

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member Culture, Recreation and Countryside
Date:	6 December 2016
Title:	Byways – Traffic Regulation Orders 2016
Reference:	7960
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

- 1.1. The purpose of this paper is to seek approval from the Executive Member Culture, Recreation and Countryside for the proposed approach to managing the 10 Byways Open to All Traffic (referred to in this report as the byways) in Hampshire which were originally included or related with the 2014 Experimental Traffic Regulation Order (ETRO).
- 1.2. The report also proposes a more sustainable approach to traffic management on byways in order to reduce the need for major capital expenditure to keep the routes open in the long term.
- 1.3. Following a review of the 10 byways which were originally included or related with the 2014 ETRO Process, it is proposed that these byways are managed in one of three different ways: remain open and monitor usage, closed to motorised vehicles with 3 wheels or more or closed to all vehicles.
- 1.4. In considering how to move to a sustainable management model for the maintenance of byways and to reduce the need for major capital expenditure, it is proposed to make greater use of Seasonal Traffic Regulation Orders and Temporary Closures. This will result in a more dynamic approach thereby reducing the risk of damage to byways by using more adaptive closures and will reduce or prevent traffic using byways when there is an increased risk of damage i.e. during the winter months or periods of extreme weather.
- 1.5. The proposed approach has been updated (since the Executive Member for Culture, Recreation and Countryside (EMCRC) Decision Day on 4 October 2016) following site visits and it has been agreed to propose an additional byway be added to list of routes to be considered for a Traffic Regulation Order.

2. Contextual information

- 2.1. Hampshire County Council (HCC) is responsible for the protection and maintenance of over 4500 km of Public Footpaths, Bridleways, Byways open to All Traffic (BOATs) and Restricted Byways. These routes provide access for recreation and amenity and are important to enable people to explore and enjoy Hampshire's countryside.
- 2.2. Byways are routes recorded on the Definitive Map, with rights to be accessed by walkers, horse riders, cyclists, horse and carriage riders and motorised vehicles (including both 4x4 and motorcycles).
- 2.3. Most byways are unsurfaced routes, which have not been made up to roads and therefore are susceptible to surface damage.
- 2.4. Hampshire County Council have a responsibility to maintain byways and the Policy for the Management of Traffic on Hampshire's Public Rights of Way Network and the Use of Traffic Regulation Order (2007) states that:

'The County Council will prioritise repair and maintenance to benefit non-motorised users on Byways Open to All Traffic.'

- 2.5. Beyond routine maintenance, Traffic Regulation Orders (TROs) are employed to manage byways, in order that these routes remain open to walkers, horse riders and cyclists. TROs can be used to temporally close routes for works to be undertaken, to restrict or prevent use by a particular type, width or weight of vehicle.
- 2.6. Hampshire's network of byways amounts to 348 Byways, which covers 286km, 53 of which have some form of Traffic Regulation Order in operation.
- 2.7. In 2013, concerns were raised about the deteriorating surface of some byways by legitimate legal users using routes that could not sustain the volume / weight or, in some cases, users that were purposely attempting to make the surface more challenging. This resulted in a decision apply an Experimental Traffic Regulation Order (ETRO) to specific routes authorised by the Executive Member Culture, Recreation and Countryside on 23 September 2013. ETROs are often used as an effective precursor to making a permanent order providing a more cost effective and flexible approach.
- 2.8. The County Council carried out repairs to a number of byways and commenced with an experimental permit system in order to assess the ability to manage vehicles using these routes. Drivers of motorised vehicles (both 4x4 and motorbikes) were required to apply and were issued with a permit by HCC to use the affected routes; this enabled the County Council to monitor use and communicate with users.
- 2.9. With the general support of the Hampshire Countryside Access Forum and the relevant user groups, the ETRO was made in 2014 to 6 Byways in the areas of Bentworth and Wield.
- 2.10. An ETRO can only stay in force for a maximum of 18 months, while the effects are monitored and assessed, before the County Council decides whether or not to continue on a permanent basis with a Traffic Regulation Order.

- 2.11. The permit system introduced in Hampshire was successful in managing traffic and preventing damage to the surface of the identified routes, therefore the ETRO was converted to a permanent TRO by way of a legal Order, which was advertised.
- 2.12. The Trail Riders Fellowship (TRF), a national user group representing off road motorcycling, are operating a campaign highlighting that motorcycles cause significantly less damage than 4x4 users and should not be included with 4x4 in TROs.
- 2.13. On the 16th December 2015, legal proceedings were issued by the Trail Rider's Fellowship, challenging Hampshire County Council's decision to permanently restrict the use of motor vehicles on the byways in Bentworth. This challenge was based on a technical flaw with the documents regarding the ETRO issued in 2014.
- 2.14. This error essentially invalidated the ETRO and, after receiving legal advice, the County Council reluctantly withdrew the Order with the result that the byways in Bentworth and Wield have been reopened whilst their use monitored.

