Further thoughts following the oral evidence session on 21 November

Thank you for the invitation to offer further thoughts and comments on the green lanes issue following our oral evidence session on 21 November. For the convenience of the Committee we have merged GLPG and GLEAM reflections into a single document.

Enforcement

1 The Committee asked us about enforcement as an issue. There are clearly 'hot spots' of illegal use. However, a key point about enforcement which we did not mention is that there is clear evidence that, once a lane has become illegal for motor vehicles (because it has had a permanent Traffic Regulation Order (TRO) put on it, or because it has been protected by sections 66 and 67 of the NERC Act), motor vehicle use drops dramatically, even when there are no barriers. This is the observation of residents living on and at either end of routes formerly open to motor vehicle use, but objective evidence comes from vehicle loggers.

2 The Yorkshire Dales National Park Authority (YDNPA) reports that vehicle logger data shows an overall reduction in recreational motor vehicle use of more than 90% on green lanes on which it has made TROs, compared to pre-TRO levels\(^1\). This is without using barriers.

3 The Peak District National Park Authority (PDNPA) also makes systematic use of vehicle loggers to monitor compliance with its TROs and with changes in rights of way status which make use by motor vehicles illegal. Its 2016 report on illegal use\(^2\) shows the following:

- an 86% percent drop in motor vehicle use of a route known as Black Harry Lane after it became a bridleway in 2015
- a 70% drop in motor vehicle use of the route known as Brushfield after it became a bridleway in January 2017. This had been one of the most heavily used and highly prized green lanes for motorists in Derbyshire Dales yet even here the reduction was dramatic and immediate.
- an 80% drop in motor vehicle use of a route in the parish of Abney after it became a restricted byway

\(^1\) Management of the use of green lanes (unsealed routes) in the Yorkshire Dales National Park, Final framework, Yorkshire Dales National Park Authority, reviewed October 2017, page 30

a 79% drop in motor vehicle use of the bridleway known as Hope Woodlands after it was protected by the NERC Act and the Winchester judgment. None of these routes has motor vehicle barriers of any kind, only signage making it clear that motor vehicles are prohibited.

4 The vehicle logging data for the PDNPA's TRO'd routes also show a similarly high degree of compliance - see Annex 1. All these TROs exclude motor vehicles at all times. Only one of them has a motor vehicle barrier and the barrier is at one end only. It prevents use of 4x4s and was put in place by Derbyshire County Council prior to the TRO to enable repairs. PDNPA itself is not using any barriers.

5 Vehicle logging data confirms a) that the vast majority of motor vehicle users are law abiding and choose not to break the law and b) that once a route has become illegal for motor vehicles, it is protected. It is not necessarily protected 100% (this requires barriers and/or regular enforcement action) but it is protected from the damage and public nuisance that comes from intensive use by large numbers of vehicles. For these reasons we believe that the need for and the cost of enforcement measures, though such measures are clearly desirable in 'hot spots' of illegal use, in no way undermine the case for restricting or extinguishing motor vehicle rights.

**Costs to the public purse**

6 The Committee asked us why so many green lanes are out of repair. We said that highway authorities simply don't have the funds to maintain them. We would like to add to this by pointing out that motor vehicle use of green lanes is in fact a heavy, and we believe unjustifiable, burden on the public purse. Not only that, but the public purse is in effect supporting and bearing the cost of an activity which is inherently damaging to the wider public interest.

7 There are a number of areas of cost. First there is the statutory duty under the Highways Act which requires local authorities to repair and maintain all types of highway, including unsealed ways damaged by motor vehicles. Repair costs to BOATs and green lanes on the List of Streets damaged by motor vehicles can typically be as high as £75,000 per mile and often much higher. For example, Derbyshire's unwillingness to use TROs permitted many years of vehicle damage to the route known as Long Causeway, now a BOAT and a link between the Peak District and Sheffield. This led to the allocation of repair costs of £235,000 for just one mile of the route. We showed pictures of the damage done to the Causeway in our written evidence.

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3 [https://democracy.peakdistrict.gov.uk/documents/s12161/Appendix%201.pdf](https://democracy.peakdistrict.gov.uk/documents/s12161/Appendix%201.pdf)

