

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Culture, Recreation and Countryside
Date:	16 July 2015
Title:	Proposal to make a Traffic Regulation Order on Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.17, 19 & 20
Reference:	6729
Report From:	Director of Culture, Communities & Business Services

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1. Executive Summary

- 1.1. The Executive Member is asked to consider making a Traffic Regulation Order on Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.19 & 20 as shown on the attached plan, under section 1 of the Road Traffic Regulation Act 1984. This follows experience under the current Experimental Traffic Regulation Order covering the same routes, which is due to lapse later this year.
- 1.2. This paper seeks to provide the Executive Member with the necessary information to determine whether to give authority to make the aforementioned Traffic Regulation Order (TRO).
- 1.3. The Executive Member is asked to consider the Council's duty under Section 122 of the Road Traffic Regulation Act 1984, to conduct an adequate balancing exercise to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians).

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 -

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

for ***preventing damage to the road*** or to any building on or near the road, or

for facilitating the passage on any road or any other road of any class of traffic (including pedestrians), or

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

(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

for preserving or improving the amenities of the area through which the road runs.

For any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

9. Experimental Traffic Orders

(1) The traffic authority for a road may, for the purposes of carrying out an experimental scheme of traffic control, make an order under this section (referred to in this Act as an “experimental traffic order”) making any such provision—

(a) as respects a road outside Greater London, as may be made by a traffic regulation order;

(2) An experimental traffic order made by a local traffic authority outside Greater London may, with the consent of the Secretary of State, extend to a road in relation to which he is the traffic authority if the order forms part of a scheme of general traffic control relating to roads of which at least one has a junction with the length of road in question.

(3) An experimental traffic order shall not continue in force for longer than 18 months.

(4) Subject to Parts I to III of Schedule 9 of this Act, where—

(a) an experimental traffic order has been made for a period of less than 18 months, and

(b) the order has not ceased to be in force,

the authority by whom the order was made may from time to time by order direct that it shall continue in force for a further period ending not later than 18 months after it first came into force.

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. In 2013, Hampshire County Council consulted user groups and local residents on the future of Bentworth Byways Open to All Traffic (BOATs) 23, 27 and 28 and Wield BOAT 17, whose surfaces had suffered significant damage. Officers commissioned repairs and considered in some detail how best to protect the surface from future damage, taking into consideration the views of stakeholders, the law and the practicality of a range of options. The consultation and the options were described in detail in a September 2013 report to the Executive Member.
- 2.2. The Executive Member, having considered the evidence, authorised the use of an Experimental Traffic Regulation Order (ETRO) as described in paragraph 9 of the legislation above. The Order came into effect on 28 May 2014, covering the repaired routes and contiguous routes Wield BOATs 19 and 20. The effect is that motorcycles and other motor vehicles can only legally use the routes if they have applied for and been issued with a permit by the Council. In this way it was anticipated that the irresponsible use that caused so much damage to some of these routes could be better controlled without the need to prevent access for responsible motorised users. The restriction is enforced by use of gates fitted with combination locks, the code for which is given to permit holders, who must adhere to a code of conduct.
- 2.3. An ETRO differs from a permanent TRO in that it may include a provision which enables it to be modified or suspended to help to address any issues raised by the public. An ETRO can be in force for a maximum of 18 months.
- 2.4. It was agreed that officers would closely monitor the effectiveness of the ETRO so as to determine how well the repairs are withstanding use, whether there has been any deterioration of the surface and whether the permit system is functional. A further report would then be provided to the Executive Member before the end of the ETRO making further recommendations in light of the results of that experiment; this is that report.

