

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 recreational motor vehicles.

SPRING 2020

Lake District judicial review – permission granted

In our Spring 2018 newsletter we reported on the GLEAM-supported campaign to persuade the Lake District National Park Authority (LDNPA) to put Traffic Regulation Orders (TROs) on two green lanes in the Little Langdale area. The LDNPA Rights of Way Committee considered the matter in October 2019. It decided not to start the TRO consultation process for either route. GLEAM responded by seeking counsel's opinion on whether there were legal grounds for challenging this decision. In the light of the legal opinion received, an application on behalf of GLEAM was made to the High Court in December asking for permission for judicial review.

The LDNPA and the Trail Riders Fellowship made legal submissions seeking to persuade the court that the LDNPA has no case to answer. The court did not agree. It has said that our case against the LDNPA is 'arguable' and 'significant' and it has granted permission for judicial review. The case will be heard in Manchester. No date has yet been set.

The main focus of the case is LDNPA's interpretation and application of the Sandford Principle. The Sandford Principle, named after a 1974 review of the national parks carried out by Lord Sandford, is enshrined in the 1995 Environment Act. The Act says that if it appears that there is a conflict between the two statutory purposes of the National Parks (on the one hand conservation and enhancement of natural beauty, on the other hand promoting opportunities for the public to understand and enjoy the special qualities of the national parks), then greater weight must be attached to conservation.

The legal action is being paid for through crowd funding. Over £64,000 has been raised. Over 2,000 people have made donations. GLEAM is hugely grateful to everyone who has contributed as the legal action could not go forward without their support.

The LDNPA committee papers advising the Rights of Way Committee on the decision which is being challenged by GLEAM are at <https://www.lakedistrict.gov.uk/aboutus/committee-meetings-calendar/archive-committee-papers-2019/2019-rights-of-way-committee/08Oct2019>.

A Lake District Green Lanes Alliance (LDGLA) has been formed to campaign for TROs on other green lanes in the Lake District which need protection from the damage and nuisance caused by recreational motor vehicles. LDGLA is a member of the Green Lanes Protection Group. More information is at www.ldgla.org.

The use of green lanes for illegal access

Driving a motor vehicle on land which is not part of a road has been a criminal offence since the Road Traffic Act of 1930. The only exceptions are if the driver has lawful authority (e.g. is relying on an existing private right of way, or has permission from the landowner), for the purpose of parking within 15 yards of the road, and if the driver can prove to the court that his/her driving was for the purpose of saving life, extinguishing fire or meeting any other like emergency.

However some recreational motor vehicle drivers use some green lanes to access land which they are not authorised to drive on. In some cases this land is sensitive to damage for archaeological or environmental reasons and therefore subject to other protective legislation, which means the drivers are committing a further criminal offence by driving on it. This article provides some examples of the use of green lanes for illegal access to adjacent land and of attempts to prevent such access.

Denbighshire

Motorbikers and 4x4 drivers have chosen to leave a byway open to all traffic (BOAT), known as Three Trees, to attempt a steep hill climb on adjoining pasture land. This activity has occurred regularly over several years, and now a large erosion scar has developed on the hillside. The BOAT and the adjacent land are in the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB), but neither AONB staff nor Denbighshire County Council have taken any action to protect the pasture land.

January 2019. Damage to hill-pasture in Clwydian Range and Dee Valley AONB, caused by motorbikers and 4x4 drivers leaving the Three Trees BOAT (the track at the bottom left of the photo)



Derbyshire (Peak District National Park)

The BOAT called Pindale runs between a disused limestone quarry and a historic lead mine (a scheduled ancient monument). Boulders and notices were put in place, by the National Park Authority, English Heritage and the landowner in 2010, to try to protect the lead mine spoil bank and rake, which are part of the ancient monument, from damage by motorbikes and 4x4s. But 4x4 drivers and motorbikers have made routes which by-pass the boulders, so that damage to the area continues.

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Pindale, March 2019.

This photo shows, from the bottom, damage to the boundary bank of the quarry, the route of the BOAT, the boulders and damage to the lead mine spoil bank and rake.



Some motorbikers used an unsealed unclassified county road, Brushfield, to access the spoil heaps of another historic lead mine. Notices explaining that the spoil heaps were part of an ancient monument failed to deter the motorbikers. But, since Brushfield was added to the definitive map and statement as a bridleway in December 2016, and signs were put up at each end of the route stating that unauthorised motor vehicle use of the route was now illegal, motor vehicle numbers have reduced significantly and the spoil heaps have not been damaged.

Brushfield, December 2014. Motorbike damage to the ancient monument. This was despite National Park Authority notices on posts next to the track which asked motor vehicle users not to drive on it and explained that damage to it was a criminal offence.



