available for our heritage?



**Trail bikes on Chertpit Lane
(blurred because the photographer had to jump for his life!)**

Why not use TROs?

What about Traffic Regulation Orders (TROs)? Surely these can protect routes even if BOAT status is awarded? Well, they can only protect routes if they are made, and in Derbyshire this is an endless process – taking years and years. In some cases a TRO will allow motorbikes. Other Local Authorities have been robust in their approach to protect their National Parks and the rights of their residents and non-motorised users. They have also realised that tourism is a major part of the local economy, and have been determined that TROs are put in place and enforced. Police action should be robust, not mediation! In Derbyshire, both the County Council and the Peak District National Park Authority have powers to make TROs, but there is paralysing caution. They are threatened at every turn by legal action by the TRF, and are understandably afraid of mistakes. The result is inertia. More pernicious even than this is the stiflingly politically correct attitude that everything and everyone should be equal. This means that the Peak District National Park Authority should do everything “without fear, favour or prejudice” (I quote their officer). It is easier and maybe safer to do nothing, and their caution is understandable under the circumstances. But inaction is not impartiality. The vast majority of users, residents of the Peak Park and tourists are prejudiced by the failure to regulate motorised users on the routes. Motorised users damage the routes (and incidentally often irrevocably damage adjacent SSSIs) and spoil the enjoyment of those using a National Park set up under Statute for quiet enjoyment of the countryside. Local Authority officers must realise that we strongly encourage them to use their powers to make TROs, and we will support them fully, in Court if required.

The cost of all this

How much does off-roading cost the taxpayer? Figures are hard to come by, especially as so many authorities and different departments are involved. Patch-up repairs to Chapelgate are costing £71,000 this year, and this is commendable, but it is only six years since previous repairs. Repairs of the eight priority routes in the Peak District National Park will cost £1m. Costs of repairs to Houndkirk Moor BOAT – jointly borne by Sheffield City Council, Natural England and the Peak District National Park Authority – are difficult to find but must have been considerable, as the destroyed adjacent moorland SSSI had to be replanted with heather. Costs of processing BOAT Claims are even more difficult to assess. What is the cost of Local Authorities officers' time, and preparation and attendance at Public Inquiries? Public Inquiries themselves are enormously expensive; one recent four-day sitting was said to cost over £80,000, excluding officers' time and preparation. What is the projected total cost of 141 BOAT Claims? And the annual cost of repair, bearing in mind that the pending routes are not maintained while the status is undecided? Is it sustainable to allow surfaces to be destroyed again and again after repair? All this is paid for by the taxpayer. It is unaffordable.

Putting it right

How can the present situation be rectified? Residents, user groups and pressure groups continue to put their case to the Authorities and plead for action on TROs, but results are very slow and piecemeal. The newly formed Peak & District Green Lanes Alliance (P&DGLA) is an umbrella organisation for groups such as the Ramblers' Association, British Horse Society, Friends of the Peak District, CPRE, Peak Horsepower and many other local groups. The Alliance is determined that the views of the majority should count.

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Walkers trapped by 4x4s on Chertpit Lane

reverse), they will take a chance and continue illegally. It is nonsense to create routes like this, and surely this situation should be remedied. A starting point would be to allow Winchester to apply to routes that have part, but not all, of the claimed route on the Definitive Map. If the Application is invalid, it is invalid and should not be saved to make part of the route into an unworkable cul-de-sac BOAT. Maybe a change in DEFRA guidance would help the legal process.

A bleak prospect

The Peak District, the environment, the wildlife, the history and the local economy are too important to sacrifice just so that the off-roaders can have their sort of fun. The vast sums of money being spent on patch-up repairs, processing BOAT Claims and Public Inquiries could be used to purchase and maintain a whole new network of off-roading tracks, for off-roaders' use only. New trails could be alongside motorways or in designated areas of Forestry Commission Land, but not on Public Rights of Way and not in areas as beautiful or special as the Peak District. Why not do this? Then everyone would have what they want. It is a radical approach, but as residents and users watch aghast as nothing is done, it is time for action. Otherwise, Derbyshire is in danger of becoming the off-roading centre of England.