Highway authorities simply do not have the resources to cover this kind of expenditure or keep up with the speed and scale of the damage which is being done. We believe highway authorities will never have sufficient resources to keep up, and unless they use TROs, they will increasingly be faced with having to do repairs over and over again to the same routes. For instance, Deadman’s Hill, a route on the List of Streets that crosses the boundary between the Nidderdale Area of Outstanding Natural Beauty and the Yorkshire Dales National Park, has, over the past 17 years been repaired four times – once by volunteers, once by the landowner (at his own expense) and twice by the County Council. The expense of the County Council’s repairs, together with the cost of the necessary temporary TROs, runs into many thousands of pounds, and yet it is unlikely that the route will ever be able to withstand the 4x4 and motorbike use to which it is subject. Moreover, the County Council’s decision to place the interests of vehicle users over those of the environment and non-motorised users has made a once-beautiful place ugly. (See the photograph below, taken after one of the futile and expensive repairs.)
The written evidence (NER0007) submitted to the Select Committee by the North York Moors Green Lanes Alliance (NYMGLA) identifies the size of the task facing its National Park Authority (NPA) and its main highway authority (North Yorkshire County Council) in managing the green lanes in the North York Moors National Park. The NPA assessed 201 green lanes (on the List of Streets) and found that 165 (82%) were highly vulnerable to recreational motor vehicle use. It completed detailed assessment reports on seven of the highest priority lanes in 2014. These reports recommended permanent TROs. The vehicle logger data in these reports show that the majority of motor vehicles on all seven lanes are motorcycles (ranging from 88% to 100%). However, three years later, none of these seven lanes yet has a permanent TRO on it. This is because the NPA ceased work on its green lanes due to funding cuts. North Yorkshire County Council attempted to make a permanent TRO
on one of the seven lanes. This TRO was quashed following legal action by the Trail Riders Fellowship (TRF) and replaced with an experimental TRO allowing motorcycle use. The Council has resolved (November 2017) to make a permanent TRO on another of the seven highest priority lanes and it has made temporary TROs on a further two. Temporary TROs are currently in force on a further five lanes, all of which will require detailed assessment reports by the NPA or County Council before permanent TROs can be considered. GLPG agrees with NYMGLA’s conclusion that “there needs to be a much simpler way [than TROs] to control the inappropriate use of green lanes by recreational motor vehicles”. We also agree with them that legislation to close the List of Streets loophole in the NERC Act could achieve this.

10 Hampshire County Council (HCC) is having to prioritise which of 69 BOATs with surface issues are to be considered for management. This prioritisation excludes a further eight BOATs where TRO consultations were carried out in 2017. Of these recent consultations, five are for TROs prohibiting use by 4x4s and three for TROs prohibiting use by all motor vehicles. Of the latter, one is for a BOAT which has had a TRO on it prohibiting 4x4 use since 1992. Sporadic use by motorcycles during a temporary TRO for repairs on this BOAT caused enough damage to show that the surface could not withstand motor vehicle use. At this rate of working (eight TRO consultations per year) it could take HCC almost nine years to decide how to manage the 69 BOATs with current surface issues. HCC also has a large mileage of green lanes on the List of Streets (9% of the total in England by length) and it is more than probable that many of these also require management of motor vehicles.

11 The East Riding of Yorkshire Council made a seasonal TRO prohibiting 4x4s on a group of green lanes on the List of Streets in 2015. Its Local Access Forum said in its written evidence to the Committee (NER0031) that 'excessive or illegal use by motorised vehicles' on green lanes 'continues to be a challenging and ongoing area', a comment which suggests that the 2015 TRO has not resolved problems in the East Riding. This is confirmed by the minutes of the September 2017 meeting of the Access Forum which record that, following concerns raised by the parishes about continuing damage to these lanes, the Council would consider a permanent restriction as the current TRO had proved ineffective.

12 A further burden on the public purse is the cost of public inquiries. These are the inquiries into Byway Open to All Traffic definitive map orders made because of the List of Streets exemption to the NERC Act and the inquiries where vehicle user groups contest footpath, bridleway or restricted byway definitive map orders because they think another NERC exemption applies. The inquiry costs fall on highway authorities and the Planning

5 Hampshire Countryside Access Forum, Agenda item 3, 12 September 2017

6 Hampshire County Council public notices about proposed TROs

7 East Riding of Yorkshire and Kingston upon Hull Joint Local Access Forum, 13 September 2017, minute 1094
Inspectorate. Defra has made some estimates of these costs - £12k for cases settled by written representation and £15k for those which go to public inquiry. This may sound modest, but as Dr Mallinson explained in her oral evidence, at present only Derbyshire and Northumberland County Councils are acting to investigate the rights of way on their List of Streets routes with a view to getting them onto the Definitive Map. This represents a very small proportion of the total 3,200 miles of List of Streets routes nationally. Should the 2026 closure of the Definitive Map be deferred with reference to green lanes on the List of Streets (see paragraph 39 below), there will be a huge growth in the number of public inquiries, in the costs associated with them and in the burden they place on the highway authorities and Planning Inspectorate. For each inquiry there are also heavy costs in time and effort for the members of local communities who contest BOAT claims through the public inquiry process.

