

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 2016

GLPG - Who?

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

In/out of the EU isn't the only referendum in progress. The question of what the Government needs to do about off-roaders on green lanes (allow/disallow) is also rumbling behind the scenes with GLPG being a leading campaigner. That has prompted the question: Who is GLPG? Like a ray of sunshine the Green Lanes Protection Group (GLPG) lightens the landscape by NOT subscribing to Facebook, or Twitter, or any of the anti-social 'social media' about which storms rage given slanderous and uncontrollable public comment. It doesn't even have its own website, a function shared with GLEAM at www.gleam-uk.org and for which GLPG has written a great deal. GLPG raises its head above the parapet only when it matters, like amendments to legislation, or representing the interests of members in BOAT claims for public vehicular rights (ie off-roading) where legal issues arise.

GLPG was founded by GLEAM in May 2005 following the Government's "Framework for Action" published in January 2005. It brought together as an alliance over 20 organisations¹ in pursuit of effective drafting of the Natural Environment and Rural Communities Bill (now NERCA 2006). Quite remarkable was the bringing together of the Ramblers and the CLA at the same table. The former have since been obliged to drop out for administrative reasons, but we still work closely together. Other organisations have since joined.

As the voice of over 350,000 combined members, in 2005 GLPG immediately had the ear of Ministers, and the changes gained by meeting Ministers in both Houses were later described by the former Leader of the Parliamentary Bar as being unique in his experience. In part that was due to quoting the words of a leading TRF red-head which were repeated by Jim Paice (then Conservative MP, SE Cambridgeshire, and Shadow Minister for Agriculture) in the Commons in a double act with Paddy Tipping (then Labour MP, Sherwood). Apart from Paddy telling Jim Knight (Minister) at a later meeting that the TRF were "*taking the piss out of you*" (from which we never looked back), the quote in Parliament led to the resignation of the TRF Chairman two weeks later. NERCA subsequently killed an estimated 3-4,000 off-roader claims nationally.

GLPG's Mission Statement at the time reflected the NERCA battle ahead. It has since been updated and the 2008 version says "*The Green Lanes Protection Group is an informal alliance of environmental, landowning and recreational organisations that share the aim of achieving a workable regulatory framework – legislation and firm government advice – which will protect green lanes from unsustainable recreational use by motor vehicles.*"

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

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Of its five Objectives, the first is **To seek the effective implementation of Part 6 of the NERC Act, which will prevent recreational motor vehicles from using green lanes not already recorded as byways open to all traffic on the definitive map.** In the light of the current legislative position, the Objectives are due for a further update.

GLPG and its members have over the years shaped the legal landscape for off-roading in a series of landmark court cases. In the *Marriott* case (*Marriott v SoSETR* Oct 2000) the scope of public inquiries was defined. In the *Todd* case (*Todd and Bradley v SoSEFRA* June 2004), it was established that inspectors must apply stiffer tests to claims than applies to highway authorities when initiating Definitive Map modification orders. The crowning success has undoubtedly been the combination of the *Winchester* and *Dorset* cases (*Winchester College and ANO v Hampshire CC* [2008] EWCA, and *R (TRF) v Dorset CC* [2015] UKSC 18). In *Winchester* it was held on appeal that the legal requirements for claims must be strictly applied. *Dorset* made an exception in cases where the wrong map scale had been used (which regrettably lost a local battle), but the Supreme Court found that *Winchester* had been correctly decided (which won the war). The net effect was to knock out an estimated further 800 or so off-roader claims nationally.

GLPG has had a string of inquiry cases where objections to BOAT claims have succeeded. The latest have included two in Dorset - (i) a connection track in Piddlehinton (where the landowners were represented at the second stage by James Pavey of Thomas Eggar, Hon Adviser to GLEAM) and (ii) Seiver's Lane in Batcombe/Leigh (albeit with peripheral input only by GLPG). Another at Chilham in Kent (James again acting) depended wholly on the impact of the *Winchester* case. At Sturton le Steeple, Nottinghamshire, four ways became restricted byways, three involving technical argument as to the local authority making applications to itself and the fourth failing as to supply of documents. All four relied on *Winchester*.

In the passage of the Deregulation Act 2015 GLPG was very active in pushing for an amendment to reduce the impact of off-roading. The objective is to classify some or all green lanes (Unsealed Unclassified Roads, or UUCRs), where the exact level of public rights is unknown, as restricted byways. For complex reasons, the amendment was withdrawn in exchange for a promise by the Government to resurrect the Stakeholder Working Group whose years of work had resulted in a short section in the 2015 Act, jealously guarded by Defra. The intended phoenix was popularly to be known as 'SWG2' and GLPG was expecting to have a seat at the table, to be occupied by our member Peak District Green Lanes Alliance (PDGLA) which, together with able assistance from Yorkshire Dales GLA, has been spearheading the battle against highly damaging off-roading in national parks. Regrettably an axe descended in the form of a change of government and the current spending review, but the phoenix is not dead yet. Long live GLPG.

⁽¹⁾ The Green Lanes Protection Group presently represents the following 22 organisations: Allen Valleys Action Group, Battle for Bridleways Group, Brecon Beacons Park Society, British Driving Society, Cambrian Mountains Society, Campaign for National Parks, Campaign to Protect Rural England, Campaign for the Protection of Rural Wales, Country Land and Business Association, Cycling UK, Exmoor Society, Friends of the Lake District, Friends of the Ridgeway, Green Lanes Environmental Action Movement, Long Bostle Downland Preservation Society, North Wales Alliance to Influence the Management of Off-Roading, Peak & Northern Footpaths Society, Peak District Green Lanes Alliance, Save our Paths (North Wales), South Downs Society, West Somerset & Exmoor Bridleways Association and Yorkshire Dales Green Lanes Alliance.