Dr Karen Hinckley is Chair of the Peak & District Green Lanes Alliance, Regional Access Officer for the British Horse Society (East Midlands) and a Committee Member of GLEAM

New Green Lanes Alliance for Derbyshire

As members of GLEAM will know from past newsletters and from Dr Karen Hinckley's article above, Derbyshire has suffered from the ravages of off-road motor vehicles, particularly of trail riders, more than any county in England. The residents of the county have now decided that enough is enough. Members of many villages in and around the Peak District National Park, and representatives of a wide range of interests, have banded together to form a new alliance, the Peak & District Green Lanes Alliance. It is modelled on the very successful Yorkshire Dales Green Lanes Alliance, founded by Michael Bartholomew in 2002.

Besides local villagers, P&DGLA includes among its members walkers, horse riders, cyclists, rock climbers, farmers, landowners and conservationists. They are united in their wish to have motor vehicles banned from the footpaths, bridleways and restricted byways of Derbyshire which these vehicles insist on using and damaging, illegal through this use may be; and from vulnerable BOATs which they have damaged to such an extent that they are virtually impassable by lesser classes of user. Numerous organisations are represented on P&DGLA, such as the Ramblers Association, the CPRE, the CLA, the NFU, the British Horse Society and the Friends of the Peak District.

Dr Karen Hinckley, who is a GLEAM Committee member and is the British Horse Society Regional Access & Bridleways Officer for the East Midlands, has been elected the first Chairman of P&DGLA. Under her leadership P&DGLA is becoming a member of the Green Lanes Protection Group, an informal grouping of like-minded organisations founded by GLEAM in 2005. They will become the 22nd member of GLPG.

GLEAM wishes P&DGLA every success in its new venture.

David Gardiner

NERCA/Winchester Roundup

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

Natural Environment and Rural Communities Act 2006 (NERCA)

List of Streets: If litigation depended on the length of the judgment rather than the judge's foot, Fortune would become a byword. The case of **Fortune and others v Wiltshire County Council** was referred to in the last newsletter, and judgment was handed down over a year after the hearing. It runs to 355 pages which may be a reason why it remains unreported! The key part concerns the **List of Streets (LoS)**, a list of highways (of all types) maintainable at public expense which the highway authority has to keep. Entry of a way on the LoS gives exemption from the killer effect of NERCA, provided the way is not on the definitive map. The purpose is to protect the "ordinary road network", which makes sense. Enter the lawyers, stage left. Just what IS a List of Streets? The law doesn't specify any process for compiling it, and authorities compete with each other as to the similarity between their records and haywire. In Fortune, the judge had to find whether Wiltshire's haywire allowed the death of motor vehicular rights under NERCA. Taking a pragmatic approach he said it did not. Enter the lawyers again, stage right. An appeal is being attempted.

The judge identified some useful principles. The LoS must be in writing of one sort or another, electronic or otherwise (which appears to include maps with a key). It must be a "public document open to inspection". It does not matter if it doesn't record all types of highway (which it should do). It doesn't matter whether actual maintenance is legally obligatory. There must be only one master list. The way must have been actually listed on 2 May 2006. Intelligent readers will realise that some questions remain unanswered, but this is enough to go on with. For most purposes the judgment confirms the objective of protecting the ordinary road network.

Several cases have already been decided on this question, notably in **Lincolnshire**. Others, notably in **Leicestershire, Dorset, Northumberland** and **Powys**, hang on the judgment.

Pre-1930 vehicular use: If vehicular rights have been created simply by use of motors pre-1930 (a rare situation), and such rights had not existed historically by horse and cart use, NERCA is toothless. Such a claim was made for Walna Scar Pass in the **Lake District** based on hill climbing on motorbikes in the 1920s. The Park Authority disagreed and made restricted byway order. A decision based on a range of howlers by the inspector rejected it and allowed a BOAT. The decision was appealed in the High Court on nine grounds and was settled by consent against Defra. The Park Authority re-made the restricted byway order and objections have been lodged by the TRF. Watch this space.

A similar claim was made in respect of Garburn Pass, albeit on very different evidence. The case has been growing whiskers while the inspector ponders. A decision is expected in April.

Winchester

Procedural effect of non-compliance: In 2008, Derbyshire had a large number of outstanding BOAT claims. In April 2008 the Winchester case clarified the need in making claims for compliance with Wildlife and Countryside Act 1981. This was subject to discretionary waiver by the authority for treating them as valid for processing under the 1981 Act, but mandatory to qualify for exemption under NERCA. Derbyshire CC took the bold decision in May 2009 to reject all non-compliant claims after giving an opportunity to make good the defects. Making good would obviate waiver, but would not protect exemption. In October 2009 DCC had 161 non-compliant BOAT claims not yet being processed. Of these, 85 were potentially caught by NERCA, 27 being made before the cut-off date and 58 after. The remaining 76 of the 161 were not caught by NERCA, but were non-compliant. In March 2010 DCC started to send out carefully worded letters giving ample time to make claims valid for processing. By January 2011, 51 claims remained non-compliant and have been axed. All might have gained exemption under NERCA + Winchester as to motor rights.

