

GLEAM



Green Lanes Environmental Action Movement

www.gleam-uk.org

A newsletter for those interested in protecting ancient ways from the ravages of recreational motor vehicles.

SPRING 2022

Defra consultation on green lanes

Many thanks to everyone who took part in the Defra consultation on its response to the Glover landscapes review. The inclusion of questions on the use of unsealed routes by recreational motor vehicles was a welcome development. It means that Defra is well aware of the problems being caused by green lane motorists. GLEAM worked hard to promote awareness of the consultation, e.g. with walking and bridleway groups and relevant national organisations. It will be some time before Defra publishes the outcome of the consultation and what steps it proposes to take. We will keep you posted.

Costs of repairing green lanes

Repairs to green lanes are expensive and may not result in surfaces which can sustain continued motor vehicle use. A GLEAM member has said repairing green lanes is a Sisyphean task for highway authorities. North Yorkshire County Council (NYCC) spent over £76,000 (over £7,000 per kilometre) repairing two linked green lanes, In Moor Lane (a route which was upgraded from bridleway to byway open to all traffic in 2012) and Deadmans Hill (an unsealed unclassified road), in the five financial years 2016/17 to 2020/21. The repairs on Deadmans Hill follow earlier repairs by NYCC in the late 1990s, 2000 (in collaboration with the landowner and recreational motor vehicle users) and 2013.

Hampshire County Council has spent an average of over £100,000 per year on repairs to byways open to all traffic (BOATs) over the last four financial years. This expenditure is 37% of its public rights of way capital spend; but BOATs are only 5% of its rights of way by length. The cost per kilometre varied from over £18,000 to over £77,000. It appears that even more will need to be spent on repairs to Hampshire green lanes; 17 BOATs are currently subject to temporary traffic regulation orders to prevent damage or surface deterioration. Some repairs are having to be repeated; a BOAT which has been closed to cars and quad bikes since 1999, but is open to motorbikers, has required repair twice in the last four financial years.

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

In 2019, the Lake District National Park Authority applied for funding from the National Grid's Landscape Enhancement Initiative, for repairs to a BOAT called Breast High Road and native tree planting in its vicinity. Funding of £324,000 was confirmed in November 2021 and the repair work will start in May 2022. The National Park Authority became responsible for Breast High Road in 2016, when the land over which it runs became part of the extended Lake District National Park. Repairs to Breast High Road had been carried out in 2012 by Cumbria County Council, at a cost of £58,276 (over £26,000 per kilometre) because the route had become unsafe for use by vehicles. The National Park Authority attributes the deterioration in the route since then to "*visitor pressure*", the route's exposed nature and flood events. It says that the 2012 repairs were "*not ultimately suitable for the type of road, the traffic, or the terrain*" but that its (more expensive) 2022 repairs will make the route a sustainable green lane.

As with Breast High Road, other authorities are having to use funding sources other than their own budgets to repair or protect the environment of green lanes. Part of Hampshire County Council's capital expenditure on BOATs in 2018/19 was a contribution by one of the district councils from its Section 106 money, contributions paid by developers as part of planning agreements. In February 2022, the Peak District National Park Authority used funding from Defra's Farming in Protected Landscapes scheme for fencing to protect fields adjoining a BOAT from damage by recreational motor vehicles.



Photo © Colin Smith (cc-by-sa/2.0)
4x4 and motorbike ruts on Selborne BOAT in 2012, repaired by Hampshire County Council in 2017/18.



4x4 and motorbike ruts in marshy ground adjacent to Breast High Road BOAT, September 2020.

Green lanes protected by the Natural Environment and Rural Communities Act (NERCA) 2006

Warwickshire

In 2019 Warwickshire County Council (WCC) made a definitive map modification order adding an unsealed unclassified road to the definitive map and statement as a public bridleway. The route is popular with motorbikers and 4x4 drivers so individual motorists and their user organisations, the Green Lane Association (GLASS) and the Trail Riders Fellowship (TRF), objected, leading to a public inquiry in December 2021. The Inspector's decision, confirming the route as a public bridleway, was issued in April 2022, and is available at <https://www.gov.uk/guidance/2020-rights-of-way-order-information-decisions-and-maps>. The Inspector agreed with WCC and GLEAM that the historic evidence showed that the route was a highway, since before 1744 when it was included as a pre-existing bridle road between the villages of Aston Cantlow and Newnham in the Aston Cantlow inclosure award, to 1911, when it was recorded as a publicly maintainable bridle road in the minutes of the then highway authority, Alcester Rural District Council, and to 1951 when Aston Cantlow Parish Council claimed most of it as a public bridle road. He also agreed that the subsequent historic evidence did not conclusively show that public vehicular rights had been dedicated after 1911.

