Select Committee on the Natural Environment and Rural Communities Act 2006

Corrected oral evidence: The Natural Environment and Rural Communities Act 2006

Tuesday 21 November 2017
11.05 am

Watch the meeting

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Lord Bradshaw; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 16 Heard in Public Questions 137 - 142

Witnesses

I: Dr Michael Bartholomew, Chair, Green Lanes Protection Group; Dr Diana Mallinson, Honorary Secretary, Green Lanes Environmental Action Movement.
Examination of witnesses

Dr Michael Bartholomew and Dr Diana Mallinson.

Q137 The Chairman: Good morning and thank you very much, Dr Bartholomew and Dr Mallinson, for coming down to see us. We are very grateful to have you here. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website and you will have the opportunity to make corrections to that transcript, where necessary, in due course. Would you introduce yourselves for the record and then we will go into questions?

Dr Diana Mallinson: I am honorary secretary of the Green Lanes Environmental Action Movement, GLEAM, which was founded in 1995 to campaign for changes to the law of England and Wales to stop off-road drivers damaging or destroying green lanes and for the rights of walkers, horse-riders, cyclists, carriage-drivers and the disabled to use green lanes without danger or inconvenience.

Dr Michael Bartholomew: I am chairman of the Green Lanes Protection Group, which was founded by GLEAM later on because we wanted to co-ordinate and bring together the large number of local green lane groups up and down the country, some very small, some quite significant, which were concerned about the wreckage of their green lanes by motor vehicles. We have 25 associated members and we represent their views.

Q138 The Chairman: Thank you very much. Perhaps I can ask the first question. What has been the effect of Part 6 of the NERC Act 2006 on England’s green lanes since it came into force?

Dr Diana Mallinson: One of the elements in Part 6 was Section 72, which gave national park authorities the power to make traffic regulation orders. Two of the national parks have used that: the Yorkshire Dales National Park to start with and, subsequently, the Peak District National Park. The main impact of Part 6 of the NERC Act was to stop byways open to all traffic, which are public rights of way that are legally open to motor vehicles, being added to the definitive map and thereby definitely becoming legally open to motor vehicles.

It worked very well for routes that were already on the definitive map as footpaths, bridleways or restricted byways and was very effective, but the big gap was in the routes that are on highway authorities’ lists of streets, which are routes that are publicly maintainable but their public rights are not defined. There are, in fact, more of those than there are of byways open to all traffic; there are 3,200 miles in England compared to 2,700 miles of byways open to all traffic. This was the main gap. These routes on the lists of streets are ancient highways and were created by horse and cart use, which was the principle on which Part 6 of NERC was based: that historic horse and cart rights should not lead to rights for modern motor vehicles but to rights for horse-drawn vehicles, i.e. should become restricted byways. We are looking for a way in which those
routes on the lists of streets can be protected in the same way as other green lanes were protected by the NERC Act.

**The Chairman:** You have not really answered my question about the effect of the NERC Act on your particular issues and problems.

**Dr Diana Mallinson:** The effect has been to save and protect a large number of routes on the definitive map and routes that were not recorded at all as public rights of way.

**Dr Bartholomew:** Before NERC, there was a very low threshold for vehicle users to claim a route and turn it into a vehicular route, and the number of routes that would become vehicular was virtually unstoppable. The NERC Act put a stop to that and stopped the expansion, but now it needs to start to reduce those that are there.

**Q139 The Countess of Mar:** What was the purpose of the exemption by which green lanes already on a county’s list of streets retained a vehicular right of access, and what have been the effects of this in practice?

**Dr Diana Mallinson:** When it devised this exemption, Defra said that it feared that if routes on the lists of streets were not exempted there would be unforeseen consequences on the ordinary roads network. It was also afraid that there would be effects on people’s rights of access to their property. That was the purpose, as Defra explained it. At the time, GLEAM and GLPG supported that, because we thought that stopping the expansion that Dr Bartholomew has referred to was more important than dealing with the lists of streets’ routes. I did not realise how many routes there were on the lists of streets which were going to be left out of the NERC Act.

**The Countess of Mar:** We have heard from you that local authorities are responsible for maintaining the roads on the lists of streets, yet we have seen some horrendous pictures of churned-up green lanes. What is your feeling about this? Have you approached local authorities with regards to maintenance, and what has their response been? It is difficult enough getting potholes in main roads fixed, is it not?

**Dr Diana Mallinson:** That is one of the issues: that there are lots of other pressures on their budgets.

**Baroness Scott of Needham Market:** We are navigating our way through the various legislative milestones, starting with the CROW Act and then the NERC Act. In your opinions, can the current issues be resolved by some relatively straightforward individual legislative changes, or is there a case for looking at the whole thing again? One of the things we have here is unintended consequences from both the CROW Act and the NERC Act, so do we need to think about it all again?

