GLEAM

Green Lanes Environmental Action Movement
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www.gleam-uk.org

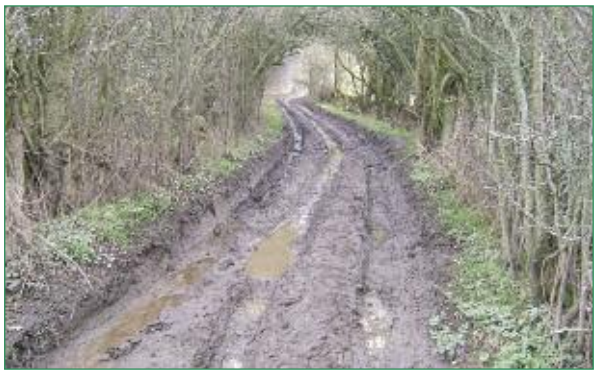
A NEWSLETTER for those interested in protecting ancient ways from the ravages of use by motorised recreational vehicles.
SPRING 2015

TRF lose the Peak District Bradley Lane case in the High Court

By Diana Mallinson, GLEAM Committee Member

As reported in GLEAM's Autumn 2014 newsletter, the Trail Riders Fellowship (TRF) had appealed to the High Court against an inspector's decision that an unsealed unclassified county road (UUCR) called Bradley Lane, was a bridleway, and not a BOAT, as originally decided by Derbyshire County Council. On 26 January 2015, Mr Justice Collins issued his judgment (available at http://www.bailii.org/ew/cases/EWHC/Admin/2015/85.html). He dismissed the TRF's grounds of appeal, saying the inspector's decision could not *"be impugned unless it was one which could not rationally have been reached or which was erroneous because of a failure to have regard to a material particular or because regard had been had to an immaterial particular."* The judge considered that the inspector had had regard to all the relevant historical evidence and evidence relating to modern motor vehicle use. As to the TRF's argument that the inspector's decision was irrational, the judge said that the inspector *"could properly have concluded in the* [TRF's] *favour, but the condition of* [Bradley Lane]*, described in the 1930s as "Bad, grass grown and little used" and not significantly improved since, coupled with the history which is inconclusive and certainly does not show with any degree of clarity that vehicular use was or is available as of right, entitled* [the inspector] *to conclude as he did"* i.e. that it is a bridleway.

The TRF's appeal to the High Court was its second attempt to overturn the inspector's bridleway decision. Its first attempt was a standard letter which was used by most of the 50-odd objectors to the inspector's interim decision to modify the BOAT order to bridleway. This letter attacked the inspector's approach to the historical evidence and his views on the evidence of modern motor vehicle use. The objectors using this letter ignored the facts that only 2 motor vehicle users gave oral evidence at the first inquiry, compared to 7 local people who gave oral evidence that motor vehicle use did not take place over the whole of the 20 year period required for statutory dedication, and that there were problems with the quality of the written user evidence.



Bradley Lane before and after repairs by Derbyshire CC.

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When the TRF made its appeal on Bradley Lane to the High Court, it issued a press release in which it said it was asking for financial support from other organisations because the outcome would be *"highly relevant to upcoming orders and inquiries"*, specifically those involving UUCRs, which it assumes all have public vehicular rights. However, Mr Justice Collins did not accept the TRF's arguments about the significance of Bradley Lane being a UUCR, but agreed with the inspector's view that this did not necessarily mean it was a vehicular highway. The appeal seems therefore to have been a waste of the TRF's money.

What has been happening to the Deregulation Bill?

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

Over the last 18 months organisations opposed to the use of green lanes by recreational motor vehicles have been using the opportunity of the Deregulation Bill to put pressure on the Government to take action to protect green lanes from the damaging effects of off-roading. We gave written and oral evidence to the Joint Committee on the Draft Deregulation Bill. At every appropriate stage of the Bill sympathetic MPs and Lords tabled an amendment seeking to restrict off-roading. This resulted in four debates in Parliament.

