

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member for Culture and Recreation
<b>Date:</b>	26 September 2011
<b>Title:</b>	Proposal to apply for a Traffic Regulation Order on Kingsley Byway Open to All Traffic No.29 and Headley Byway Open to All Traffic No.36, also known as Cradle Lane
<b>Reference:</b>	3199
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** Vicky Bowskill

**Tel:** 01962 846891

**Email:** vicky.bowskill@hants.gov.uk

#### 1. Executive Summary

- 1.1. The purpose of this paper is to consider requests to make a Traffic Regulation Order on Kingsley Byway Open to All Traffic (BOAT) No.29 and Headley BOAT No.36, also known as Cradle Lane, as shown on the attached plan, under section 1 of the Road Traffic Regulation Act 1984.
- 1.2. This paper seeks to provide the Executive Member with the necessary information to determine whether to give authority to advertise the Council's intention to make the aforementioned Traffic Regulation Order (TRO) and begin the formal consultation.

#### Extract from the **Road Traffic Regulation Act 1984**

1. The Traffic Authority for a road outside Greater London may make an order under this section (referred to in this Act as a 'Traffic Regulation Order') where it appears to the authority making the order that it is expedient to make it -
  - a) for **avoiding danger to persons or other traffic using the road** or any other road or for preventing the likelihood of any such danger arising, or
  - b) for **preventing damage to the road** or to any building on or near the road, or
  - c) for facilitating the passage on any road or any other road of any class of traffic (including pedestrians), or
  - d) for preventing the use of the road by vehicular traffic of a kind which or **its use by vehicular traffic in a manner which is unsuitable** having regard to the existing character of the road or adjoining property, or

- e) (without prejudice to the generality of paragraph (d) above) for **preserving the character of the road** in a case where it is specially suitable for use by persons on horseback or on foot, or
- f) for preserving or improving the amenities of the area through which the road runs.
- g) For any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

**122. Exercise of functions by local authorities.**

- 1) It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland the road.
- 2) The matters referred to in subsection (1) above as being specified in this subsection are—
  - a) the desirability of securing and maintaining reasonable access to premises;
  - b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
  - bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
  - c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
  - d) any other matters appearing to the local authority to be relevant.
- 3) The duty imposed by subsection (1) above is subject to the provisions of Part II of the Road Traffic Act 1991.

**2. Background**

- 2.1. This route has been subject to temporary closures for an extensive period due to the poor condition of the surface, which appeared to have been damaged by high levels of use by motor vehicles, in particular four wheel drives. The route was closed to all users to allow significant improvement work to be carried out on the northern section between Points A and B on the attached plan, and has been gradually reopened to different classes of user as the new surfacing settled. The current closure allows use by non-motorised users only (i.e. walkers, cyclists, equestrians and horse-drawn vehicles) from 16 August 2011 onwards and is due to expire on 15 February 2012.
- 2.2. The route, which is now also part of the Shipwrights Way (a long distance promoted route for non-motorised users), was in an extremely bad

condition, with the erosion in places being around four feet deep. This is believed to have been caused by a combination of poor drainage and by motor vehicles using the route. In addition to the tyre tracks there is evidence of irresponsible vehicular use of this route on YouTube. The route is not used by farm or other motor vehicles to access adjacent land, so all vehicular use is presumed to be public.

- 2.3. Over winter 2010/11, the vegetation was cut back so that the damage could be properly assessed. The route was then extensively resurfaced between Points A and B on the attached plan, new ditches and culverts were cut and concrete rail sleepers were laid through the ford and its approaches at Point B. The southern section from Points B to C is on sandier soil and has not needed significant repairs.
- 2.4. This route was the Countryside Service's top priority for Local Transport Plan funding for 2010/11 and this, together with Developers' Contributions from both Hampshire County Council and East Hampshire District Council (this last obtained through the Shipwrights Way project), enabled approximately £39,000 of work to be carried out. This level of investment was necessary in order to bring the route into good order, and it is unlikely that a similar sum will be available in the foreseeable future to repeat such an exercise.
- 2.5. This project has been shortlisted as a Natural Environment Project in the East Hampshire District Council Conservation and Design Awards 2011, which reflects how much these improvements are appreciated locally.
- 2.6. Hampshire County Council is now concerned to protect this investment and prevent the type of damage that has occurred in previous years, following several earlier repairs. The route is vulnerable to damage by motor vehicles during wet weather at any time of year and problems can also arise from such vehicles using the ford (which can be several feet deep even in summer) and wetting the route on either side.
- 2.7. On 19 April 2011 a consultation was sent out proposing a staged reopening of the route to the various classes of user, including motorised vehicles, whilst a close watch was kept for signs of reoccurring damage. There was some support for this approach from representatives of motorised users. However, the consultation also met with strong opposition from Parish, District and County Councillors, the South Downs National Park Authority and the Forestry Commission, as well as local residents, who oppose the idea of motor vehicles being allowed access to the route again in the future. On 09 June 2011 a further consultation was sent out proposing that, in view of the strong reaction to the earlier consultation, a permanent restriction be placed on motor vehicles with three or more wheels and a seasonal restriction be placed on two wheel motorcycles to allow use during the summer months only.
- 2.8. In view of the strong opposition to vehicular use of this route and in order to protect the significant investment that has been made in repairing this route, ensuring that it remains in a safe and enjoyable condition for the majority of users, it is now proposed to make a permanent Traffic