**Dr Michael Bartholomew:** I do not think you need to start from scratch, but a small piece of legislation that extinguishes vehicular rights on those 3,000 miles on the lists of streets would be simple and very effective, and would, I think, complete the work that Parliament intended
to do with green lanes. It is a loophole in the Act, which has been ruthlessly exploited by vehicle-users, which could be closed with a very small piece of legislation.

**Baroness Byford:** I have a supplementary question on that, and I should declare that, when the Act was going through, obviously I worked with colleagues here giving evidence. In section 5 of your written evidence, you imply that BOATs are being added to the definitive map after the cut-off date of 1 January 2026, and you go on to say, “However, we understand Defra does not intend to bring this provision into force”. My question is: what have you done about that, or have you taken any action with regard to that particular piece of evidence you gave us?

**Dr Diana Mallinson:** I ought to say that since I wrote that it has become unclear what Defra will do. There is a provision in the CROW Act that allows BOATs to be added after 2026, but it is not clear whether it will bring that in. If it does not bring it in, for authorities that are currently processing claims or adding routes on the lists of streets as BOATs all that work will be wasted by 2026. They will do that work, 2026 will come along, they will have to stop and those routes will not go on the definitive map in any way. They will end up in a limbo where we will know what rights they have because the authorities will have done the determinations, but we will not be able to add them to the definitive map.

**Baroness Byford:** Do you know how many local authorities have made progress and how many are waiting to see the outcome of that decision?

**Dr Diana Mallinson:** The only two authorities that are actively either processing applications or adding routes to the definitive map under their duty to keep it under review are Derbyshire County Council and Northumberland County Council.

**Q140 Baroness Whitaker:** A number of witnesses have told us that the different local authorities and national park authorities have had very different attitudes towards the use of traffic regulation orders. Why do you think that might be?

**Dr Michael Bartholomew:** There are four reasons. One is that they are very expensive for hard-pressed local authorities to bring about, because it requires so much legal paraphernalia, public consultations and so forth. Secondly, they are too litigious and lead to High Court actions by vehicle users who will pick holes in traffic regulation orders. If there is a colon that should be a semi-colon, they will litigate, and local authorities are very chary, understandably, of being taken to the High Court and having costs awarded against them. Thirdly, local authorities have very poor guidance from Defra on how to apply TROs. The advice they have is out of date, incomplete, and in some cases wrong, and if I were a highway officer looking for guidance I would be bereft.

Fourthly, and this goes back to something the Countess of Mar said, highway authorities, which are the agencies that look after routes on the lists of streets, have a tremendous job in keeping the black-top asphalt
roads in good order. They are full of potholes. For them, green lanes are a marginal concern which they can put aside, especially when they find that to repair a couple of miles of a green lane will be horrendously expensive. Those are the reasons why TROs have been an ineffectual instrument in the management of green lanes.

**Baroness Whitaker:** That might affect all local authorities, but we have heard that there are differing considerations. Do either of you want to add any more on why some go hard and some do not?

**Dr Michael Bartholomew:** The ones that are effective tend to be national park authorities, which under the NERC Act were given TRO-making powers. The Yorkshire Dales National Park Authority, which is the one I know best, was very quick off the mark, knew its green lanes intimately and decided that it would impose traffic regulation orders on them. If you move out of the national park into North Yorkshire County Council as a whole, its ability, let alone its inclination, to address the green lanes it is in charge of is very limited.

**Lord Cavendish of Furness:** What do you think is the background to the users being so litigious? It is very expensive being a litigant.

**Dr Michael Bartholomew:** It is, but they are so litigious because they see an end to their activities. The NERC Act severely curtailed their activities by stopping the expansion of the routes available to them and they see the ones left as ones which they must defend every inch of, so they will go to court, and they are quite well supplied with funds.

**The Earl of Arran:** Has Natural England or any other government body provided adequate guidance or support for authorities considering the use of TROs?

**Dr Michael Bartholomew:** No, it has not. The advice that authorities get is overlapping, out of date, contradictory and, as I said earlier, in some cases wrong. The best example I can give you is the handbook which every highway officer should have available to him or her for the management of green lanes. It was published in 2005, is completely out of date, and the examples are obsolete. It is nearly 70 pages long and just three and a half are given over to the application of traffic regulation orders, so authorities need better, up-to-date and more comprehensive guidance.

**The Chairman:** Who should produce this guidance?

**Dr Michael Bartholomew:** Parliament, via Defra and Natural England, has set up this working group, which you may know about, which is meeting on Friday for its fourth or fifth meeting in the hope that users of green lanes can see eye to eye and come up with recommendations that do not require new legislation and will see a better way of managing green lanes. As the convener of the subgroup looking at TROs, it seems to me that the chances of agreement are slim to vanishing.