Contact the GLPG through its Chairman, David Gardiner, on 01488 638227, or write to The Old Rectory, Lilley, Newbury, Berkshire RG20 7HH.

Grim Fairy Tale Update

by Andy Dunlop, GLEAM Committee member

You may recall, O best beloved, that in the last newsletter we told the Grim Fairy Tale of a farmer and his track, troubled by a mysterious black line, like no other, upon a mystical map, of the Council that said the track was a byway despite there being no legal history, and that this led to the arrest of the farmer's adviser for "wilful obstruction of a highway". We went further to explain that the arrested man was not prosecuted, as the Council declined to back up their case, and the track remained blocked. There's now more...

After the matter of "wilful obstruction of a highway" was dropped, the man, who you may also recall is neither a Prince nor handsome, wrote to the Council and asked that they refund the vehicle release fee and some other costs, as he held them responsible for these. "No" said the Council "*it wasn't our fault*" (even though they had told the Police that the way was a Highway and asked for his car to be moved). The complaint went to the highest possible level, but the Council still said "*No, not our fault, we are not responsible for the Police's actions*".

Frustrated by this shoulder-sloping, the man then approached the Chief Constable of the Police and, after apologising for taking up her most excellent Officers' time, he asked for the money he had been forced to pay be returned. The Chief Constable, a most serious and busy lady, sent the request to a Chief Superintendent, and he sent it to his Inspector for advice. The Chief Superintendent then replied that, as the route was on a thing called "Google Maps" it must be a Highway, so the man was guilty and so, no, he wouldn't get his money back.

The man persisted, explaining that, oddly enough, Police HQ's driveway was also on "Google Maps", and that it wasn't a Highway; furthermore, that no one should be forced to pay a penalty without recourse to a Court. The Police Legal team then got involved and suggested that "*it wasn't their fault, but that of the Council*" and perhaps he should "*take it up with them*". The man wrote back, with something called a "*Letter of Intent*", saying that, as his Article 6 Human Rights had been breached, perhaps, just perhaps, a County Court Judge should decide if the Police could keep the money. Strangely, the Police then (without admitting any liability, ever or at all) sent him his fees and costs back.

Meanwhile, the Council published a note for all to see complaining that a group of horse riders (who we shall refer to as Happy Valley Bridleways Group) served Notices requesting that the Council clear the track of obstructions placed there by the farmer. The Council said "*In response we then served notice on the owners of (the Farm) to remove an obstruction from the public right of way. When the owners failed to comply, we were then obliged to try and clear the obstructions ourselves, and we attended the site to carry this out on 20 October 2015. On attending, we were prevented from removing the obstruction when the farm owners and a group of local people positioned themselves across the lane and refused to move. We are now left in a difficult position – if we fail to get the obstruction removed then we could be taken to court for non-compliance with the statutory duty to keep the track clear. But it appears that further attempts to clear the track are unlikely to be successful, and would lead to additional costs at a time when budgets are already under strain*".

The farmer responded to this note and even went on to advise Happy Valley Bridleways Group (who were not at all happy) that they should now take the Council to a Magistrates Court to get an Order and, if they did get an Order, he would remove all the obstructions straight away.

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So, in January, they did just that. They took the Council to Court, and the parties (Happy Valley, The Council and of course, as is fair, the farmer as well) all went to stand in front of a District Judge to argue their cases.

The horse riders' man went first, he stood up and said passionately *"It's a Byway and we want to ride it, we want an Order to clear the track"*. He then sat down, passionately. The Council went next. They had an expensive and serious Barrister, two serious solicitors and 4 other very serious people. Their Barrister impressively stood up and, with an air of gravitas honed through years of training and practice, said *"We will not resist such an application!"* He then, impressively, sat down. Then it was the farmer's turn. He didn't stand up, but his wife did, for she had already written to the Judge and sent him legal arguments that the man who went on a short holiday had prepared. Although nervous in such an imposing place, she read out what she had to say: *"that the way was not drawn on the mysterious map as a byway, but only as a black line like no other and, because of the Council's failures, the Judge could not issue an Order"*. She also said lots of other things about *"serious dispute"*, 30 tons of cow manure, a pile of logs, a caravan, a human barricade and a barbed wire fence. She then sat down.

The Judge listened to all of this and then questioned the Council's Barrister. It was a very one-sided conversation, as the Barrister could not answer the questions. The Council's Barrister then asked for an adjournment so that they could get maps for the Judge and, importantly, so that the Council could *"reconsider its position"*.

The Judge smiled upon the farmer's wife and said *"that would be a good idea"*. So they all went away for a few weeks.

However, a few days later, after Happy Valley Bridleways Group had thought about what had happened and what had been said, the horse riders withdrew their application to the Court. They won't say why they withdrew it, but perhaps it was because the Farmer's wife's argument was good, and they saw that the Council was wrong.

And there, O best beloved, we have it. The route is still blocked, Happy Valley Bridleways Group aren't happy and the Council have stated publicly, and in writing, that they will not undertake their statutory duty to protect and assert the public's rights which they say exist. We can only presume that they have chosen this illegal stance as they don't want the embarrassment of attempting to defend the legality of their Definitive Map; and maybe, just maybe, they have recognised that the farmer is right.

Post Script. The vehicle release fee and other costs came to £165. Totally unconnected with the recovery of the monies from the Police, but minutes afterwards an exactly similar amount was donated (which with the benefit of Gift Aid totalled £206.25) to The Care of Police Survivors Charity. This excellent charity assists the families of Officers killed on duty. <http://www.ukcops.org/>

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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www.gleam-uk.org

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