Regulation Order to prohibit motor vehicles with three or more wheels from proceeding along this route at any time. There is little evidence that motorcycles have caused, or are likely to cause, significant damage to the surface during the drier months of the year. As such it is proposed that motor vehicles with two wheels be restricted between 01 September and 31 May each year, but allowed to use the route during the months of June, July and August. This use will be reviewed following summer 2012 and a further decision made about the appropriateness of this seasonal use by motorcycles for the long term.

### **3. Informal Consultations**

#### **3.1. Ramblers**

The Ramblers has been consulted on this proposal and has no objection to it. However, they questioned the usefulness of a seasonal restriction on motorcycles when the seasons can be so unpredictable and dry weather cannot be relied upon at any time of the year.

#### **3.2. National Farmers Union**

The National Farmers Union has been consulted on this proposal, but has made no comment.

#### **3.3. British Horse Society**

The British Horse Society has been consulted on this proposal, but has made no comment.

#### **3.4. Open Spaces Society**

The Open Spaces Society has been consulted on this proposal, but has made no comment.

#### **3.5. Land Access & Recreation Association**

The Land Access & Recreation Association has been consulted on this proposal, but has made no comment.

#### **3.6. Cyclists Touring Club**

The Cyclists Touring Club has been consulted on this proposal, but has made no comment.

#### **3.7. British Driving Society**

The British Driving Society has been consulted on this proposal, but has made no comment.

#### **3.8. Trail Riders Fellowship**

The Trail Riders Fellowship has been consulted on this proposal and has commented that, as the ford has now been surfaced with concrete sleepers, it is no longer vulnerable to damage by motorcycles and as such the TRF objects to the proposal to restrict motorcycles at any time of the year.

#### **3.9. Auto Cycle Union**

The Auto Cycle Union has been consulted on this proposal, but has made no comment.

- 3.10. All Wheel Drive Club  
The All Wheel Drive Club has been consulted on this proposal, but has made no comment.
- 3.11. Local Member - Councillor Kemp-Gee  
Councillor Kemp-Gee has been consulted and has no objection to the current proposal, provided that the seasonal use by motorcycles is reviewed following the summer of 2012, as proposed.
- 3.12. Hampshire County Council and East Hampshire District - Councillor Carew  
Councillor Carew has been consulted on this proposal and supports the proposal to restrict motor vehicles with three or more wheels, but would like to see a permanent restriction on two wheel motorcycles as well.
- 3.13. Hampshire County Council – Highways Management  
Hampshire Highways has been consulted on this proposal, but has made no comment.
- 3.14. Hampshire County Council – Environment Department  
Hampshire Environment department has been consulted on this proposal, but has made no comment.
- 3.15. Hampshire County Council – Crime & Disorder Risk Advisor  
Hampshire's Crime and Disorder Risk Advisor has been consulted on this proposal and does not consider that the proposals will have a material impact on crime levels in the area at this time.
- 3.16. East Hampshire District Council  
East Hampshire District Council has been consulted on this proposal, but has made no comment. Responses from East Hants District Councillors are listed separately.
- 3.17. East Hampshire District - Councillor David Ashcroft  
Councillor Ashcroft, who is also the Chair of the Hampshire Countryside Access Forum, has been consulted on this proposal and is in support of it.
- 3.18. East Hampshire District – Councillor Ken Carter  
Councillor Carter who, together with Councillor Kemp-Gee (see 3.11), is the lead councillor for the Shipwrights Way steering group, objects to the proposal to reopen the route to any motorised vehicles, stating that it is imperative that we protect Cradle Lane from any recurrence of the previous damage resulting from use by motorised vehicles.
- 3.19. Kingsley Parish Council  
Kingsley Parish Council has been consulted on this proposal and supports the permanent restriction of motor vehicles with three or more wheels on this route. Whilst they have some concerns about the seasonal use by motorcycles they are willing to support this provided that the situation is reviewed following the summer of 2012, as proposed.
- 3.20. Headley Parish Council  
Headley Parish Council has been consulted on this proposal and supports the permanent restriction of motor vehicles on this route, but remains concerned that motorcycles may not mix well with other users during the summer months.