**The Earl of Arran:** What happens then?
**Dr Michael Bartholomew:** We need to go back to Parliament. Parliament needs to get hold of this problem, take a deep breath and say, “Green lanes were not made for Land Rovers and motorbikes. They should be for non-motorised recreational users and farmers and occupiers who need them for access, but they are not suitable for motorised recreation”.

**Lord Bradshaw:** I declare an interest as a member of GLEAM, president of the Friends of the Ridgeway and a member of the Campaign to Protect Rural England. I also have long experience on the county council and the Thames Valley Police Authority, where I was responsible for the maintenance of rights of way.

Do you consider that the existing historical classification of rights of way, which of course stretches back to Victorian times, is fit for purpose, and would you recommend any changes to simplify it?

**Dr Diana Mallinson:** One thing that could be done without any changes in legislation is that some BOATS—byways open to all traffic—may have been misclassified in the 1950s when they were put on the definitive map, as roads used as public paths, and there is some evidence for that. Landowners, parish councils and non-motorised user groups only have until 2026 by which to make an application to get those routes downgraded to footpaths or bridleways, and you need cogent evidence to downgrade a public right of way. They need to be reminded, if they have that evidence, to make an application before 2026.

Going further, there is an argument that the vast majority of byways open to all traffic were created and became byways open to all traffic, because they were routes that were used by horse-drawn vehicles, so there is an argument to say that they should all be reclassified as restricted byways. However, GLEAM has felt in the past that Parliament would be unwilling to accept that because it would mean taking away rights from users.

**Lord Bradshaw:** How do you envisage that any new regulations, which might be drafted, might be better enforced?

**Dr Michael Bartholomew:** There are two things. One is that we would know who has rights over these green lanes. At present, there are 3,200 miles whose rights are unclear. They are, by the term, unclassified; nobody knows who is allowed to use them, so the police will not enforce anything on those lanes because they do not know who is allowed to be on them. The legislation that we are asking for would clarify that.

Beyond that, there is the big, practical problem of a thinly stretched police force trying to stop illegal use, and I have no magic wand there. There are examples of police days of action in combination with countryside officers to try to stop illegal use, and they are effective, but policing is a big problem.
**Dr Diana Mallinson:** In the Yorkshire Dales National Park Authority, there are joint action days throughout the winter between the police and the rangers, which have been effective.

**Lord Bradshaw:** What sorts of sanctions? Do they take evidence, impound vehicles? What do they do?

**Dr Diana Mallinson:** It depends on the type of lane they are looking at. If it is a lane that is legally open to motor vehicles, sometimes spot checks will reveal that there are other issues with the vehicles, so the police find it worth while in that respect.

**Baroness Scott of Needham Market:** I can see how that would work on a route where people are not living or there is may be one farm, but you sometimes get routes where there are quite a number of residents. In practical terms, how can you go about enforcing the rights if you have people who are using it in order to gain access, and visitors and deliveries and various things?

**Dr Diana Mallinson:** My experience from working in the Peak District is that where you have residents at either end or along the lane, they will enforce it and will report it.

**The Earl of Caithness:** You have answered most of the question I was going to ask, but what we are talking about is 3,200 of green lanes. Is there a similar problem in Scotland and, if so, how do they handle it?

**Dr Michael Bartholomew:** I cannot speak for Scotland beyond saying that the rights of way system is utterly different from that in England and Wales, so we have no authority to have an opinion on it.

**Dr Mallinson:** As Mike has said, the rights of way system is completely different in Scotland. There are about 120 miles equivalent to byways open to all traffic, so it is a tiny number compared to England and Wales. Green-laning goes on in Scotland, but my understanding is that it is all done by permission on private estates.

**The Earl of Caithness:** Dr Bartholomew, to be clear, you want a total ban on any unauthorised vehicle on green lanes?

**Dr Michael Bartholomew:** Yes, and authorised vehicles, to take the point made a moment ago, would be where occupiers, landowners, gamekeepers, farmers and anybody with business on property that the green lanes give access to are in the clear and are covered by the law. The recreational use of them by 4x4 users, motorbike users and a few quadbike users who do the damage that we have supplied illustrations of in our evidence have no place on green lanes. All that is required is that people leave their vehicles where the tarmac stops and walk, cycle or horse-ride. It is no different from being asked to leave a vehicle when you enter a pedestrianised area of a city centre. It does not stop people; it stops vehicles.