Devon

Land adjacent to an unsealed unclassified county road (UUCR) called Holbeam Lane has been damaged by recreational motor vehicles. The Green Lane Association (GLASS), a national organisation representing recreational motor vehicle users, put up notices last year, jointly with the police and the Environment Agency, telling users that leaving the route is illegal. (The Environment Agency is concerned because such activity near the ford

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on the lane will increase the risk of flooding in the area.) GLASS is now promoting voluntary restraint (i.e. asking recreational motor vehicle drivers not to use the lane), following continued damage and removal of the notices.

Essex

4x4 drivers have driven off a BOAT in Essex into the adjacent woodland. As well as damaging this land, they have made impassable a public footpath which runs along the edge of the woodland. This is despite Essex County Council putting up posts to try to protect the footpath and repairing the surface of the BOAT.

Essex, March 2019. The public footpath runs between the posts and the trees on the left of the photo. Essex County Council installed the posts in 2015 to try to protect the footpath from damage caused by recreational motorists driving onto the footpath from the woodland (on the right of the photo), but this has proved ineffective. Note the ruts, the discarded tyres, and the uprooted post between the trees on the left.



Damage to woodland adjoining a BOAT has happened elsewhere in Essex, at Great Dunmow. The Green Lane Association (GLASS) and All Terrain UK (two of the national organisations representing recreational motor vehicle users) raised money last year to “smooth over” the ruts and “bomb holes” in the woodland and to place gabion baskets (metal cages filled with hardcore) alongside the BOAT to try to prevent access into the woodland. Their crowdfunding webpage said that the woodland “resembles a ‘pay & play’ site, with deep heavy ruts, bad enough to get many modified 4x4s stuck”. This work has had to be redone because other recreational motor vehicle users winched the gabion baskets out of their way and damaged the woodland again. GLASS is now organising the planting of a hedge (funded by a grant from Dunmow Town Council) to screen the barrier.

Kent

BOAT KH164 is in the Kent Downs AONB. Where it runs through ancient woodland owned by the Woodland Trust there has been repeated damage by recreational motor vehicles

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leaving the BOAT and driving illegally over vulnerable woodland. The Trust has had to erect sturdy fencing to protect the woodland, notices having failed to stop the illegal access. The Trust reports a cost of several thousand pounds.

Where Drake Lane, another BOAT in the Kent Downs AONB, climbs the scarp slope of the downs, recreational motor vehicles are driving illegally on the steep chalk banks at the side of the BOAT and damaging the adjacent chalk grassland. The landowner has made efforts to stop this, but his efforts have been thwarted.

Motor vehicle damage to chalk bank boundary of Drake Lane. Metal posts put up by the landowner to deter access have been removed.



Monmouthshire

In January this year, the Woodland Trust reported severe damage to a Bronze Age burial mound (a scheduled ancient monument) on its land by off-road motor vehicles to the police and Cadw (the Welsh Government organisation responsible for ancient monuments). The Woodland Trust said it had been spending around £1,500 per year to try to keep motor vehicles away from this and other burial mounds on the land but would have to spend more. The burial mounds are very close to and accessible from an unsealed unclassified county road. The land, Wentwood, is part of the largest area of ancient woodland in Wales. Gwent Police described the damage as appalling (<https://www.bbc.co.uk/news/uk-wales-51013596>).

North Yorkshire (Yorkshire Dales National Park)

Cam High Road is a BOAT which runs for 5 ½ miles from Bainbridge and is the green lane in the Yorkshire Dales National Park which is most popular with recreational motor vehicle drivers, following the closure of other green lanes by traffic regulation orders by the National Park Authority in 2008 and 2010. At its highest point, it crosses an area of limestone grassland where 4x4 and motorbike drivers have left the route, resulting in ugly ruts and, potentially, disturbance to ground nesting birds such as curlew and lapwing.

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Cam High Road, March 2020. 4x4 and motorbike ruts damaging the grassland near to the route and starting to expose the rock below.



Sheffield (Peak District National Park)

SSSI moorland between two BOATs, Houndkirk Road and Jumble Lane, is being repeatedly and deliberately damaged by 4x4s and motor bikes. Notices telling drivers to keep off are ignored or mysteriously disappear.

Track created by 4x4s and motor bikes between Houndkirk Road and Jumble Lane. A warning notice put up by Natural England and Sheffield City Council has disappeared from the post on the track.



Shropshire

Wootton Lane is a BOAT which is not enclosed by fences or hedges where it runs through woodland and crosses a stream. 4X4s have gone off the route into the woodland and some have got stuck in mud in it. Over the winter of 2019/20, Shropshire Council has been putting in a barrier of 1.5 metre high concrete blocks to try to prevent further illegal use of the woodland. The cost of this work has been met in part by GLASS and by the landowner, the National Trust.

