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Peak District  
Green Lanes Alliance

## July 2014 Newsletter

### Stop Press: TRF to appeal to the High Court on Bradley Lane, Pilsley

We've heard that the Trail Riders Federation (TRF) are appealing to the High Court against the Planning Inspector's decision to make Bradley Lane a bridleway. This is very disappointing news, especially as the TRF participated fully in the inquiry process. We will try to find out what the grounds for the TRF's appeal are and the likely timescale for the High Court's decision and let you know, but we will not be involved ourselves - the appeal is the TRF versus the Secretary of State for Environment, Food and Rural Affairs, on whose behalf the Inspector acted.

### More good news on Long Causeway



*A culvert to take run off water. Photo: February 2014*



*An unrepared section of Long Causeway. Photo: February 2014*

You may remember reading in our October 2013 Newsletter that PDNPA had finally decided on a full, permanent Traffic Regulation Order (TRO) on Long Causeway. You may also have been puzzled why it has not been implemented.

Legally, PDNPA is not allowed to place a TRO on a route if the Highway Authority has already imposed one. Derbyshire County Council have had a Temporary TRO (TTRO) on the route for some years. This bans 4 x 4 vehicles whilst repairs are carried out. There is now a further TTRO on the route banning

all users during working hours. DCC have announced that their repairs will be completed soon and that they will remove the TTRO as soon as they are done.

PDNPA Officers felt that Members should reconsider whether they wished to impose a TRO in light of the repairs carried out since their initial decision in September 2013. Fortunately, Members decided unanimously on 18 July 2014 that they still wished to go ahead with their TRO. We believed that recent repairs should not have altered the initial decision as the grounds for the PDNPA TRO were based on amenity factors – not the state or repair of the route. If you want to know more about the amenity grounds you can see the background papers at <http://www.peakdistrict.gov.uk/about-us/committees/audit-committee/agenda-18-july-2014>

We will let you know when this TRO comes into force.

### **Route of the month, Back Lane, Darley Dale**

*This month we have deliberately chosen a route outside the National Park. We've done this for three reasons. Firstly to show that problems with routes are found in the whole of Derbyshire – not just the National Park. Secondly, we want to demonstrate how repairs can change the character of the route if done unsympathetically. Thirdly it highlights how difficult it is to repair very damaged sections of a route and why we believe there is a need for pre-emptive action to protect routes in some cases.*

Back Lane, Darley Dale is an unsealed, unclassified highway or "green lane" just outside the National Park boundary. There is not much "green" about it now though, but more about that later. It runs more or less north-south for 1.6 miles from a sharp bend on Flash Lane on Matlock Moor down to the B5057 on Sydnope Hill just above the outskirts of Darley Dale. A short central section is actually a tarmac lane which provides access to a few houses and Woodside Farm from the main road.



*Photograph 1: The start of the route in August 2013*



*Photograph 2: Erosion in 2013*

When I surveyed this route a year ago, I discovered that all was far from well. After a promising start, the first mainly level section at the top soon became full of muddy puddles, some of them extending from one side of the track to the other and deep (photograph 1). Thereafter, the rest of the unsurfaced route was suffering from erosion due to the classic combination of lack of drainage and vehicle use (photograph 2), particularly bad on the steeper slopes. The bottom 400 yards was more badly eroded than anything else I have seen, with half the width of the track washed away to a depth of up to a full metre (photograph 3).



*Photograph 3: The bottom section in August 2013*

I reported the results to the County Council, asking what their plans were for repairing the lane, and was pleasantly surprised to be told that work would start very soon and would continue as and when "recycled material" became available.

The good news is that quite a bit of repair work has indeed been done. The bad news is that the "recycled material" consists of broken tarmac & concrete, road planings (the old top surface scraped off when a road is resurfaced), and tarmac. This provides

a sturdy surface which will wear well, which is good from the Council's perspective, but it is hardly green and is unsympathetic to the natural character of the lane.



*Photograph 4: A similar view to photograph 1 but taken in July 2014*



*Photograph 5: July 2014*

The muddy puddles in the first section have been filled with rubble, and the track then topped with road planings & gravel and roughly levelled (picture 4, update of picture 1). It is a lot better, but hardly Tour de France standard (picture 5).

The rest of the upper section down to Woodside Farm has not been repaired yet. The surface is still eroded, badly in places, but not noticeably worse than a year ago. It is not great to walk or ride on, but it does still look 'natural'.