**The Earl of Caithness:** Are you not going to put a huge burden on the
police? I am driving and I want to go down a green lane, so I take my 4x4 down a green lane, you stop me and I say, “I’m just going to call in to so and so”. You say, “Right, okay”, and I do not pull in, I pass his drive and go out of the end of the green lane. You are going to put an enormous burden on the police to enforce that sensibly.

Dr Michael Bartholomew: It will require some vigilant policing, and I take that point very seriously. At present, the recreational vehicle-users go out in large parties and it is a social event where you will get a dozen 4x4s or a dozen motorbikes that are equipped for off-road travel with winches and so forth, and you would not have any trouble in distinguishing between a convoy of 4x4s with winches and somebody who wants to pay a visit to the farmer down the lane.

Lord Faulkner of Worcester: You have partly answered a question I was going to ask you, which is the whole point about enforcement. It would be a burden on the police to enforce the sorts of regulations which you are looking for. Do you think, given the cuts in numbers and the different sets of priorities, that they are going to see this as a particularly important job for them to do?

Dr Michael Bartholomew: No, I do not believe that they will suddenly say, “Yes, we can now go out and catch them all”. Certainly, I agree with you that that is implausible, but if the legislation that we are asking for were enacted, the whole notion of going out in convoys of 4x4s and on trailbikes would be an illegal activity and would stop, so the police would not have so much to do.

Lord Bradshaw: The burden of enforcement is not quite as heavy as has been suggested. Thames Valley, which is a large police area, has one countryside officer and he effectively enforced the traffic regulation orders through the three counties, because you do not need to do a great deal. If you impound vehicles, that sends a very strong message.

Q142 The Chairman: I assume that was a question. If the TROs and the guidance thereon were simplified, made clearer and may be even less expensive, would that be a satisfactory answer to the problem?

Dr Michael Bartholomew: No. When Parliament passed this Act, it thought, “We have removed vehicular rights and protection of vehicular rights from thousands of miles and it leaves only a small number”—and the number was not known then—“and they can be mopped up with TROs”. However, there are 3,200 miles of them, and even if the TRO system were simplified, as you have suggested, to work your way through all those lanes would take until kingdom come.

The Chairman: Being fair to both sides, is it not right that we work our way through them rather than have overall litigation that bans the process?

Dr Michael Bartholomew: I go back to what I said a moment ago: that Parliament has to take a deep breath and ask itself, “Do we want non-essential motor vehicles on these green lanes?” If the answer is, “Yes, we
do. They have rights”, perhaps we then follow the piecemeal procedure that you have outlined. If the answer is, “No, they’re inappropriate”, people should use this amazingly beautiful recreational resource on their feet, on a bicycle or on a horse.

Baroness Scott of Needham Market: I just want to go a bit deeper on the Chairman’s point about TROs. I absolutely recognise your position, but if Parliament were to retain its current view, which is that TROs are a tool for dealing with problems on a one-by-one basis, certain things will be quite cumbersome in putting them in the legislation. For example, you are required to advertise in the local newspaper, which can be quite expensive, and in this day and age hardly anyone, sadly, reads hard copies of local newspapers. Are there some procedural things that could make their use a little less expensive and a little less onerous?

Dr Michael Bartholomew: There are ways in which you could trim it and simplify it, but to repeat what I said to Lord Cameron, that is an inadequate way of handling the size of the problem. I do not know if Diana wants to add anything.

Dr Diana Mallinson: I would go back to the point that you have these two categories of green lanes. The ones that are on the lists of streets the vast majority of which have public vehicular rights will become byways open to all traffic when they eventually get on the definitive map. If Parliament were to pass legislation that took those unrecorded motor vehicle rights away, you would halve the problem and make local authorities’ lives much easier. They could concentrate on whether a particular BOAT needed a TRO or not, and they would not have to worry about the ones which were on the list of streets.

The Countess of Mar: We are talking about pleasure on the part of path walkers, cyclists and people who drive 4x4s. Have you ever met LARA and pointed out the difficulties that they are confronting you with? Is there any possibility of volunteers helping to remediate where roads have been destroyed?

Dr Michael Bartholomew: Yes, we have met LARA. We have regular informal meetings. They are very well represented on the working group which Natural England has set up, and I have met them on local access forums, so there is plenty of interchange between the motorised users and us.

On your second point, which was about voluntary repairs, it is true that the motorised users will go out and do the repairs under the guidance of the local authority. There is a problem with insurance and so on, but if those can be overcome, they do repairs. But it is an entirely self-interested enterprise; they are not doing it for the benefit of walkers and cyclists but so that they can get their vehicles along a track that has been made impassable by those vehicles.

The Countess of Mar: They reach a stage when they are impassable and you need a wetsuit in order to walk through them.
Dr Michael Bartholomew: Exactly so.

The Chairman: Thank you both very much for coming to see us.