Other demands on the public purse arise from the costs and burdens on authorities of making TROs, and the cost of high court actions where there is a successful legal challenge to a TRO.

The issue of dead-end or interrupted Byways Open to All Traffic

We did not have the opportunity during our oral evidence session to comment on the proposal from the Land Access and Recreation Association (LARA) which suggests amending the NERC Act to prevent routes which would otherwise be a through route for motor vehicles from becoming a dead end for motor traffic. We make the following comments on this proposal.

A dead end BOAT comes about for one of three reasons: because it terminates in a bridleway or footpath; because as well as being on the List of Streets part of the lane is also on the Definitive Map of rights of way as footpath or bridleway; or because part of the route is not on the List of Streets at all and so becomes a restricted byway.

LARA’s proposal to do away with such outcomes is contrary to Parliament’s intentions when it passed the CROW Act in 2000 and the NERC Act in 2006. It would reverse all the work which has been done on these routes by local authorities and user groups since the introduction of the Definitive Map through the National Parks and Access to the Countryside Act 1949 - work which has added routes on the list of streets to the Map with their correct rights of way classification. It would also reverse, at least in part, the reclassification of roads used as public paths as restricted byways, approved by Parliament in the Countryside and Rights of Way Act 2000.

LARA is also arguing that routes which are part on the definitive map (as footpaths, bridleways or restricted byways) and part on the List of Streets should be removed from the definitive map and opened up to motor vehicles as through routes. And it wants Parliament to

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legislate for a similar removal from the definitive map of restricted byways which are also on the list of streets.

18 To illustrate: two high level green lanes in the Lake District, Walna Scar Road and Garburn Pass, which ultimately became restricted byways as a result of the NERC Act, would be removed from the definitive map if this proposal by LARA became law. They would become open once more to damaging and intrusive motor vehicle use, as happened before the NERC Act was passed.

19 Should the wishes of LARA be adopted it would lead to a very significant increase in the number of green lanes which can legally be used by recreational motor vehicles.

20 We invite the Committee to consider the issue of dead-end BOATs not from the point of view of motor vehicle users but from the point of view of farmers, landowners, non-vehicle users and the residents who live on these tracks or on the otherwise dead-end tarmac lanes which give vehicle access to them. A dead-end BOAT can still cause a degree of nuisance and damage if it is long enough and/or the surface is rough enough to be challenging for drivers, but for residents and non-motorised users a dead-end BOAT is infinitely preferable to a through-BOAT. We agree with Mr Kind when he said in his written evidence that a dead-end BOAT means a loss of amenity for motor vehicle users. It also vastly reduces the level of use, damage and nuisance to the local community.

21 As dead-end BOATs are of such little interest to motor vehicle users, the Committee might wish to consider an alternative legislative response to their existence, namely to extinguish motor vehicle rights on such routes, as suggested by the Peak and Northern Footpaths Society in its written evidence (NER0005).

Has the use of green lanes on the List of Streets intensified since the Act and is it due to displacement?

22 The Committee was interested to know whether the use of the green lanes that have remained open to motor vehicles since the NERC Act (ie the BOATs and the routes on the List of Streets but not on the definitive map) has intensified since the Act came into force, and they wanted to know whether the Act has caused displacement onto these lanes. We agree that there could be a degree of displacement onto other green lanes in an area if a TRO is made, or if a route becomes a footpath, bridleway or restricted byway on the Definitive Map. However, we also agree with Mr Costa-Sa of the TRF and Mr Kind of LARA that displacement is not a significant issue nationally. (Mr Costa-Sa told the committee that there has been no big increase in traffic and Mr Kind said that intensification has taken place only in some places).

23 The green lanes on the List of Streets started to become popular with recreational motor vehicle users when they were first shown on Ordnance Survey maps as Other Routes with Public Access (ORPAs) in the 1990s. Increasingly intensive use of them and the BOATs
Evidence that green lanes on the List of Streets were being used and damaged prior to the NERC Act is available in data published by the Peak District National Park Authority (PDNPA). This Authority started systematically to monitor and manage use of its green lanes in 2005, in anticipation of the NERC Act giving it TRO powers. Five of the six TROs which the PDNPA has made to date are on routes which were on the List of Streets and not on the Definitive Map throughout their length at the time the TRO was made. One was made on a green lane which was a BOAT throughout its length. Most of the 34 routes which are on (or used to be on) on PDNPAs 'Priority List' of green lanes needing management because of motor vehicle use were on the List of Streets and not on the Definitive Map at the time they were put on the Priority List. Most of these lanes were assessed as being not sustainable by 2007 and were put on the PDNPA list of lanes causing concern in 2008. The green lanes on the Priority List are shown in the Table at Annex 2.