The Deregulation Bill aimed to reduce the costs and burdens of current legislation. The amendment we have been tabling called on the Government to identify and report on the costs and burdens arising from recreational motor vehicle use of unsealed highways, and to bring forward legislation to deal with them.

As a result of this pressure, the government has a) acknowledged that there is a problem, b) accepted that something must be done about it, c) agreed to set up a new Stakeholder Working Group (known colloquially as SWG2) to advise on possible solutions and d) has said there will be full public consultation once SWG2 has reported. However, our amendment was not accepted in the Bill as it was not sufficiently deregulatory.

The new Stakeholder Working Group

The Green Lanes Protection Group (GLPG, founded by GLEAM in 2005) has also been lobbying the government about the composition of SWG2 , the timescale for its work and the fact that it is unlikely to be able to reach a consensus solution. The government has now agreed that:

- The group will be set up on completion of the passage of the Deregulation Bill
- Will have a limited life of 18 months
- Will be free to produce majority and minority recommendations if necessary
- Will include representation from the National Parks, Areas of Outstanding Natural Beauty and the National Trails.

The Government has also said that the Stakeholder Working Group will:

- Have an independent Chair
- A secretariat organised by Defra and Natural England
- Will contain a balance of interests across all sectors
- Will include representatives of different types of user of rights of way
- Will set its own terms of reference
- Will be expected to 'look at all the issues in the round and include assessments of any economic and social benefits of the current recreational use of unsealed roads as well as an assessment of the costs and burdens'.

GLPG expects to be on the working group, but this is not yet confirmed.

The Deregulation Bill received the Royal Assent on 26 March. It only applies to England.

TRF win the battle but lose the war
(NERCA/Winchester reflections)

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

The TRF's long-running case against Dorset County Council on the correct scale of maps to accompany applications for BOAT status, as reported in previous issues, has finally been won by the TRF in the Supreme Court by a majority of 3 to 2. (Judgment available at www.bailii.org/uk/cases/UKSC/2015/18.html). The minority included Lord Neuberger as President of the Supreme Court. This has proved expensive for DCC, but we commend them for applying what most rational people would regard as the clear meaning of the legislation. The very disparate findings by the court demonstrate that DCC was well justified in defending the case all along. GLPG incurred no costs as it was personally represented, and lawyers' fees (necessary for conduct of its involvement) were funded by the landowners and other welcome contributors.

The judgment in favour of the TRF was plainly contrary to the intent of Parliament, as demonstrated by quotes from Hansard combined with common sense. It was won primarily on a very obscure technicality that was not in fact specifically argued by Counsel for the TRF. The key factor in the decision lies in an ambiguity in the legislation.

Schedule 14 to the 1981 Act provides:
1. Form of Applications
An application shall be .... accompanied by –
(a) a map drawn to the prescribed scale .....

5. (2) 'prescribed' means prescribed Regulations made by the Secretary of State.

The relevant Regulations are the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

2. Scale of definitive maps
A definitive map shall be on a scale of not less than 1:25,000 .....

8. Application for a modification order
(1) An application for a modification order shall be in the form set out in Schedule 7 to these Regulations .....,
(2) Regulation 2 above shall apply to the map which accompanies such an application ....."

There can be no doubt that the prescribed scale is "not less than 1:25,000". There is however a conflict between "drawn to" for application maps (Sch 14) and "on a scale of" for a definitive map (Reg 2). The problem arises when Regulation 8(2) is considered, because it applies the Regulation 2 requirement designed for definitive maps (ie on the prescribed scale) to the requirement designed for application maps (ie drawn to the prescribed scale). That error in drafting was not seen or taken

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into account when s67(6) NERCA was passed, requiring compliance with the Sch 14 requirements if exemption from extinguishment of MPVs is to succeed.