3. Review of the ETRO /TRO process

- 3.1. Following the withdrawal of the order, two key strands of work were identified for investigation:
 - I. Technical processes and compliance with legislation
 - II. Next steps for the routes subject to this challenge, and other routes where traffic management is required
- 3.2. The **technical processes and compliance review** to ensure that our legal processes are robust and previous errors are not repeated has been completed.
- 3.3. A **Route Audit and Management Recommendations** study was commissioned and undertaken by an external consultancy. This study looked at the original 6 byways in Bentworth and Wield) and a further 4 byways that were to be subject to an ETRO. The study assessed the routes and made management recommendations based on the existing HCC policy and the Road Traffic Regulations Act (RTRA 1984) criteria.
- 3.4. Some of the recommendations for TROs on these routes have changed since the 2014 ETRO process, either because:
 - I. The improvements made to the routes have made them more sustainable to traffic
 - II. There is insufficient evidence that motorbikes, although creating a noise nuisance generally, have less effect on surface damage.

3.5. The proposed management, falls into 3 categories:

- I. Routes where the condition means they do not require closing, these routes will remain open to all uses and will be regularly monitored and action taken if surface starts to show signs of damage (Group A).
- II. Routes where damage is sustained from recreational use, which now effects / prevents the use of other uses (including walkers, cyclist and horseriders). TROs will be developed to restrict vehicles with 3 wheels or more (Group B).
- III. Routes, which are at a high risk of damage, which would result in other uses (including walkers, cyclist and horseriders) been prevented from use, will remain closed by TRO to all motorised and carriage traffic (Group C).

3.6. The table below summarises the proposals for the 10 routes in the original study:

Group A - 2 N ^o . To remain open and monitor usage	Worldham 40 Grayshott 13
Group B - 5 N ^o . To be closed to motorised vehicles with 3 wheels or more e.g.4x4.	Bentworth 23 Bentworth 27 Bentworth 28 Wield 19 Wield 20
Group C - 3 N ^o . Close to all vehicles	Selbourne 67 Worldham 38 Selbourne 68 (maintain existing closure)

3.7. Following a site visit by the Executive Member Culture, Recreation and Countryside, it has been agreed that Bentworth 23 should be moved from Group A to Group B due to the context of this route, its association with other TROs in the area, local knowledge of use, and evidence on the ground. This is an updated recommendation following the EMCRC Decision Report on 4 October 2016.

3.8. All routes will be monitored in line with the Councils policies and traffic management will be used to seek the least restrictive option for managing the sustainable usage of byways. As stated in the 2007 Policy:

'The County Council will take action to limit or prevent access by motor vehicles if this use is damaging to the route or local environment, or conflicts with the reasonable interests of walkers, riders, cyclists or carriage drivers'

- 3.9. In addition to the recommendations above, it is proposed that the County Council adopts a more dynamic approach to reduce the risk of damage to byways, focusing on routes that are at risk of damage or are susceptible to damage in the winter or at periods of extreme weather (e.g. flooding).
- 3.10. Selected routes which have had historic winter damage or are at risk of deteriorating over the winter months will be closed. This process will use a Seasonal Traffic Regulation Order which will operate over winter season e.g. from October – April for all motorised traffic and horse drawn carriages.
- 3.11. It is also proposed to operate Temporary Closures, in parallel with Seasonal Traffic Regulation orders. These closures will be enacted at any point during the year following shorter spells of wet weather, which could result in increased damage to the routes. Increasing the use of seasonal closures will move the Countryside Service to a position of prevention and minor maintenance, rather than continuing with large scale high cost reactive works, after byways have become impassable.
- 3.12. Byways in Hampshire do receive a great deal of use, some of which can cause disruption and conflict with other users and local residents. Although the Countryside Service primarily uses Traffic Regulation Orders to prevent damage and maintain access for non-motorised users to byways, there are other Road Traffic Act criteria that can be used specifically 'to minimise the effects on the Character or Amenity of the route, landscape or area'.
- 3.13. The Countryside Service will review options for using these other criteria and will seek to develop a robust method to implement if required. It should be noted that these other criteria require a stronger evidence base and are potentially easier to challenge.