Surrey

Surrey County Council and landowners have been trying to stop 4x4 drivers and motorbikers damaging land adjoining Wolvens Lane, a BOAT in the Surrey Hills Area of Outstanding Natural Beauty, for many years. They have used notices explaining that the boundary banks are historic, barriers where footpaths and bridleways leave the BOAT and posts and fencing. Most recently, in 2018/19, the County Council has spent £3,500 on putting the BOAT in good condition, so that users do not have the excuse of a damaged surface for leaving the route. It and the landowners have also stabilised eroded banks and put up new barriers (gates, logs, stumps) to try to prevent vehicles leaving the route. GLASS has contributed towards the landowners' costs. One of the landowners, the National Trust, has already had to repair a new steel gate which had been cut through.

Conclusion

Warning notices were insufficient at Pindale, Brushfield and Holbeam Lane. It is too early to say whether the barriers being put in place on the Great Dunmow lane and Wootton Lane will be effective in stopping illegal access to adjacent land. But the evidence from elsewhere is that barriers are often ineffective, as well as being intrusive in the countryside and costly. Prohibiting recreational motor vehicle use of the green lane which provides access to the land being used illegally does however appear to be effective (e.g. Brushfield as described above and the Warnford, Hampshire, lanes discussed in our Autumn 2019 newsletter).

TRF trickery

By Graham Plumbe

In the Autumn 2019 edition a brief explanation was given as to the statutory provisions whereby unrecorded public motor vehicular rights (pmvrs) were extinguished w.e.f. 2 May 2006 subject to exceptions. It had been held by the Supreme Court that 5 BOAT applications, rejected by Dorset Council as being defective in being drawn to the wrong drawn scale, were in fact valid given a strange interpretation of the words 'drawn scale'. The Court Order was the subject of a Declaration by the Deputy Registrar seeking to record the Order in short form, where he unfortunately used an ambiguous phrase that the applications 'were made in accordance with paragraph 1 of Schedule 14'. In fact, the only provision in issue had been the first limb of Sch 14 para 1(a), referring to 'drawn scale'.

The ruling by the Court of Appeal in the Winchester case (that the requirements of Sch 14 must be strictly complied with) was confirmed by the Supreme Court as having been correctly decided, and this remains clear law in respect of the whole of Paras 1(a) and 1(b) of Sch 14 subject only to the odd interpretation of 'drawn scale'.

The Trail Riders Fellowship (TRF) are claiming that the Declaration by the Deputy Registrar (i) is an Order of the Supreme Court, and (ii) is to be construed as saying '... were made in accordance with **all** the provisions of paragraph 1 of Schedule 14'. Dorset

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Council agrees with the Green Lanes Protection Group (GLPG) that the interpretation of the Declaration is wrong, and that the applications were not compliant, but agrees with the TRF that the Declaration is a Court Order. GLPG has pointed out that the TRF construction effectively gives the Registrar unthinkable powers to override the law (see below) and allow the TRF to succeed with non-compliant applications. Supported by GLPG, Dorset asked the Registrar to clarify the wording of the Declaration. The matter was passed to the Court and it was referred to Lord Carnwath who was one of the original judges. In the last newsletter we concluded by saying 'watch this space' in anticipation of a favourable outcome based on knowledge of the case and common sense.

'Twas not to be. Lord Carnwath took leave of his senses and said in November "The court sees no reason to vary the terms of the order which was agreed between the parties, and reflected the form of the relief sought in the original claim. Had the council wished to challenge the validity of these applications on other grounds within schedule 14 para 1, they should have done so expressly in these proceedings or reserved their position. That not having been done, it is too late to raise such issues at this stage."

These comments relate to 5 cases, all of which need to be revisited because some or all are invalid for other reasons. They have come to bear on two in particular – Dorset Ref T353 and T354 (both Beaminster). T353 was referred to the Planning Inspectorate (PINS) last year and GLPG has written to PINS giving eight sound reasons why Lord Carnwath is wrong. We pointed out that the statement implies authority for the Registrar to authorise defective applications to succeed and in so doing permit the TRF to disregard the law as held by the Court of Appeal in the Winchester case and by the Supreme Court in the Dorset case. We also suggest that Lord Carnwath has not even read the papers because he is woefully short of reference to what the parties have said, and makes a number of serious errors as to the history of the case and what was agreed. Above all, we point out that the statement is not a ruling, so that it is open to an inspector to reach his/her own conclusion.

Asked as to where T353 has got to, PINS says:

"No further evidence has been exchanged and the papers are with an inspector for decision. However, any decision will not be issued until we return to the office because a number of interested parties do not have email addresses."

T354 is more recent, and is at the stage where an order has been made, has been objected to and so should now be referred to PINS by Dorset Council. It is being held up however as Officers are working from home and it will be some time before Dorset Council is able to put its submission together for referral of the order.

So as to both we say 'watch this space, but now you will have to be patient!'

*Published by GLEAM, PO Box 159, Otley, LS21 9BT, www.gleam-uk.org.
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