Faced with this conundrum, the principal passages in the judgments were:

Lord Clarke:
19. The question is therefore whether each of the maps was drawn to a scale of not less than 1:25,000. On the face of it that question must be answered in the affirmative. Paragraph 1 of Schedule 14 provides that the map must be drawn "to the prescribed scale" and by paragraph 5 "prescribed" means prescribed by the 1993 Regulations. By regulation 2 of those Regulations, "A definitive map shall be on a scale of not less than 1:25,000" and, by regulation 8(2), regulation 2 applies to a map accompanying an application. As I read these provisions, no distinction is drawn between a map "drawn to the prescribed scale" and a map "on a scale of not less than 1:25,000".

That last sentence is plainly wrong. The natural meaning of the words "on [the prescribed scale]" is the presented scale, although in the case of definitive maps that is normally taken to be synonymous with drawn scale. By contrast, the words "drawn to [the prescribed scale]" have a very specific meaning, there being copious evidence from the Ordnance Survey as to the conventional meaning of 'drawn' in relation to maps.

Lord Neuberger was far more rational. He said:
86. Where an applicant uses a copy of an original map, the appellant council contends that the document only complies with the requirements of paragraph 1(a) of Schedule 14 if it is a copy of a map which was prepared on a scale of at least 1:25,000, whereas the respondent applicants argue that it complies with these requirements if the copy is on a scale of at least 1:25,000, even if the map from which the copy was made was on a scale of less than 1:25,000.

87. The words used in paragraph 1 of Schedule 14 and in regulations 8(2) and 2 of the 1993 Regulations could justify either contention as a matter of pure language, although, as explained in para 90 below, I consider that the more natural meaning is that contended for by the appellant council.

90. Secondly, it is not an entirely natural use of language to describe an enlarged photocopy of a map originally prepared on a scale of 1:50,000, as "drawn" on a higher scale. To my mind at any rate, a map is "drawn" to a certain scale if it is originally prepared to that scale. One might fairly describe a doubly magnified photocopy of a 1:50,000 map as "being on" a scale of 1:25,000, but I do not think that it would be naturally described as having been "drawn to" a scale of 1:25,000. The word "drawn" in paragraph 1 of Schedule 14 must, of course, be given a meaning which is appropriate in the light of modern technology and practice, but I do not see how that impinges on the natural meaning of the expression in the present case.

91. Thirdly, the operative regulation in the present case, regulation 8(2) of the 1993 Regulations, states that regulation 2 is to apply to an application. Regulation 2 contains the express requirement "A definitive map shall be on a scale of not less than 1:25,000". It appears to me therefore incontrovertible that if a map satisfies regulation 8(2), it must also satisfy regulation 2. With due respect to those who think otherwise, I do not see how regulation 2 can have one meaning in relation to a definitive map and another meaning in relation to a map accompanying an application. Bearing in mind the public importance of a definitive map, it strikes me as very unlikely that the drafter of the 1993 Regulations could have envisaged that such a map could be an enlarged photocopy of a map which had been prepared on a scale of significantly less than 1:25,000. I also note that regulation 2 is foreshadowed by section 57(2) of the 1981 Act, which refers to "Regulations" which can "prescribe the scale on which maps are to be prepared": again, it does not seem to me to be a natural use of language to describe a doubly magnified photocopy of a 1:50,000 scale map as "prepared" on a scale of 1:25,000.

Lord Neuberger's reasoning paid far more regard to the whole background of the problem than did that of Lord Clarke, but even Lord Neuberger did not recognise (i) the fact that 'on a scale' can mean either 'drawn to' or 'presented at', and (ii) that if Reg 2 expressly applies only to definitive maps, it is silent as to application maps and could arguably be of no effect.

It is unfortunate that two other judges followed Lord Clarke for reasons that were not directly related to this central point of construction. In its submission, GLPG (personally represented) had raised the issue of the word 'drawn' being missing from Reg 2 but regrettably Counsel for DCC (who had seen GLPG's submission beforehand) did not take the point and argue it specifically as a matter of construction along the lines adopted by Lord Neuberger. The TRF were extremely lucky to win this case (by a majority of one), given that the applicant's case had originally rested on the absurd claim that a digitally enlarged map 'carried no scale' prior to selection of the presented image on computer.