A lot of work has been done to the lower section, all the way from where it leaves the tarmac lane at a bend down to the start of the huge gully at the bottom. The eroded water channels have been part filled with tarmac, which appears to have been rolled in. This fixes the loose surface to prevent further damage, but it looks a mess - a haphazard patchwork of tarmac over a good 50% of the surface (photographs 6 & 7 show before & after).

The bottom section where one side of the track has been washed out will be expensive to rebuild and will probably require Committee approval for capital funding, so nothing is likely to happen there soon. This is bad news for horse riders as it is unsafe for them to use. On the positive side, it is impassable for 4x4s.



*Photograph 6: August 2013*



*Photograph 7: The same area, repaired in July 2014*

Why has the erosion here been so dramatic? I discovered the answer on a visit after prolonged heavy rain. Water runs down the upper section of track and off fields around Woodside Farm on to the tarmac lane, where there is no drainage, so it then runs down to the bend where it all flows on to the track and all the way down to the bottom. It is a strong little stream after a lot of rain.

The County Council's Land Drainage Team is supposed to have investigated "culverted water systems" and made some repairs, but none are apparent. One obvious solution is to allow water to run off the road on to adjoining land, but the verge has actually been built up to prevent this. Another is a tarmac hump round the outside of the bend to stop all the water running off there and down the track, but this suggestion must be too simple for a highways engineer.

Even if repaired, there are bends with restricted visibility. If vehicles continue to use the route, this will be dangerous to horse riders.

Derbyshire County Council is currently in the process of determining the status of this route. They are looking at the historical evidence and have asked for user evidence in order to decide what legal rights of way exist.

*David Selkirk*

## **Bradley Lane: a bridleway (maybe)**

### **Editor's notes:**

- 1. This article was written before we heard that the TRF were appealing against the Planning Inspector's decision.*
- 2. There is a flow chart at the end of the newsletter explaining the Planning Inspectorate involvement in a Definitive Map Modification Order.*

As with many other Peak District communities, the people of Pilsley have been fighting for many years to stop 4x4s and motorbikes using their local green lane. Bradley Lane is a narrow lane, with a sharp bend hollowed into the steep hillside, which runs from Pilsley village on top of the hill to the valley bottom where it meets the A619. It dates back to at least the 17<sup>th</sup> century, when the philosopher Thomas Hobbes and his pupil, William Cavendish, rode along it. This article explains why it has taken so long for Bradley Lane to be classified as a bridleway.



*Just before DCC started the repairs in March 2012*



*Part of the lower section (previously always muddy) when the repairs were completed in June 2012*

Pilsley residents have been reporting problems with recreational motor vehicles since the late 1990s, ranging from damage to the surface to being forced to scramble up the banks so that vehicles could pass. Some motor bikers also drove in a risky and threatening way through the village on their way to or from Bradley Lane, at speed, pulling wheelies and using abusive language. Derbyshire County Council put in new drainage and repaired the surface in spring 2012, which meant that the route was once again physically usable by walkers and horse riders; but the new surface of tarmac planings allowed motorbikes to go faster, so that non-motorised users still felt it was too risky to use. Bradley Lane is one of Derbyshire's unsealed non-classified highways (NCHs). These are routes which have been included in highway authorities' lists of routes for which the authorities are responsible for repair and maintenance, for a long time (since at least 1929 and probably earlier). But these lists (usually) do not indicate whether the public's historic rights over such unsealed NCHs are on foot only (footpath), on horseback (bridleway, open to cyclists since 1968) or with vehicles. Recreational motor vehicle users assume all unsealed NCHs have public vehicular rights, but Derbyshire County Council has investigated the history of some of its NCHs and found that some do not. The only way for users to be

certain about what their rights are is when the NCH is added to the definitive map of public rights of way, following such an investigation. Public motor vehicle use of NCHs, which are footpaths, bridleways or restricted byways on the definitive map, is illegal.

The organisation which represents motor bikers who use green lanes, the Trail Riders Fellowship (TRF), made applications for many Derbyshire NCHs to be added to the definitive map as byways open to all traffic (BOATs - i.e. with public motor vehicular rights) in the years 2003-2005. Derbyshire County Council accepted all these applications when they were made (even though some of them have maps which are inadequate to show the route applied for and none included the evidence which they cited in support of the application) and is therefore under a duty to investigate them all. The County Council also committed itself to adding all its unsealed NCHs (whether an application has been made or not) to the definitive map, in its Rights of Way Improvement Plan, published in 2007. It made this commitment because many of these NCHs are important links between other rights of way for walkers, horse riders and cyclists, and because after 2026 it will not be possible to add rights of way to the definitive map on the basis of historic evidence.