**How many trail riders and off-road 4x4 drivers are there?**

Mr Costa-Sa of the TRF said in his oral evidence that he thought there has been no intensification in the use of off-road routes or any big increase in traffic. He said that the number of motor cycle licence holders as a whole has been falling, that the number of trail bike and enduro-type bikes has also been falling, and he mentioned that a 2005 research report found that the average number of uses of BOATs by recreational motor vehicles was just one per day. We think that this gives a misleading impression of the scale of recreational 4x4 and motorbike use of green lanes.

Between 2007 and 2010 there was certainly a dip in the number of new registrations of motor bikes capable of off-road use, but this is likely to be an effect of the recession. Numbers started to rise again in 2011 and have increased every year since then. Data from the Motor Cycle Industry Association (MCIA) shows that over 59,000 trail and enduro motorbikes and 118,000 'adventure motor bikes' were newly licensed in the ten years to December 2015. This is a total of 177,000 new motor bikes capable of use off-road and purchased in recent years. The figures from the MCIA are reproduced in Annex 3. Mr Costa-Sa has elsewhere acknowledged that the number of active trail riders is very high. Reporting to the TRF membership in his role as TRF Marketing Director in 2015 he estimated that there are 70,000 trail riders in the UK. The membership of the TRF stands at just over 4,000.

There are no comparable figures for the growth in the number of 4x4s being used off-road on green lanes. Observation on the ground indicates a very significant growth since

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the passage of the Act, particularly since Land Rover Defenders became cheaper on the second-hand market. There has also been a noticeable growth in the number of commercial operators offering off-roading experiences on green lanes.

28 The arrival of internet forums, YouTube, digital mapping and GPS technology is also driving growth. It is allowing information about the location of green lanes to be easily shared and there is an emphasis on sharing information on the most challenging (ie damaged and rutted) routes.

Irresponsible use: how much influence does the TRF have over whether green lanes are used responsibly by trail riders?

29 The Committee indicated that it is concerned about irresponsible use of green lanes and asked Mr Costa-Sa what the TRF does about irresponsible use. Mr Costa-Sa said that the TRF has a Code of Conduct and seeks to get trail riders to ride responsibly. He also said that TRF membership has recently 'increased dramatically' and that this has had the effect of raising the standard of trail riding. He did not, however, say how many members the TRF has. Our understanding from its annual reports is that the TRF's membership grew from 3484 members in June 2015 to 4326 members in June 2016. The figure of 4326 members represents only 6% of the 70,000 trail riders which Mr Costa-Sa says currently exist. The TRF's ability to influence behaviour is therefore extremely limited and there is no evidence that trail riding can be effectively self-regulated so that it becomes a responsible activity.

LARA and TRF engagement with the TRO process

30 The TRF said in answer to Q148 that they will challenge a TRO only if it is unreasonable and not because of minor technicalities or because they think the authority is biased against them. Mr Costa-Sa said of suspected bias and minor technicalities 'we will not go there'. But the TRF's reports to its members suggest otherwise. The TRF Technical Director's report to the organisation's 2017 AGM\textsuperscript{10} says 32 green lanes were 'secured by the TRF for motor cycles' in 2016. This report is instructive reading as it shows the effort which the TRF puts into preventing the imposition of TROs which affect motor cycles. In each case the TRO was quashed, prevented or revised by TRF intervention so as to enable motor cycle use to continue. Seven of the 32 planned or made TROs were quashed by the TRF through high court challenges (to Durham, Hampshire and North Yorkshire County Councils). As far as we are aware, in each of these cases the legal challenge was based on and succeeded only on the grounds of minor technical errors in the process by which the TROs were made. Three more TROs (in Hampshire) were 'shelved due to TRF intervention and recent litigation'.

31 We think that one of the reasons why TROs are expensive is because authorities find they have to remake them, either following successful legal challenges by the TRF or because they find that partial TROs encouraged by the TRF and permitting continuing motor

\textsuperscript{10} TRF Technical Directorate Report, TRF AGM, 2 January 2017.
cycle use are not effective. We also think that the TRF's track record in winning high court challenges has the effect of making authorities very wary of trying to use TROs which exclude motor cyclists.

Equestrian interests
32 Mr Costa-Sa mentioned that the TRF has been 'reaching out' to the equestrian community by telling its members to remove their helmets, switch off engines and offer Polo mints to horses. With about 70,000 or, quite possibly from the Motor Cycle Industry Association statistics, as many as 177,000 trail riders not inside the TRF, we doubt if this will alleviate the problems and dangers caused to equestrians by off-road vehicles. We noted the written evidence (NER0016) submitted to the Committee by the Peak Horsepower bridleway group, in particular the results of their national survey on the impact which 4x4, quad bikes and motor bikes are having on horse riders. We ask the Committee to give serious weight to the evidence revealed by the survey. It found widespread surface damage making routes un-rideable and various other forms of danger to horses and riders from motor vehicle use of off-road horse riding routes. We also ask the Committee to consider the fact that unsealed tracks which are legal for motor vehicles are equally legal for carriage drivers and that deeply rutted surfaces, narrow tracks and blind bends are an even greater hazard for horse-drawn carriages and their drivers than they are for horse riders.