In addition to challenging WCC's and GLEAM's interpretations of the historic evidence, the TRF argued that use by motorbikers and 4x4 drivers had created public vehicular rights before NERCA prevented such creation in 2006. If the TRF had succeeded in either argument for public vehicular rights, the order would have been modified to add the route either as a byway open to all traffic, or not confirmed because the route was found to be an ordinary road (the TRF's preferred outcome). This is because the route is excepted from NERCA's extinction of pre-2006 public motor vehicular rights, being on WCC's list of publicly maintainable highways as an unsealed unclassified road.

Creation of public rights by use requires 20 years use, counted back from the date the right was brought into question, for dedication under statute (section 31 Highways Act 1980) or for what could be a shorter period of years, where there is evidence that the landowner intended to dedicate, for dedication under common law. The TRF argued that NERCA's prevention of creation of public rights by prospective motor vehicle use in 2006 was a bringing into question; but the Inspector rejected this argument because there is no statutory provision by which the commencement of NERCA is a bringing into question. He agreed with WCC's arguments that there were two earlier dates when public vehicular rights were brought into question. The first was in 1984, when a historic clap gate (a hunting gate which is self-closing) on the route was destroyed by a group of 4x4 users so that they could drive the route. A landowner's sons heard the noise and blocked the route

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

with their tractor. But when they said they would call the police one of the 4x4 users claimed to be a police officer. The second was in 2001 when one of the landowners made a declaration under section 31(6) Highways Act 1980 that the route was a public bridleway and that no higher rights had been dedicated over it. This declaration and incidents in the 1990s where the landowners had challenged motor vehicle users mean that common law dedication was not possible, and that statutory dedication was not possible on the basis of 20 years use counting back from the second bringing into question in 2001. The Inspector rejected statutory dedication by motorbike use during the 20 years preceding the destruction of the clap gate in 1984, because no motorists claimed they had used the route before 1970 and because claimed use in the 1970s was limited in number of users and frequency. He also noted that no motorbiker had explained how they got through the clap gate (although it might have been possible to wheel a motorbike through it), that some of the information on some user evidence forms was not provided by the user, that there were differences between evidence submitted by the same user at different times, and that some users did not use the entire route. WCC and GLEAM also argued that the evidence of public nuisance (walkers and horse riders being deterred from using the route, damage to the surface and adjacent farmland, disturbance from night driving) provided by local residents precluded the creation of public vehicular rights by use. But the Inspector did not need to consider this evidence as he had already found that dedication on the basis of use had not happened.

This case is important for several reasons: because the TRF's arguments about dedication based on use were defeated; because it clarifies that NERCA commencement was not a bringing into question; and because it is an example of an unsealed unclassified road being found not to have historic public vehicular rights. Local residents and non-motorised users will now be protected from the nuisance caused by motorbikers and 4x4 drivers.



Recreational motor vehicle damage in 2020 to the Aston Cantlow unsealed unclassified road and adjacent arable land.



Recreational motor vehicle damage in 2020 to the Aston Cantlow unsealed unclassified road, now a bridleway.

Wiltshire

In the Autumn 2021 newsletter we included a photo of a public footpath in Steeple Langford, Wiltshire, which GLASS and the TRF were trying to get upgraded to byway open to all traffic (BOAT), arguing that it has historic public vehicular rights and is excepted from NERCA because its main public use in the 5 years ending May 2006 was by motor vehicles. Wiltshire Council has now completed its investigation into this definitive map modification order application and concluded that this NERCA exception does not apply. This footpath will be upgraded to restricted byway, as historic public vehicular rights have been found to exist, but it will remain protected from recreational motor vehicle use.

GLASS and the TRF also tried to have two restricted byways which terminate on this footpath upgraded to byway open to all traffic, again claiming that the main public use in 2001-6 was by motor vehicles. Wiltshire Council has also rejected this claim. Its reason for rejecting these claims for NERCA exception is that evidence from local residents and non-motorised users of the three routes shows that non-motorised users made more use of the routes in 2001-2006 than motorised users. In its report on these claims (available at https://www.wiltshire.gov.uk/media/8994/Steeple-Langford-Decision-Report-Final-r/pdf/Steeple_Langford_Decision_Report_Final_-_r.pdf?m=637843986890300000) Wiltshire Council noted that the user evidence forms submitted by GLASS and TRF members were difficult to analyse because, for example, some forms did not have maps, some maps did not show the routes used and some forms were not signed.

This case is important because it shows that motorised user claims that they were the main users in 2001-2006 must be tested against local residents' evidence, and be subject to the same tests of consistency and completeness as other user evidence.

View from 4x4 stuck in ruts on a BOAT elsewhere in Wiltshire, January 2022.