4. Consultation and Equalities

- 4.1. The management of Byways Open to All Traffic has long been a controversial issue so consultation is extremely important.
- 4.2. The approach outlined in this paper was discussed at the Hampshire Countryside Access Forum (HCAF) on the 13th September (a members only Sub-Group) and received general support and consensus. The Local Access Forum will also be included in the informal consultation on the orders.
- 4.3. The approach proposed in this paper will also be discussed with the relevant user groups (listed below).
- 4.4. User groups to be consulted include:
 - TRF - Trail Riders Fellowship
 - BDS - British Drivers Society
 - LARA – Land Access and Recreation
 - And selected local groups
- 4.5. The local Elected Member, Councillor Kemp-Gee has been consulted and his views are:-

- a) Supportive of the proposal to close the following BOATS to all motorised vehicles: Selborne 67, Worldham 38 and Wield 17. (This includes leaving the current TRO on Selborne 68)
- b) Supportive of the proposal to close the following BOATS to vehicles with 3 wheels or more (eg 4x4 but not motorbikes) and put in place Seasonal TROs as necessary: Bentworth 27, 28 and Wield 19 and 20.
- c) With regards to Bentworth 23 and Worldham 40, would like to see those routes also closed to vehicles with 3 wheels or more

Following a site visit by the Executive Member Culture, Recreation and Countryside, it has been agreed that this Bentworth 23 should be moved from Group A to Group B (see 3.6) due to the context of this route, its association with other TROs in the area, local knowledge of use, and evidence on the ground.

- 4.6. In accordance with the order making process (outlined below) each order will be publicly advertised which may result in objections.
- 4.7. To reduce the risk of challenge, the Countryside Service will ensure that each order has a strong case before advertising and will work proactively with user groups and the Hampshire Countryside Access Forum.

5. Future direction

- 5.1. It is proposed to undertake an informal consultation with stakeholders and user groups, prior to beginning the formal order making process.
- 5.2. Hampshire County Council is the order making authority; therefore a report and recommendation is provided to the Executive Member Economy, Transport and Environment (ETE) for a decision to proceed at each stage:
 - I. When advertising an 'intention to make an Order' (6 weeks consultation),
 - II. The advertisement of the Order (21 days consultation),

(At each stage the County Council is required to evidence the case for a TRO and to explain how the Council has considered the objections made and mitigated the scheme where possible, before recommending to confirm the Order).

- III. Confirmation of the Order,

(If the Executive Member ETE agrees with the recommendation and makes the order, it needs to be advertised within 14 days. After this point the objector's only recourse is to challenge by application to the High Court and / or to seek Judicial Review of the decision to make the TRO).

- 5.3. The timescales for implementing these proposals are:
 - I. Group A – will remain open, they will be monitored with consideration to using seasonal traffic regulation orders if and when required.
 - II. Group B – The process to restrict use of vehicles with 3 wheels or more will begin immediately and will be complete before April 2017.

III. Group C – The Traffic Regulation Orders on these routes will be made or continued and extended as required.

- 5.4. Early engagement with the user groups and interested parties will start before the formal TRO processes begin.
- 5.5. Once established the closure and restrictions on use of byways will need to be more actively managed and communicated, the Countryside Access Teams in Winchester and particularly the Area teams will be responsible for ensuring this is undertaken.

6. Recommendations

That the Executive Member for Culture, Recreation and Countryside;

- 6.1 Approves the approach to managing the 10 Byways Open to All Traffic (BOATs) in Hampshire which were originally included or related with the 2014 Experimental Traffic Regulation Order.
- 6.2 Supports the commencement of the Traffic Regulation Order for 8 Byways Open to All Traffic in Bentworth, Wield, Selbourne and Worldham.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Maximising well-being:	yes
Enhancing our quality of place:	yes

Other significant links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Byways – Traffic Regulation Orders 2016	7772	4/10/16

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>
None	

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:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) 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:

- a) This decision does not affect any people who fall into the protected characteristics.
- b) A decision to continue to restrict access by motorised vehicles on some routes will enable surface improvements to be maintained, making routes more easily accessible by a wider range of path users, including those who are less mobile. It does not affect mobility scooter users.
- c) To minimise the impact on motorised vehicle users the least restrictive option available has been recommended in line with the Council's adopted policy.
- d) This affects byways in the rural areas of East Hampshire District.

2. Impact on Crime and Disorder:

2.1. There will be a requirement to actively manage the closures of routes, where applicable, including working closely with Country Watch.

3. Climate Change:

- a) N/A