Lake District trail management scheme
33 Mr Kind of LARA mentioned a scheme in the Lake District known as the 'Hierarchy of Trail Routes'. He said it was 'set up with the national park and the users', 'non-vehicular people as well', and that it has been 'very successful'. We beg to differ on all these points. The Hierarchy of Trail Routes scheme was designed by vehicle users for the benefit of vehicle users. It was not set up with the involvement of non-vehicle user groups and has failed to protect unsealed routes in the Lake District National Park. The Green Lanes Protection Group and some of its members have been pressing the Lake District National Park Authority for some time to use TROs to protect its routes from motor vehicle damage and it has sent to the Authority a detailed critique of the Hierarchy of Trails scheme.

34 The Committee will have seen the written evidence of Mr Fritz Groothues. He lives near a route on the List of Streets which is supposed to be protected by the Hierarchy scheme. He says that the scheme has led to 'a massive increase in off-road traffic' and has failed to protect the national park's vulnerable routes (paragraph 11 of his evidence, NER0020).

35 Mr Kind has sought over a number of years to promote and to encourage other national parks to adopt the Lake District hierarchy scheme. Not one has done so. We believe the reason the scheme has not been adopted elsewhere is because it has failed to protect a single green lane in the Lake District.
36 We invite the Committee to view the following YouTube clips of green lanes in the Lake District National Park which that National Park Authority believes are being adequately protected by the Hierarchy of Trails scheme.

http://www.youtube.com/watch?v=aIiQnHoVIQc
http://www.youtube.com/watch?v=8Q68oAo3-Xc
https://www.youtube.com/watch?v=fIOGWtw0vO4
http://www.youtube.com/watch?v=7Rja0hkIWJA (this route has a TRO permit scheme)
http://www.youtube.com/watch?v=Q9JrZpmxon4

Proportion of the rights of way network open to motor vehicles
37 Mr Kind of LARA told the Committee that there is 'quite a small mileage of vehicular unsealed roads but a very large mileage of footpaths and bridleways', that in the overall scheme of countryside access vehicle use does not blight 'the whole network', that any blight is localised and 'needs sorting out locally', a characterisation which at least concedes that vehicular use can and does blight green lanes.

38 The current 2,700 miles of BOAT is 2% percent of the rights of way on the Definitive Map. The 3,200 miles of UUCR on the List of Streets is equivalent to a further 3% of all rights of way. On the face of it 5% is indeed a small proportion of all unsealed ways. But for a local community, a resident, a farmer, a horse rider, a carriage driver, a non-motorised disabled user, a pedal cyclist or a landowner, one or more BOATs or green lanes on the List of Streets can represent 100% of their local tracks and all too often they find themselves unable to use them, because of damage, danger and other forms of nuisance from motor vehicles. The only relief for such a community is via a TRO (Mr Kind's 'local solutions'). Yet the TRO regime is manifestly failing to provide such relief because so few local and national park authorities are willing to use them.

The List of Streets and the closure of the Definitive Map in 2026
39 Dr Mallinson mentioned in her oral evidence that the government is considering, but has not yet decided, whether to defer closing the Definitive Map with regard to adding to it routes which are currently on the List of Streets but which should be recorded as BOATs because they have public vehicular rights and are exempted under section 67(2)(b) of the NERC Act. Under the Definitive Map process the majority of routes on the List of Streets are likely to be found to have public vehicular (historic horse and cart) rights. Should the Map be left open to the addition of these List of Streets routes, it will lead to the provision of thousands more miles of BOAT. This would be contrary to Parliament's intentions in the Countryside and Rights of Way Act 2000, ie to stop more BOATs being added to the Definitive Map after 2026.
40 Should the Definitive Map be closed to the addition of BOATs in 2026, as currently intended under the CROW Act 2000, this will still not protect the 3,200 miles of green lanes on the List of Streets. Unless something else is done about them, they will remain unclassified highways indefinitely open to motor vehicle use. The only way to control or prevent this use will be through the use of TROs.11 Yet there is no statutory duty on highway authorities to use a TRO on any route, even if it needs one, and, as we have explained, many Authorities are reluctant to use them.