Deadline for historic public rights of claims in England

We wrote about the Countryside and Rights of Way (CROW) Act 2000 deadline of 1 January 2026 (the cut-off date) for applications for definitive map modification orders (DMMOs) based on historic (pre-1949) evidence in our last newsletter (Autumn 2021). Instead of extending the cut-off date to 1 January 2031, as requested by user organisations such as the British Horse Society and the Ramblers Association, Defra announced in January 2022 that it intended to repeal this provision of the CROW Act. Defra did not say what would happen to the provisions in the CROW Act which say that byways open to all traffic (BOATs), i.e. ways mainly used as footpaths and bridleways but also legally open to the public with motor vehicles, could not be added to the definitive map after the cut-off date, or which apply the cut-off date to DMMO applications which seek to downgrade BOATs to footpath or bridleway or which seek to show there are no public rights of any sort, on the basis of historic evidence. We assume that these provisions will also be repealed, as they also depend on there being a cut-off date.

Repeal of the former provision, BOATs not to be added to the definitive map after the cut-off date, is probably a good idea. This provision was made redundant for public rights of way not recorded on the definitive map nor on highway authorities' lists of publicly maintainable highways (lists of streets) by the Natural Environment and Rural Communities Act (NERCA) 2006. For historic public vehicular rights of way on lists of streets, it would have had the effect of putting them in a limbo, where they could not be added to the definitive map after the cut-off date, even if DMMO applications were outstanding.

The safety of motorised and non-motorised users of green lanes

A number of incidents where recreational motor vehicle users have had to be rescued from crashes or other dangerous situations on green lanes have been reported in the last twelve months. In August a motorbiker crashed on an unsealed unclassified road (UUR) in the Forest of Bowland; the local mountain rescue team had to call on a coastguard helicopter to take him to hospital because his injuries were so bad. In September a 4x4 driver crashed on a UUR in the Lake District; Coniston Mountain Rescue Team, an air and two land ambulances were involved in getting the seriously injured driver and his passenger to hospital. In November, two North Yorkshire mountain rescue teams were called out to assist two drivers, one of whom "*became unwell whilst debogging his 4x4*" in snowy weather on Deadmans Hill, an unsealed unclassified road (UUR) which links Nidderdale Area of Outstanding Natural Beauty and Yorkshire Dales National Park (see article on costs of repairing green lanes on page 1). In February, a 4x4 got stuck in a ford on another UUR (the day after a temporary traffic regulation order on the route had been lifted) in Nidderdale AONB. A land and air ambulance and the fire service were involved in

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

the rescue of the two passengers, one of whom was a child. In April, Cleveland Mountain Rescue Team rescued a motorbiker who had broken his leg on an UUR in North York Moors National Park.

The 4x4 stuck in a ford on an unsealed unclassified road in Nidderdale Area of Outstanding Natural Beauty, February 2022. The passengers were rescued by the emergency services.



Changes to the Highway Code to improve safety of non-motorised users

The Department for Transport consulted in 2020 on changes to the Highway Code with the aim of making highways safer for the most vulnerable users, i.e. pedestrians, cyclists and horse riders. This is a key government priority because of the health and environmental benefits of walking, cycling and horse riding. The amended Highway Code has now been agreed by Parliament and is available at <https://www.gov.uk/guidance/the-highway-code>. Highway Code rules which are relevant to motorised users of green lanes include:

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

Rule 163 on overtaking

“.....

- *give motorcyclists, cyclists, horse riders and horse drawn vehicles at least as much room as you would when overtaking a car As a guide:*
 - *leave at least 1.5 metres when overtaking cyclists at speeds of up to 30mph, and give them more space when overtaking at higher speeds*
 - *pass horse riders and horse-drawn vehicles at speeds under 10 mph and allow at least 2 metres space*
 - *allow at least 2 metres space and keep to a low speed when passing a pedestrian who is walking in the road (e.g. where there is no pavement)*

.....

- *you should wait behind the motorcyclist, cyclist, horse rider, horse drawn vehicle or pedestrian and not overtake if it is unsafe or not possible to meet these clearances”*

Rule 206

“*Drive carefully and slowly when*

....

- *approaching pedestrians on narrow rural roads without a footway or footpath. Always slow down and be prepared to stop if necessary, giving them plenty of room as you drive past*

....”

Rule 215

“... *Be particularly careful of horse riders and horse-drawn vehicles especially when approaching, overtaking, passing or moving away. ...When safe to do so, pass wide and slow, allowing at least 2 metres of space*”

Many green lanes are narrow for the whole or parts of their lengths. Keeping non-motorised users safe e.g. within the Highway Code rules, on such green lanes, may require authorities to consider traffic regulation orders.

*Published by GLEAM, PO Box 159, Otley, LS21 9BT, www.gleam-uk.org.
Views expressed are those of the contributor and are not necessarily those of GLEAM.*