3.21. Hampshire Police

Hampshire Police has been consulted on this proposal but has made no comment.

3.22. Hampshire Countryside Access Forum (HCAF)

The Motorised User Representative for HCAF has highlighted that the revised proposal does not appear to be in line with the County Council's policy of choosing the least restrictive option. He points out that other solutions have not yet been fully trialled and that the repairs that have been made are of a sufficiently high standard that motor vehicles are unlikely to cause further damage. The good condition of the lane is unlikely to attract the irresponsible users that were attracted by the previously challenging condition, particularly around the ford. The County Council's original proposal to gradually reopen the route to different classes of user and closely monitor the impact on the surface would more accurately demonstrate the use that the route can now support. Hampshire County Council has a duty to protect the rights of all users, including motorised users.

3.23. South Downs National Park Authority (SDNPA)

The South Downs National Park Authority has been consulted on this proposal, both as a member of the Shipwrights Way steering group and because the northern end of Cradle Lane marks the National Park boundary. The SDNPA objects to the reopening of this route to any motorised vehicles, commenting that seasonal closures could cause confusion and that the County Council must be able to demonstrate sustainable use of the funds that have been invested in this route by preventing further damage from occurring.

3.24. Forestry Commission

The Forestry Commission has been consulted on this proposal and has commented that, in its experience, the type of road construction carried out on this route is not sufficiently robust enough to survive continued vehicular use. They are also of the view that vehicular use is incompatible with a long distance promoted route for non-motorised users.

3.25. Individuals

Six individuals have responded to the consultations, two of whom are former members of Kingsley Parish Council or East Hants District Council. Two of these individuals object to the proposal to restrict motor vehicles on this route and four are in favour of the restriction, but wish to see motorcycles permanently prohibited throughout the year in addition to motor vehicles with three or more wheels. The following points have been raised;

- a) British weather does not conform to seasonal norms and as such a seasonal restriction on two wheel motorcycles is unlikely to be useful.
- b) Lack of maintenance to a standard suitable for the traffic using the route is no excuse for permanently restricting a particular class of user. The route should be maintained to a level suitable for those legal users that wish to make use of the route.

- c) Modern trail bikes cause no more damage to the surface than horses do and as such there is no justification for such a restriction.
- d) The County Council should work with legal trail bike riders to ensure that routes are maintained and damage avoided. Abuse of the route by a few irresponsible users is not justification for permanently restricting an entire class of user.
- e) Should the route be opened to motor vehicles of any kind, for any amount of time, damage is likely to reoccur. Should there be further damage, it is unlikely that further repairs can be made in the foreseeable future and as such the good work that has been done should not be put at risk, but protected for the use of non-motorised users.
- f) In addition to surface damage, noise pollution from motor bikes is a concern for local residents, particularly as such use often occurs in large groups for large parts of a day. Such groups are reported to often be inconsiderate to non-motorised users and local residents, spending the day going up and down the route. This type of use is not consistent with highway use, which is about travelling from point A to B, and as such is not in line with the legal rights that exist on this route.
- g) Local non-motorised users have long been unable to use what used to be a pleasant and valuable rural route, owing to the damage that has occurred in recent years due to increased vehicular use. They have waited a long time for the route to be restored to a useable condition and do not want this to be lost again to vehicular damage.
- h) Motorised use of such lanes is to the detriment of local flora and fauna, air quality and sustainable tourism.
- i) Thousands of miles of vehicular highway are available to motor vehicles, whilst there are relatively few quiet traffic-free routes that can be enjoyed by cyclists, equestrians and horse-drawn vehicles in particular. The presence of motor vehicles is incompatible with this use and should be prevented.