**Rural Communities**

41 We hope that in relation to the green lanes issue that the Committee may wish to reflect on the title of the NERC Act and its reference to rural communities. One of the most distressing aspects of off-roading on green lanes is the impact it has on rural communities. Our organisations and our supporters are regularly involved in public inquiries to establish whether or not motor vehicle users have a public right of way on a green lane. As part of the inquiry process we amass each time a large amount of evidence from rural communities whose green lanes on the List of Streets are being claimed as BOATs and used for offroading, usually by non-residents who come into the parish from many miles away. We find time and again that local residents have ceased to be able to use their own local routes or to enjoy them in peace and safety. We hear of damage to walls, banks, verges and trees as well as to surfaces. We are told by farmers that gates are left open, that stock escapes, that stock is injured by vehicles, and that farmers suffer surface damage which is so severe that they are unable to access their own fields and animals. We even know of farmers who have lost Single Payment income because routes are so rutted that they are deemed no longer fit for agricultural use. Local horse riders, who depend on safe off-road routes to get away from tarmac roads and traffic, tell us they have been driven off their historic riding routes. Carriage drivers are confined to the tarmac.

42 We hope that the Committee will agree that rural communities deserve better than this and that the NERC Act can and should be amended to give them relief. As Dr Mallinson explained in her oral evidence, if unrecorded public motor vehicle rights were extinguished on the 3,200 miles of unsealed routes on the List of Streets, the highway and national park authorities would be able to focus their management efforts and resources on the 2,700 miles of BOAT.

**Final thoughts.**

43 As we see it, Parliament can tackle the problem of the destruction of green lanes by recreational vehicles in one of two ways. It can either leave the law as it is, and hope that local authorities will use their TRO-making powers to ameliorate the problem, or it can

11 John Riddall, joint author of 'Rights of Way, A Guide to Law and Practice', provided an explanation of the legal position if the 2026 cut-off is applied to routes on the List of Streets which have public vehicular rights. This explanation is at Annex 4.
legislate to remove motor vehicular rights at least from the unsealed routes on the List of Streets. We believe that the hope that TROs will be effective and sufficient is a vain one. Green lanes are a precious part of the rural heritage. It is only archaic, horse-and-cart law that makes them available to modern 4x4s and motorbikes. We believe that the only way to protect them from the damage and nuisance inflicted by motor vehicles is to legislate.

Michael Bartholomew, Chair, GLPG
Diana Mallinson, Honorary Secretary, GLEAM

Date: 10 December 2017

Annexes on the following pages:

Annex 1 Compliance with TROs in the Peak District
Annex 2 PDNPA list of priority routes, ie routes causing concern due to motor vehicle use
Annex 3 Motorcycle registration data
Annex 4 Opinion of John Riddall, joint author of Rights of Way a Guide to Law and Practice, on the implications of the 2026 cut-off for routes on the List of Streets
Annex 1 - compliance with TROs, Peak District National Park Authority data.
Roych, Use Winter 2013/14, prior to TRO

Roych Use in Winter 2017, after TRO
Long Causeway Use in Autumn 2012, prior to TRO

Long Causeway Use in Winter 2014/15, after TRO

Leys Lane Use in Winter 2014, before TRO
GLPG Comment on the above Leys Lane data: the higher level of illegal use of Leys Lane compared with other Peak Park TRO'd routes is due to Leys Lane having been the subject of the first sustained campaign by a local community in the Peak District National Park against motor vehicle use of a green lane. The TRO when it was made generated an unusual degree of anger and defiance.
Annex 2: PDNPA List of priority routes - ie routes causing concern due to motor vehicle use