The County Council started its investigation of Bradley Lane by consulting with the applicant, the landowner and occupier, the parish meetings (Pilsley and Hassop), the district council, county councillors and user groups in 2007. This consultation was to obtain historical and user evidence relevant to the status of the route, in addition to the historical evidence which the County Council had researched itself in the County Record Office and in its own records. The County Council concluded in 2010 that the historical evidence that Bradley Lane had been used by the public with horse-drawn vehicles or only with horses was inconclusive, but that the evidence of use submitted by motorists suggested that it had acquired public vehicular rights by modern motor vehicle use over a 20 year period. It therefore made an order to add Bradley Lane to the definitive map as a BOAT.

The local representative of the British Horse Society, and local residents, co-ordinated by the Bradley Lane Action Group (BLAG), objected to the BOAT order. These objections meant that the County Council had to refer the order to the Planning Inspectorate so that one of their Rights of Way Inspectors would decide whether to confirm the order as made or not.

The Inspector appointed, Mr Mark Yates, held a public inquiry to hear evidence from all the interested parties, in December 2012. PDGLA members (Diana Mallinson and Patricia Stubbs) had got involved in the case earlier that year, and represented BLAG and Peak Horsepower at the inquiry. Our decision to get involved was the result of our research at Chatsworth Archives and the County Record Office which provided new historical evidence, which we hoped might tip the balance towards historic bridleway status. We also got written evidence from local people and horse riders which allowed us to challenge the date claimed for first use of the lane by motor vehicles and describing the nuisance such use had caused. We also analysed the motorists' user evidence for inconsistencies.



*Bradley Lane: Both photographs August 2013*

We, BLAG and Peak Horsepower were very pleased when Mr Yates issued his decision following the inquiry, in January 2013, because he had decided to modify the status of Bradley Lane to bridleway. He was not satisfied that the historical evidence was sufficient to show public vehicular rights. He also concluded that the motorists' user evidence was not sufficient for a presumption of dedication based on 20 years' use "*in light of the quality of the user evidence supplied and the fact that there is credible conflicting evidence*" i.e. about when motor vehicle use started.

However Mr Yates had to advertise this modification to the order (along with others not affecting the status), because they were significant changes to the order as originally made by the County Council. Over 50 off-roaders objected to the modification to bridleway status. Most of these objectors used or adapted a standard letter issued by the TRF.

Mr Yates held a second inquiry to consider these objections in March 2014. None of the objectors, who had used the TRF standard letter, followed up their objections, either by providing a written statement before the second inquiry or by speaking at it. Derbyshire TRF's advocate presented a case for BOAT status, based on new evidence and argument, at the inquiry but neither of his two witnesses were able to attend. We and BLAG also provided new evidence to try to rebut Derbyshire TRF's case. Most of the new evidence was not about Bradley Lane itself but a route on the other side of the A619 from Bradley Lane, Hassop Restricted Byway 6, which, until the 19<sup>th</sup> century, was a direct continuation of Bradley Lane. (Hassop Restricted Byway 6 was made a restricted byway in 2006 under a provision in the CROW Act of 2000; such a reclassification is not currently possible for NCHs.)

As reported in last month's newsletter, Mr Yates has confirmed his modification to bridleway following the second inquiry. This means that Bradley Lane has now been added to the definitive map as a bridleway, and the County Council has put up bridleway signposts at each end. The TRF could only get this decision quashed if it were to convince the High Court that the correct legal procedures for deciding an opposed order had not been followed. (It would appear that they believe this is the case as we have heard they are launching an appeal.) Interested readers can look at the reasons why Mr Yates came to his decisions at

[http://www.planningportal.gov.uk/uploads/pins/row/documents/fps\\_u1050\\_7\\_66.pdf](http://www.planningportal.gov.uk/uploads/pins/row/documents/fps_u1050_7_66.pdf) (interim decision of January 2013) and [http://www.planningportal.gov.uk/uploads/pins/row/documents/fps\\_u1050\\_7\\_66\\_m.pdf](http://www.planningportal.gov.uk/uploads/pins/row/documents/fps_u1050_7_66_m.pdf) (final decision of June 2014)

The length of time from the TRF's application for BOAT status in 2003 to the final decision of bridleway status in 2014, and the uncertainty caused by the two inquiries required, have been a test of BLAG's patience. We hope that most future decisions on the status of NCHs will be less drawn-out than this one.

PDGLA members always look at the historical evidence for where the County Council has already made orders adding NCHs to the definitive map or where it is consulting before making such orders. If we think the evidence points to historic use by horse-drawn vehicles, and that the NCH will therefore inevitably become a BOAT, under current legislation, we will not oppose the order making it a BOAT. The only way to try to prevent motor vehicle use of such routes is to campaign for a traffic regulation order.