3. Experience under the Experimental TRO

- 3.1. The ETRO has now been in place for a year on Bentworth BOATs 27 and 28 and just over 6 months on Bentworth BOAT 23 and Wield BOATs 19, 20. Signs and barriers with combination locks were installed as the ETRO came into effect and officers have created a permit scheme and monitored use with CCTV, monthly visits and information from local people.
- 3.2. To date, permits have been issued for 192 vehicles, comprising 176 motorcycles, 8 quadbikes, 8 "4x4s" and 1 tractor. Permits are valid for two years and for that period details are kept of the vehicle and the rider/driver. All are expected to keep to a code of conduct and to carry the pass when using the routes. The permit system is not onerous to run and has worked from both the authority and the users' perspective. The code has also been provided to the landowners (who use a separate padlock), and so farm traffic has used the network in addition to permit-holders.
- 3.3. Motion-activated CCTV has been used to monitor use and is able to differentiate between different types of user and to record use after dark. Camera locations were varied over the network of routes within the ETRO. These showed that public use at any one place along the routes is on average 20-50 people a week, with greater use at weekends, warmer times of year and school holidays, as would be expected for any route. The majority of use is by walkers and cyclists, with some equestrian and some motorised vehicle use (consistent with the permits issued, most of this is by motorcycles). In addition to public use, 1 or 2 farm vehicles were seen at any one place on most days.
- 3.4. Officers have undertaken monthly inspections, walking the routes, checking the surface, barriers and signage, taking photos at fixed points and responding to issues as they arise.
- 3.5. The condition of Bentworth BOATs 27 & 28 (also known as Jenny Green Lane, and were re-surfaced and ditched) has remained very good, with ditches working well and full through the winter and the surface able to withstand the current motorised level of use by permit-holders and farm traffic. There was one incident of a 4-wheeled vehicle driving into the ditch and causing damage as they tried to exit; repairs had to be made. In April 2015, the gate on at the northern end of Bentworth BOAT 28 was damaged and motorcycle tyre tracks were seen.
- 3.6. Bentworth BOAT 23 (also known as Dirty Lane) also remains in good condition following the surfacing and drainage work; officers carried out some additional resurfacing work in autumn 2014 which has stopped the build up of water at the junction of byways near Wield 19 & 20. There was considerable traffic from the local estate on shooting days over the winter on this route, but with the dry spring the surface has dried.

- 3.7. The surfaces of Wield Byways 19 and 20, which are subject to the ETRO but were not resurfaced, are not as good but given budgetary constraints are not yet a priority for re-surfacing.
- 3.8. Where damage has occurred, given the treads and the wheelbases it is possible to conclude that this has largely been caused by farm traffic.
- 3.9. Over the year which the ETRO has been in force, most of the gates have been vandalised and in April 2015 the chains and padlocks were stolen from Wield BOATs 19, 20 and the southern end of Bentworth BOAT 23; all have been repaired/replaced, using a different combination code.
- 3.10. Wield 17 was part of the ETRO, but not part of the permit scheme or opened to the public, due to the projected prohibitive cost of repairs. It remains closed, and requires a permanent TRO.
- 3.11. Prior to the repairs, there was a considerable and regular volume of complaints about these BOATs; since the ETRO came into force there have been no complaints other than some difficulty reported by horse-riders in using some of the gates (which is being resolved).
- 3.12. The Executive Member's decision of September 2013 authorised the Head of Countryside to modify the ETRO should it be necessary to ensure the expeditious, convenient and safe movement of traffic. Modifications have not been necessary and the ETRO has remained unchanged.

4. Options for the future

4.1. Option 1: Extend the ETRO

The law permits an ETRO to be in force for a maximum of 18 months, its purpose being to test a restriction. The ETRO has now been in place for a year (since 28 May 2014) and has served its purpose; on 28 November 2015 the order must lapse and one of the following options will apply.

4.2. Option 2: Reopen the routes to motorised traffic

Officers are of the view that the level and nature of motorised use on these byways prior to the ETRO is not sustainable and if reopened to all it would inevitably result in a reoccurrence of the damage previously seen. It is unlikely that funds could be made available to carry out further repairs in the foreseeable future, and to improve the routes to a degree which would sustain this use would fundamentally alter their character. At the time of the previous report, there had been a significant amount of local objection to this option from non-motorised users of the routes and local residents and this is not thought to have changed.

4.3. Option 3: Impose a permanent restriction against motorised users to protect the surface of the routes from further damage, together with a permit system to allow responsible motorised use

The ETRO has enabled the gathering of evidence so that an informed decision can now be made, which complies both with the law and the Council's TRO policy. Officers are of the view that the ETRO has ably demonstrated that restricting motorised vehicle use to permit-controlled, responsible users is a sustainable and effective solution for these routes. There is no evidence that it has adversely affected other routes in the area through displaced use. Officers are therefore of the view that a permanent TRO which mirrors the extent and terms of the existing ETRO is now justified and represents the best solution for these routes. During the lifespan of the ETRO, it can be superseded by a permanent TRO provided that no modifications have been made to the ETRO during the preceding 6 months; in this case, no modification has been made or is expected.