Throughout the proceedings the TRF had made plain that it intended to seek the overturning of the Winchester case, this objective being far more damaging in its ability to desecrate the countryside than a handful of cases in Dorset. Although, because of the way the issues were framed, there was no express ruling on Winchester, the issue was fully argued and three of the judges found that it had been correctly decided. That effectively puts it out of reach of further challenge. Although GLPG is disappointed by the Supreme Court's ruling in the Dorset case, it hugely welcomes the lifting of a shadow over the whole nation in respect of the Winchester case. If that case had been overturned, it would have been an unmitigated disaster for the countryside, for landowners, and for a huge number of walkers, cyclists and horseriders who use green lanes. Not only are some old claims still undecided, but potential re-opening of hundreds of claims is avoided.

GLPG is now examining the Dorset BOAT applications to see whether any fail on other grounds. That exercise will not go unrewarded.

Green Lanes in Northeast Wales

By Diana Mallinson, GLEAM Committee Member

The Dee valley, running between the Clwydian and Berwyn mountain ranges in northeast Wales, was a popular tourist destination in the 19th and early 20th century, for the beauty of the valley and the opportunities for recreation offered by its main town, Llangollen. More recently, visitors have been encouraged to come to stay in the area to use the opportunities for walking and mountain biking, by the creation of several multi-day trails. The beauty and the historical and natural heritage of the area have also been recognised by its designation as an Area of Outstanding Natural Beauty (AoNB). But the peace and beauty of many green lanes (some included in these trails) in the AoNB and in the Ceiriog valley to the south is increasingly being affected by recreational motor vehicle use. Farmers are reporting damage to fences and open moorland, and the damage to the surface of some lanes is affecting water quality. A pressure group based in Llangollen, Save our Paths (SOPS https://www.facebook.com/Saveourpathsllangollen), has been trying to get action from local and central government and from the police to protect green lanes.

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One of the highway authorities, Denbighshire County Council, has responded by using Welsh Government funding to log motor vehicle use on four routes, and so identify patterns of use. The vehicle loggers were installed last year, so a full year's data is not yet available. However the levels of use so far recorded indicate high levels of recreational motor vehicles, compared to data from areas in England. Denbighshire County Council and the other highway authority covering this area, Wrexham County Borough Council, are, however, reluctant to consider permanent traffic regulation orders (TROs). This is because of the costs incurred by a neighbouring highway authority (Powys County Council), where the Trail Riders Fellowship (TRF) and the Green Lane Association Ltd (GLASS) took the authority to court in two cases about the authority's duty to repair green lanes and its making of permanent TROs. (See Andrew Kelly's article in the Spring 2014 GLEAM newsletter and paragraph 12 of my January 2015 article about TROs on http://www.gleam-uk.org/guidance/ for more information about these cases). Information from the vehicle loggers has helped the police in holding two days of action, stopping vehicles and issuing warning notices under section 59 Police Reform Act 2002. The authorities hope that these will deter users who drive off the green lanes onto open moorland.

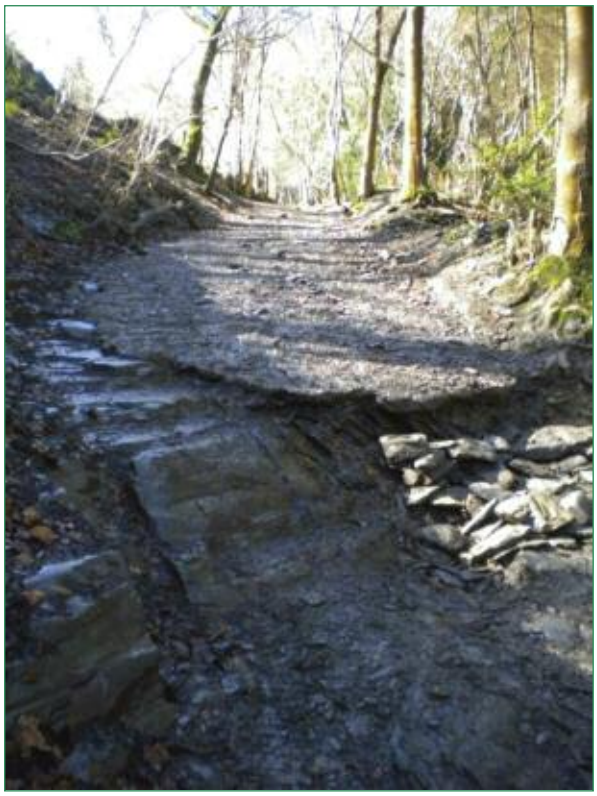
Two of the routes on which a vehicle logger is installed are of particular concern to SOPS. Allt-y-Badi is an unclassified county road which runs steeply (maximum gradient greater than 1 in 5) from the outskirts of Llangollen to the top of the ridge between Llangollen and the Ceiriog valley. The two ends, which provide access to a farm and to houses, are tarmacked, but the remainder is not.