DCC is to be commended in taking a positive (albeit slow) and even-handed approach to the problem. The process was spurred on by a vigorous campaign by the Ramblers following Winchester, and has been helped legally by GLPG. In respect of individual cases already underway, some have been successfully contested by members of GLEAM.

Map scales: The two year saga, of getting Dorset to understand that a map created to a scale of 1:50,000 and then enlarged to 1:25,000 is not the same as a map "drawn to a scale of not less than 1:25,000", was reported last time. It was also said that the TRF, muttering about judicial review (JR), would be out of time against Dorset CC, and had no case against the Secretary of State (SoS) for rejecting an appeal. The timing point was slightly wrong, and the TRF issued proceedings against both. The TRF lawyers admitted that the SoS (Defra) had no case to answer, so the SoS now has reduced involvement, ie that of interested party. DCC has resisted the application, and very helpfully named GLPG as an interested party as having been closely involved in the decision.

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The TRF lawyers have used a scattergun approach to try and win permission to apply for JR but, even if they get it, it has to be a pipedream that the map scales point will eventually succeed. The argument is based on digital mapping, but the map provider (Anquet Maps) and the Ordnance Survey itself have both strongly supported the GLPG/DCC position. Again, watch this space.

Copy documents: In **Northumberland**, a quashing order was reported in the last newsletter. It is gratifying that the landowners have made a generous contribution to GLEAM's fighting fund. In a second case, similarly non-compliant and again with the help of GLPG, the Committee reversed a previous BOAT decision, and decided to throw out the claim altogether as being invalid.

After a string of successful cases elsewhere, this issue is hitting North Somerset Council which has now reached 1994 in attacking its backlog of claims! A clutch of BOAT claims were made by the local bridleway association (affiliated to the British Horse Society) in place of original bridleway claims. Theirs is not to reason why At first glance, the copy documents are faulty and the applicants will be saved from themselves, but it's early days. Some Dorset claims will also fall at this hurdle, even if the map scales point succeeds.

Yorkshire Dales TROs: As reported previously, Yorkshire Dales National Park Authority (YDNPA) took the lead in using powers given to National Park Authorities, and made 13 important TROs. LARA, the umbrella association for all the off-roading organisations, took the Park to the High Court and won on a technicality, which resulted in four orders being quashed. This was, as predicted, a hollow victory. Of the four ways, three fell foul of Winchester anyway, so the judgment achieved nothing. The fourth, (Gorbeck Road - the most important one) is now subject to a renewed TRO. This time, YDNPA made sure the procedures were right. The Yorkshire Dales Green Lanes Alliance has been doing sterling work in this area.

Defra/PINS/ GONE, inspector conduct/guidelines:

GONE has gone: The functions of the National Rights of Way team (NATRoW), alias Government Office for the North East (GONE), alias SoS, have been transferred to the Planning Inspectorate (PINS) so that all appeals against rejection of claims are now in the hands of PINS. It is to be hoped that this will bring swifter results and increased competence. PINS will also have to deal with outstanding complaints from GLPG as to policy in respect of third party representations in such appeals, as well as continuing complaints as to inspector conduct. An earlier series of complaints on conduct led to an internal conference which was well intended. However, the Walna Scar case reported above involved a serious failure in not circulating material for comment. It also revealed a serious error in the inquiry rules guidance. A case in **Hampshire** has now added to the list. Here the inspector has decided a material point (the line of a route) on a basis which was completely different from the assumptions made by all parties, and which was not circulated for comment before the decision. When will they learn?

Posting of Newsletters

Newsletters can now be seen on the GLEAM website www.gleam-uk.org and there may be some members who no longer require to receive a copy through the post. In order to reduce our ever increasing postage costs I should be grateful if any member who does not now wish to receive a copy of the Newsletter by post could let me know, either by email to info@gleam-uk.org or by writing to our address at P.O. Box 5206, Reading, RG7 6YT.

David Marr

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

**If you would like more information or
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