#### **4. Comments on Informal Consultations**

- 4.1. The Ramblers, County Councillors Kemp-Gee and Carew, District Councillors Carew, Ashcroft and Carter, Kingsley and Headley Parish Councils, the South Downs National Park Authority and the Forestry Commission, as members of the Shipwrights Way Steering Group, and four local residents are in favour of restricting motor vehicles on Cradle Lane, but would generally like to see motorcycles permanently restricted throughout the year, in addition to motor vehicles with three or more wheels.
- 4.2. The Trail Riders Fellowship, the motorised user representative of the Hampshire Countryside Access Forum and two individuals have objected to the proposal to restrict motor vehicles on this route.
- 4.3. Eleven consultees have not submitted any comment on this proposal.

- 4.4. The Trial Riders Fellowship has objected to the proposal to restrict motorcycles as the repairs appear to be of a standard that could easily support use by two wheel motorcycles. It has been impossible for Officers to assess the impact of motorcycles in isolation from the action of four wheel drive vehicles. As such Officers believe that the introduction of a seasonal restriction on motorcycles is the best way to demonstrate the impact of these vehicles during the summer months. Following the summer of 2012 it is proposed to review the suitability of this restriction for the long term.
- 4.5. The motorised user representative for HCAF has commented that this proposal does not appear to be in line with the County Council's policy for Traffic Regulations Orders, in that other solutions have not been fully trialled to demonstrate that this is the least restrictive option. Officers have highlighted that previous repairs to the drainage and the surface have not stood up to the level of vehicular use that has been made of this route. The most recent repairs have been to a much higher standard, and have only been possible due to the inclusion of this route as part of the Shipwrights Way, allowing access to the necessary funding to implement them. A significant part of the solution has been to reinstate the drainage ditches to take water off the surface. With very limited exceptions, the route is not wide enough to allow four wheel drive vehicles to pass other users without causing damage to these ditches, which would lead to their collapse and the subsequent deterioration of the surface. It has not been possible to construct this lane to a standard that is likely to sustain continued use by motor vehicles with three or more wheels. By implementing a seasonal restriction on motorcycles it will be possible to assess their impact on the surface in isolation from that of four wheel drives and demonstrate whether such use is appropriate in view of the impact on the surface and in the context of the rural character of the route. Allowing some use by motorcycles on a trial basis is seen to be, on balance, the least restrictive option that will resolve the issues on this route whilst still allowing some level of access for motorised users. As such it is in line with the County Council's policy.
- 4.6. It has been highlighted that the County Council has a duty to maintain all public highways to a standard that is suitable for the level of legal public use that is being made, and that this route should be maintained in a condition suitable for use by motor vehicles. Officers acknowledge this, but assert that powers are also available under section 1 of the Road Traffic Regulation Act 1984 to restrict traffic of a type that is unsuitable to the general character of the road, to prevent damage to the road and to preserve the character of routes that are particularly suited to non-motorised use. Section 122 of the same act places a duty on the County Council to balance the needs of the various user groups.
- 4.7. A large part of the motorised use that has been observed on this route has been reported to regularly consist of large groups who come to spend a day going up and down this lane, particularly through the ford. Officers assert that this use is not consistent with highway use and can be described as unsuitable for the general character of the road. It is

reasonable to seek to prevent this damaging use and to protect this as a route that is particularly suited to non-motorised use. In order to maintain this lane in a condition that could support the level of use it has been subject to in the past, significant funds would need to be invested in ongoing repairs, or on creating a metalled surface. This level of investment is not seen as reasonable, in the context of the limited budgets available to maintain all public rights of way across the county.

- 4.8. Officers believe that, given the sensitive rural character of this route and the significant ongoing investment that would be required to maintain it to a standard that could support the use that it has previously been subject to, it is arguable that, on balance, it is reasonable to restrict motorised use, other than two wheel motorcycles during the summer months. Many other vehicular highways are available for motorised users throughout the county should this lane be closed to them.