Motor vehicle trials used Allt-y-Badi as a test hill up until the 1930s (see http://speedtracktales.com/2013/01/04/isdt-heritage-highways-allt-y-bady-llangollen-wales/). The surface was damaged during the Second World War by military traffic accessing a training area in the Ceiriog valley, and the Ministry of Transport paid £384 17s (equivalent to over £14,800 at today's prices) to Llangollen Urban District Council (UDC) for repair of the route in 1946.

In 1961 Llangollen UDC made an unsuccessful application for government funding under the Agriculture (Improvement of Roads) Act 1955 for a road adoption and improvement scheme. This would have bypassed the steepest section of Allt-y-Badi, at an estimated cost of £4,870 (over £100,000 at today's prices). In the application the Allt-y-Badi road was described as *"unsuitable for modern agricultural vehicles"* because of its steepness and narrowness and it was *"impracticable to improve it"*. Llangollen UDC argued that the Allt-y-Badi road, *"if improved, would be used increasingly by farm traffic in the* [Ceiriog valley] *area wishing to shop and trade in Llangollen"*. However a nearby road (Allt Gwernant) between the Llangollen area and the Ceiriog valley had been tarmacked in the early 1950s, so local traffic already had a better alternative to Allt-y-Badi.

Denbighshire County Council repaired the unsealed section of Allt-y-Badi in 2008 and the TRF cleaned out the grips (transverse drains) in autumn 2014. At the same time, GLASS and the TRF put up notices asking motor vehicle users to use the route downhill only to avoid damage to the surface. However recent photos (March 2015) show that the route is badly damaged and very difficult for all but off-road motor vehicles and that the repairs/ maintenance have not lasted.

The main (if not the only) motor traffic using Allt-y-Badi in recent years is recreational. The vehicle logger figures available so far record 44.6 motor vehicles per week, of which the majority (35.6) are motorbikes. The latter figure is higher than the current maximum for unsealed unclassified county roads in the Yorkshire Dales which are not subject to a TRO. In addition to the damage to Allt-y-Badi and consequent loss of amenity for non-motorised users, those living near the route are

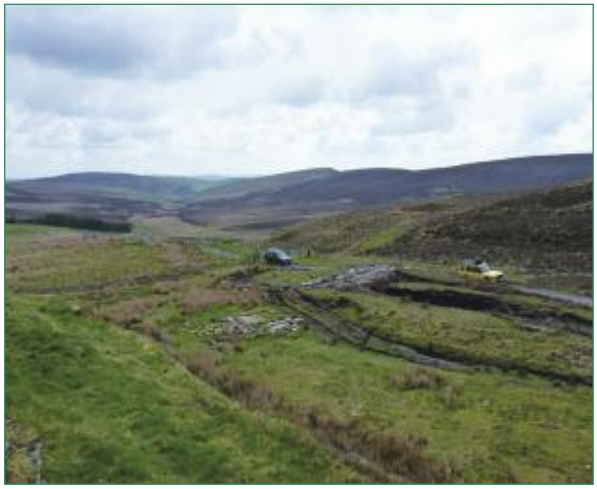


Surface repaired by Denbighshire County Council in 2008 now eroded into step.