4.4. Option 4: Introduce a seasonal traffic regulation order

Although this measure has been introduced on other BOATs in the county, due to the variable weather conditions in recent years throughout what have traditionally been drier periods, officers believe that as a result this measure has become a less effective means of minimising surface damage.

4.5 Option 5: Impose a permanent restriction against motorised users to protect the surface of the routes from further damage (without a permit system)

Officers are of the view that the ETRO has demonstrated that this would be overly restrictive and therefore would not be compliant with the County Council's Traffic Regulation Order policy.

5 Compliance with the law, Hampshire County Council's Traffic Regulation Order Policy and Countryside Access Plans

- 5.1. The Council has a duty under section 122 of the Road Traffic Regulation Act 1984, to conduct an adequate balancing exercise to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians). It is the Council's policy to adopt the least restrictive solution that will be effective in addressing problems on a BOAT. Further details regarding the use of motorised vehicles in the countryside can be found on the HCC website here <http://www3.hants.gov.uk/row/vehicles-row.htm>.
- 5.2 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. 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.
- 5.3 The proposed TRO addresses the aims of the South Downs (Hampshire) Countryside Access Plan, in particular issues 2, 3 and 4 which describe 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. This document is shortly to be superseded by a revised Hampshire Countryside Access Plan for 2015-2025; the proposed TRO is also consistent with this incoming policy in that it represents a cost-effective, sustainable solution which will benefit the vast majority of users.

6 Consultation

- 6.1 The Local Member, Councillor Kemp-Gee is aware of the issues and supports the recommendation in this report.
- 6.2 Parishes and user groups. A consultation exercise was carried out in 2013 prior to the ETRO. This prompted 58 responses.
- 6.3 Should authorisation be given for the TRO to become permanent, a fresh consultation will be carried out with stakeholders.

7. Costs and Financial Implications

- 7.1 The advertising costs for implementing this TRO will be in the region of £300, to be met from the Access Team budget. The necessary barriers, locks and traffic signs are already in place and will need to be repaired/replaced as required. Running the permit system has cost around £1,500 in officer time over the last year (excluding some time taken to set it up) and is expected to continue at broadly the same level.

8. Conclusions and Recommendations

- 8.1. In light of the previous surface damage that may be attributed to excessive use by motorised vehicles, officers are of the view that a TRO to restrict motor vehicles, with access being allowed to permit holders only, complies with the Council's TRO policy, protects the surface whilst allowing responsible use and presents the best solution. This option has strong support from stakeholders.

9. Recommendations

- 9.1 That a Traffic Regulation Order be made under section 1 of the Road Traffic Regulation Act 1984, to prohibit all motorised vehicles except for permit holders from proceeding along Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos. 19, & 20, as shown on the attached plan.
- 9.2. That a Traffic Regulation Order be made under section 1 of the Road Traffic Regulation Act 1984, to prohibit all motorised vehicles from proceeding along Wield Byway Open to All Traffic No. 17, as shown on the attached plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Business plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

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.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Report to Exec Member 2013-25-09	Proposal to make an Experimental Traffic Regulation Order on Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.17, 19 & 20
TRO Policy	www3.hants.gov.uk/row/making-changes/traffic-regulation-orders/tro-policy.htm
Hampshire Downs Countryside Access Plan	http://www.hants.gov.uk/rh/countryside/access/hampshire-downs.pdf

IMPACT ASSESSMENTS:

1. Equality Duty

- 1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

The continued restriction of motorised vehicles, except by permit, will enable surface improvements to be maintained, making the route more easily accessible by a wider range of path users. To deliver this objective, the least restrictive option available has been recommended to the Executive Member in line with the Council's adopted policy.

2. Impact on Crime and Disorder:

- 2.1. The proposals made are anticipated to have no impact on reported crime and disorder in this area

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The proposed restrictions will retain reduced use of the route by motorised vehicles, reducing environmental impacts in the local area.