## **5. Compliance with Hampshire County Council's Traffic Regulation Order Policy and Countryside Access Plans**

- 5.1. The Countryside Access Team of Hampshire County Council has published a Traffic Regulation Order (TRO) policy which was approved by the Executive Member for Recreation and Heritage in June 2006 ([www3.hants.gov.uk/row/making-changes/traffic-regulation-orders/tro-policy.htm](http://www3.hants.gov.uk/row/making-changes/traffic-regulation-orders/tro-policy.htm)). This policy says that each case will be assessed on its individual merits and the least restrictive option will be sought after exploring alternative methods to manage the problems that exist. The recommendations contained in that policy have been taken into account in developing this proposal.
- 5.2. This proposal is also in line with the aims of the South Downs (Hampshire) Countryside Access Plan, in particular issues 2, 3 and 4 which talk about the problems that path users encounter with poor or damaged surfacing in localised areas, the limited availability of accessible and inviting routes and the lack of awareness of each others needs among those who use the countryside and those who manage countryside access (<http://www.hants.gov.uk/rh/countryside/access/south-downs.pdf>).
- 5.3. This route was temporarily closed whilst surface improvements were carried out and has since then been gradually opened up to different classes of user to properly assess what level of use the route can reasonably sustain. This has clearly shown that the surface can sustain use by horses, horse drawn vehicles, cyclists and walkers. Officers are confident that, during generally dry conditions, the surface would be able to sustain use by motorcycles at the expected levels of use. However, if there is a period of wet weather during the summer months the route could still be susceptible to damage from use by motorcycles if no traffic management controls are in place. A seasonal TRO to restrict two wheel motorcycles is believed, on balance, to be an appropriate solution.
- 5.4. Due to the narrowness of the route and the lack of passing places for motor vehicles with three or more wheels, it is likely that any use by such vehicles

will cause significant damage to the surface and the ditches. As such, a permanent restriction on motor vehicles with three or more wheels would appear to be an appropriate solution. This combination of TROs is seen to represent the least restrictive option in this case.

## **6. Recommendations**

- 6.1. It is recommended that Hampshire County Council should advertise its intention to introduce a **permanent** Traffic Regulation Order under section 1 of the Road Traffic Regulation Act 1984, to prohibit motor vehicles with three or more wheels from proceeding along Kinglsey BOAT 29 and Headley BOAT 36, also known as Cradle Lane, as shown on the attached plan.
- 6.2. It is further recommended that Hampshire County Council should advertise its intention to introduce a **seasonal** Traffic Regulation Order, to be in force between 01 September and 31 May each year, under section 1 of the Road Traffic Regulation Act 1984, to prohibit two wheel motor vehicles from proceeding along Kinglsey BOAT 29 and Headley BOAT 36, also known as Cradle Lane, during that period, as shown on the attached plan. The impact of seasonal use by motorcycles to be closely monitored and the Traffic Regulation Order to be reviewed prior to 31 May 2012 to assess its continued suitability.
- 6.3. Once comments have been received on this proposal from interested parties a further report should be prepared for the Executive Member seeking approval for the making of the abovementioned Traffic Regulation Orders, should it still be considered appropriate to do so in light of those comments.

**CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**

<b>Links to the Corporate Strategy</b>		
	Yes	No
Hampshire safer and more secure for all	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximising well-being	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Enhancing our quality of place	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>OR</b>		
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:</b>		

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.</p> <p>(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
General Correspondence	HantsFile\CCRA\Countryside\Countryside HQ\Countryside Orders\Traffic Regulation Orders 1
Proposal File	VB\TRO\Kingsley BOAT29 & Headley BOAT36 – Cradle Lane

**IMPACT ASSESSMENTS:**

This decision has been assessed to see what impact it may have in the following areas. If it has been identified that there are possible implications which may have a negative impact this grid should identify the part of the report which covers the recommendation about how those potential negative impacts are managed or avoided.

**Impact Level:** **S**= Significant Impact    **L** = Low Impact    **None** = No impact

<b>IMPACT AREA</b>	<b>IMPACT LEVEL</b>	<b>COMMENTS</b>	<b>WHERE COVERED IN REPORT (Where there are details of how impact could be managed)</b>
Equality & Diversity Impact	L	The restriction of motorised vehicles on this route will enable surface improvements to be maintained, making the route easily accessible by a wide range of path users.	
Crime Prevention (under Section 17)	None	The introduction of the proposed Traffic Regulation Orders will enable the restrictions to be effectively enforced by physical structures, rather than policing. The proposals made are anticipated to have no impact on crime and disorder in this area.	
Environmental	L	The proposed restrictions will reduce use of the route by motorised vehicles, reducing environmental impacts in the local area.	