Drainage grip cleared by TRF in autumn 2014 filling up again with dislodged stones.

affected by noise and air pollution from vehicles using it.

The second route is called the Wayfarer or Bwlch Llandrillo (the pass of Llandrillo). It is an unsealed unclassified county road running from the Ceiriog valley over this high (just over 580 metres) pass in the Berwyn mountain range to meet tarmac roads serving farms above the villages of Llandrillo and Cynwyd in the Dee valley. The name 'Wayfarer' comes from the pen name of Walter McGregor Robinson, a pioneer of "rough stuff" cycling (i.e. cycling on unsealed tracks rather than on roads). He wrote about his crossing of this mountain pass in 1919 (see http://www.cyclingnorthwales.co.uk/pages/wayfarer.htm) and the Rough Stuff Fellowship of cyclists has put up a plaque in his memory at the summit.



*Off-roaders at Bwlch Llandrillo. **

As well as cyclists emulating 'Wayfarer', this route has been used more recently by horse riders and carriage drivers, but they now feel it is unsafe because of the damage to the surface from recreational motor vehicle use. The logged weekly average of motor vehicles is more than double that on Allt-y-Badi. Some 4x4 drivers and motorbikers leave the track, damaging the moorland vegetation.

This moorland is one of the most important uplands in Wales for breeding birds. It has been designated as a Special Area of Conservation (SAC) for its internationally important populations of hen harrier, merlin, peregrine and

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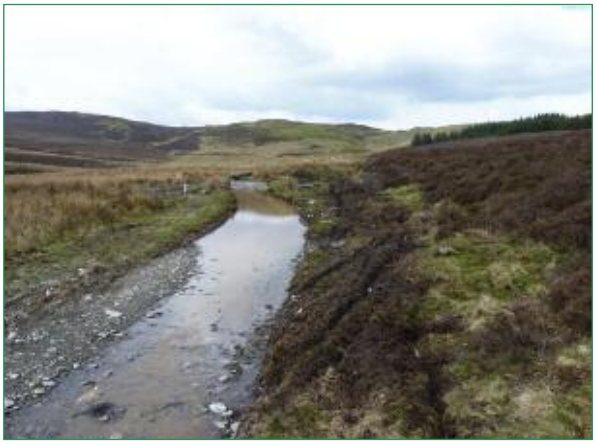
red kite, and for its dry heath and blanket bog habitats. Damage by off-road vehicles to the vegetation and peat surface of blanket bog was cited as one of the issues which needed to be addressed in the current Management Plan (issued in 2008 by the Countryside Council for Wales) for the SAC.

The only solution for Allt-y-Badi and for the Wayfarer under current legislation would appear to be to persuade the highway authorities responsible for them (Denbighshire and Wrexham) to consult on making permanent TROs.



*Trailbike damage beside the track to Bwlch Llandrillo.**

Rights of way legislation and its implementation are devolved to the National Assembly of Wales and the Welsh Government. Assembly Members (AMs) from North Wales have been pressing the Welsh Government Minister responsible, Carl Sargeant AM, to take action. In an Assembly debate entitled 'Keeping Green Lanes Green' on 25 March 2015, the Minister agreed to issue guidance on the application of Part 6 of the Natural Environment and Rural Communities Act 2006 (NERCA). This is needed because there is no Welsh equivalent to the guidance published for English authorities by Defra in 2008, and some Welsh highway authorities are confused about the effects of NERCA, in not taking action against recreational motor vehicle use of bridleways. The Minister also gave a commitment to issue a Green Paper (first announced in July 2013 and eagerly awaited by user groups) on access and outdoor recreation by the end of 2015 and to include green lanes in it. The Green Paper consultation will allow SOPS and other groups opposed to recreational motor vehicle use of green lanes to put forward proposals for new legislation, similar to those proposed by GLPG for inclusion in the Deregulation Bill in England.

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, Old Hawkridge Cottage, Bucklebury Village, Reading RG7 6EF.
www.gleam-uk.org

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