<table>
<thead>
<tr>
<th>Route</th>
<th>Date classified as 'may be unsustainable for motor vehicle use'</th>
<th>Date added to PDNPA list of priority routes causing concern</th>
<th>Status when added to the priority list</th>
<th>Became BOAT in</th>
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<td>List of Streets</td>
<td>2014</td>
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<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td></td>
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<td>List of Streets</td>
<td>2016</td>
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<td>The Cop</td>
<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td></td>
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<td>Cumberland Lane</td>
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<td>2014</td>
<td>List of Streets</td>
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<td>List of Streets</td>
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<td>2013</td>
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<td>List of Streets</td>
<td>2015</td>
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<td>Jumble Lane</td>
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<td></td>
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<td>Limer Rake</td>
<td>2013</td>
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<td>List of Streets</td>
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<td>List of Streets</td>
<td>2017</td>
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<td>Moorlands Lane</td>
<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td>2014 (part BOAT part Restricted byway)</td>
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<td>BOAT</td>
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<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Pindale</td>
<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Rakehead</td>
<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Ramsden Road</td>
<td>2013</td>
<td>2014</td>
<td>BOAT</td>
<td></td>
</tr>
<tr>
<td>Riley Lane</td>
<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td>2014</td>
</tr>
<tr>
<td>School Lane</td>
<td>2007</td>
<td>2008</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Shatton Lane</td>
<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td>2014</td>
</tr>
<tr>
<td>Swan Rake</td>
<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Three Shires Head</td>
<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td></td>
</tr>
<tr>
<td>Wetton</td>
<td>2013</td>
<td>2014</td>
<td>List of Streets</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Routes no longer on the priority list</th>
<th>Status when added to list</th>
<th>Why no longer on list</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapel Gate</td>
<td>2007 2008</td>
<td>BOAT TRO</td>
</tr>
<tr>
<td>Chertpit Lane</td>
<td>2007 2008</td>
<td>List of Streets TRO</td>
</tr>
<tr>
<td>Derby Lane</td>
<td>2007 2008</td>
<td>List of Streets TRO</td>
</tr>
<tr>
<td>Long Causeway</td>
<td>2007 2008</td>
<td>List of Streets and BOAT TRO</td>
</tr>
<tr>
<td>Street</td>
<td>Year 1</td>
<td>Year 2</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>The Roych</td>
<td>2007</td>
<td>2008</td>
</tr>
<tr>
<td>Washgate</td>
<td>2007</td>
<td>2008</td>
</tr>
<tr>
<td>Black Harry Lane</td>
<td>2007</td>
<td>2008</td>
</tr>
<tr>
<td>Brushfield</td>
<td>2007</td>
<td>2008</td>
</tr>
<tr>
<td>Bradley Lane</td>
<td>2007</td>
<td>2008</td>
</tr>
<tr>
<td>Monkseal Lane</td>
<td>2007</td>
<td>2008</td>
</tr>
</tbody>
</table>

Note: The List of Streets routes added to the list in 2014 are in Cheshire East, Kirklees, Staffordshire and Sheffield and were assessed by PDNPA only in 2013. The reason they were not assessed sooner is that until 2013 PDNPA concerned itself only with routes in Derbyshire.
Annex 3: Motorcycle registration data

<table>
<thead>
<tr>
<th>Year</th>
<th>Type</th>
<th>Adventure</th>
<th>Trail/Enduro</th>
<th>Total Dual sport</th>
<th>Overall total</th>
<th>Dual sport as % total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Adventure</td>
<td>9,225</td>
<td>9,934</td>
<td>19,159</td>
<td>133,076</td>
<td>14.4%</td>
</tr>
<tr>
<td>2007</td>
<td>Adventure</td>
<td>12,339</td>
<td>8,608</td>
<td>20,947</td>
<td>144,540</td>
<td>14.5%</td>
</tr>
<tr>
<td>2008</td>
<td>Adventure</td>
<td>13,304</td>
<td>7,305</td>
<td>20,609</td>
<td>139,869</td>
<td>14.7%</td>
</tr>
<tr>
<td>2009</td>
<td>Adventure</td>
<td>10,418</td>
<td>5,515</td>
<td>15,933</td>
<td>111,510</td>
<td>14.3%</td>
</tr>
<tr>
<td>2010</td>
<td>Trail/Enduro</td>
<td>9,308</td>
<td>4,686</td>
<td>13,994</td>
<td>95,922</td>
<td>14.6%</td>
</tr>
<tr>
<td>2011</td>
<td>Trail/Enduro</td>
<td>10,208</td>
<td>4,057</td>
<td>14,265</td>
<td>93,849</td>
<td>15.2%</td>
</tr>
<tr>
<td>2012</td>
<td>Trail/Enduro</td>
<td>11,759</td>
<td>4,197</td>
<td>15,956</td>
<td>93,667</td>
<td>17.0%</td>
</tr>
<tr>
<td>2013</td>
<td>Trail/Enduro</td>
<td>12,601</td>
<td>4,555</td>
<td>17,156</td>
<td>91,908</td>
<td>18.7%</td>
</tr>
<tr>
<td>2014</td>
<td>Trail/Enduro</td>
<td>13,129</td>
<td>4,926</td>
<td>18,055</td>
<td>101,277</td>
<td>17.8%</td>
</tr>
<tr>
<td>2015</td>
<td>Trail/Enduro</td>
<td>16,653</td>
<td>5,581</td>
<td>22,234</td>
<td>114,160</td>
<td>19.5%</td>
</tr>
</tbody>
</table>

**Definitions**

- **Adventure**: These bikes are similar in style to enduro motorcycles but are predominately designed and capable for on-road use.
- **Trail/Enduro**: These bikes encompass trials, enduro and trail bikes with an off-road or cross-country capability.