If we think that the historical evidence points to bridleway or footpath status, or is inconclusive, we will look to see if a claim for public vehicular rights based on 20 years use by motor vehicles could be rebutted. If the TRF or other motor vehicle user organisations make such a claim in objection to a footpath or bridleway order (or footpath or bridleway modification to a BOAT order), and provide evidence in support, the Planning Inspectorate will often (but not always – see below) organise a public inquiry, so that the evidence for and against such a claim can be tested by questioning of the interested parties.

Despite the bridleway order and clear signage at both ends of Bradley Lane which make it clear that using the lane with a motor vehicle is now illegal, Pilsley residents are reporting that many motorbikers are still using it. We are looking to the Police to prosecute illegal use wherever it occurs and where there is clear evidence. If illegal use of the lane persists, Derbyshire County Council has the power to install anti-vehicle barriers.

*Diana Mallinson*

### **A second success in June**

The route known as Green Lane, on Bonsall Moor, is an example of an NCH where historical evidence (from the 18<sup>th</sup> century and the 1950s) clearly indicated bridleway status, but the TRF objected to the County Council's bridleway order on the basis that "the nature and usage pattern of this route is more suited to the status of" BOAT. In this case only a limited amount of motor vehicle user evidence had been submitted (when the County Council consulted), and no further user evidence was provided by the TRF with its objection. The Inspector appointed to decide this order, Ms Alison Lea, agreed with the County Council's and Diana Mallinson's written representations that the user evidence was insufficient for a presumption of BOAT status based on modern motor vehicle use. Ms Lea's decision, confirming the bridleway order, can be found at [http://www.planningportal.gov.uk/uploads/pins/row/documents/fps\\_u1050\\_7\\_74.pdf](http://www.planningportal.gov.uk/uploads/pins/row/documents/fps_u1050_7_74.pdf).

*Diana Mallinson*

### **How much work was involved in the Bradley Lane public inquiry**

1. Diana visited the National Archives at Kew, and the Parliamentary Archives in London as well as Derbyshire Record Office and Chatsworth Archives. She found maps at the National Archives which had been part of the evidence in a 19th century court case about the inheritance of the Hassop estate. The Parliamentary Archives had plans and other documents deposited relating to railways planned but not necessarily built. She spent about 6 days in the archives, record office and local studies library.

2. She then spent 12 days analysing and understanding our evidence and that submitted by DCC and the TRF.

3. 25 local residents and 6 local horse riders contributed witness statements. Patricia and BLAG spent a lot of time getting these statements and talking to local residents to understand the recent history of the route etc.

4. Patricia examined and analysed all the motor vehicle users' evidence forms with a view to discrediting them and they both spent time preparing questions for when Patricia cross examined motor vehicle users who turned up to give oral evidence.

5. Diana spent about a further eight days writing statements of case, proofs of evidence and closing submissions, proof-reading, preparing cross-examination questions and photocopying papers and assembling bundles.

6. Patricia estimates she spent a fortnight on the case plus the time spent attending the inquiries.

7. The first inquiry lasted 3 days, the second 1.5 days (including the site visits).

### **Chatsworth Horse Trials give up on using motor bike riders**

For a number of years the Chatsworth Horse Trials used members of the Trail Riders Fellowship (TRF) to ride between jumps and carry the competitor score cards filled in by each of the jump judges. In 2013 there was a serious accident when one of the TRF motor bike riders tried to ride his machine over one of the jumps. This year the Chatsworth Trials dispensed with the services of the TRF and did not use motorbike riders.

The TRF regularly says in public inquiries into BOAT claims that horses are not frightened by offroad motor bikes and that this is why they are asked to help at horse trials. What the TRF does not say at public inquiries is that motor bike

riders used at horse trials have to obey strict health and safety rules. One of these is that they must keep well away from horses and competitors while they are on the course. Any motor bike rider who rides anywhere at horse trails in such a way that a horse is frightened is immediately excluded.

### **How the status of a route can be changed**

We have all struggled at times in understanding the process of what happens after the Local Authority has investigated the status of a route and what happens if the claim is referred to the Planning Inspectorate. To help you understand the process, we've prepared a simple flow chart. We've drawn the flow chart using Derbyshire County Council (DCC) as the Local Authority as it fits in with the two cases which Diana Mallinson describes in articles earlier in the newsletter. The process starts with an application for a Definitive Map Modification Order (DMMO).

A simple flow chart of what happens if the Planning Inspectorate is involved