**Source:** [http://www.mcia.co.uk/Press-and-Statistics/SubPage/NewReg_Statistics.aspx](http://www.mcia.co.uk/Press-and-Statistics/SubPage/NewReg_Statistics.aspx)
Annex 4:

Motor Vehicle rights on UCRs (routes on the list of streets) at 2026 cut-off

20 June 2007

Explanatory Note by John Riddall - Joint Author, "Rights of Way"

In your email of 29 March you asked -

"who will have the right to use a UCR (NCH in Derbyshire) on the list of streets which has not been regraded after 1 Jan 2026 if there is no change in the law?" I am sorry that it has taken so long to let you have a reply. My understanding of the position is as follows.

1. The fact that a way is classified by the Derbyshire County Council (as highway authority) as a Non Classified Highway (NCH) does not, the Council states, indicate whether the way carries vehicular rights. The matter could only be settled after research.

2. Similarly, the fact that a way is on the authority's List of streets does not indicate whether the way carries vehicular rights. Here also, the Council states, the matter can only be settled by research.

3. If a way that is a NCH or a way that is on the list of streets is depicted on the definitive map as a BOAT, then it carries vehicular rights.

4. For the purpose of answering your question I will assume that the NCH is not shown on the definitive map, that it was on the list of streets on 2 May 2006, and that whether the way carries vehicular rights has not been determined.

5. The way is not affected by section 66 of the Natural Environment and Rural Communities Act 2006 since this deals with the creation of new rights of way.

6. If vehicular rights do exist over the way, these are not extinguished by section 67 of the Act since the section has no application because (s.67(2)(b)) the way was on the list of streets on 2 May 2006.

7. When paragraph 4 of Schedule of 5 of the Countryside and Rights of Way Act 2000, (which adds section 54A to the Wildlife and Countryside Act 1981) is brought into force, this will prevent the addition to the definitive map of the way as a BOAT.

8. But the new section 54A does not extinguish vehicular rights.

9. If there are vehicular rights over the way, these will not be affected by the extinguishment provisions of section 53 of the Countryside and Rights of Way Act 2000,
since the way does not come within any of the categories that the section covers.

10. The result (i.e. if there are vehicular rights) will be that the way will be one that is on the highway authority's list of streets under section 36(6) of the 1980 Act, it is not shown on the definitive map, and cannot be shown as a BOAT. The answer to your question will, in this case, be "Everybody, including motorists."

11. However, if there are no vehicular rights, but public rights exist that are capable of being recorded in the definitive map and statement (i.e. the way carries footpath, bridleway or restricted byway rights), then if by the cut-off date (1 January 2026) the definitive map has not been modified to show those rights, those public rights will be extinguished by section 53 of the Countryside and Rights of Way Act 2000, and the answer to your question will be "Nobody".

12. In this case, since no public rights exist over the way, it cannot be a public highway and so cannot be a highway maintainable by the public at large. This being so, the way should be removed from the list of streets. Further, the way will be subject to section 34 of the Road Traffic Act 1988, under which it is an offence to drive a mechanically propelled vehicle (inter alia) off-road without lawful authority.

13. So the effects of the cut-off provisions of the 2000 Act depend on whether or not vehicular rights exist over the way.

14. But, you may ask, how are you to know whether the way does, or does not, have vehicular rights? The answer is that if you are aware of the existence of evidence that proves that the way carries vehicular rights, then this provides the answer. But the converse does not apply: the fact that you are not aware of the existence of evidence showing that the way carries vehicular rights does not prove that vehicular rights do not exist, since even if meticulous research is carried out, it is always possible that a piece of hitherto unknown evidence of vehicular rights will come to light. And it is this that will be the snag if an attempt is made to prosecute the drivers of mechanically propelled vehicles for breach of section 34 of the Road Traffic Act 1988, since a successful prosecution would depend on proving that no vehicular rights existed, and this could not be done. Indeed, because of this it seems likely that the Crown Prosecution Service would decline to prosecute on the ground that they did not consider that they would stand a reasonable chance of success due to their inability to establish beyond all reasonable doubt that an offence under section 34 of the Road Traffic Act 1988 had been committed.
15. In view of the complexity, expense and uncertain outcome of seeking to establish by legal process the existence or non-existence of rights over the way, someone who objects to the use of the way by motor vehicles would find a more straightforward course to be to request the highway authority (or, in a national park, assuming that section 72 of the Natural Environment and Rural Communities Act 2006 has been brought into force, the national park authority) to make a traffic regulation order prohibiting use of the way by mechanically propelled vehicles other than for access to adjacent properties.

16. The government has stated that the fact that the existence or non-existence of vehicular rights over a way is uncertain is no bar to the making of a traffic regulation order in respect of the way.

Yours sincerely,

J.G.Riddall

10 December 2017