

REGULATORY COMMITTEE
17th DECEMBER 2003

**SMEATHE'S RIDGE: THE RIDGEWAY -
PROPOSED TRAFFIC REGULATION ORDER**

Purpose of Report

1. To consider representations made by the public and user groups to the draft Traffic Regulation Order (TRO) to prohibit use by motor vehicles of Smeathe's Ridge, part of The Ridgeway National Trail.

Background

2. A report regarding the management of the Ridgeway was considered by Cabinet at its meeting on 20th June 2003. A copy of this report is attached at **Appendix A** and the full minuted resolution at **Appendix B**. Part of the resolution of Cabinet was:-

" ... the promotion of a permanent Traffic Regulation Order at Smeathe's Ridge."

Traffic Regulation Orders

3. Section 1 of the Road Traffic Regulation Act 1984 empowers Traffic Authorities, in this instance the County Council, to make Orders regulating traffic. The original Section 1 lists six scenarios where a TRO may be appropriate. Subsequent legislation has amended and added to this list.
4. The general obligation placed on a traffic authority when exercising any power or function under the 1984 Act is to do so in such a way as to:-

"secure the expeditious, convenient and safe movement of traffic (vehicles and pedestrians)."
5. The TRO statutory administrative process requires prior formal public consultation if the Order route is a bus route or if freight transport is likely to be affected. These instances do not apply in this case.
6. However, once an Order has been made, but before it is confirmed, the Order has to be advertised and displayed on site for a statutory period. The purpose of this advertising is to bring to the attention of the general public at large the intention to confirm an Order and to give the opportunity for the general public to make representations to the Order-making authority. These representations may be for or against the Order.

7. The County Council's current policies with regard to TROs on byways are:-

Policy: The costs of making Traffic Regulation Orders on Byways where being promoted in the interests of the landowner are to be paid by the applicant.

Background: Transport and Highways Committee, 15th June 1990, approved the policy that permanent TROs on Byways Open to All Traffic (BOATs) were to be introduced in the County in response to specific problems and where a degree of enforcement action can be taken.

Action: Applications for TROs on Byways are to be treated in a similar manner to Diversion applications by being the subject of informal consultations with user groups, Parish and District Councils at an early stage.

Policy: Permanent TROs on BOATs are to be only introduced in the County in response to specific problems and where a degree of enforcement action can be taken.

Background: Arising from a question raised at County Council (February 1990) to determine a policy for the use of traffic regulation measures in respect of vehicular traffic on BOATs.

Action: When specific problems are identified on BOATs and where enforcement action can be taken, Permanent Regulation Orders may be investigated/introduced

and more recently

The County Council will adopt a local management strategy to deal with problems on the byway network whereby surface drainage improvements will be implemented in the first instance, in association with voluntary restraint or temporary closures as required.

8. In addition, Cabinet, at the meeting on 20th June 2003, resolved (with particular reference to The Ridgeway):-

To affirm the general objective that, where problems exist, non-essential motor vehicles should be banned from rights of way (subject to site specific considerations).

9. The routine management of The Ridgeway is undertaken on behalf of Highway Authorities by the Ridgeway Management Group. The Cabinet resolution and The Ridgeway management arrangements have provided the authorisation for the advertising of the TRO to proceed.

Description of Smeathe's Ridge

10. Smeathe's Ridge is part of The Ridgeway National Trail and is situated within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). It is recorded on the Definitive Map and Statement as a Byway Open to All Traffic. It runs approximately east-west and is a green sward of varying width, in effect a wide unsurfaced grass area. It conveniently breaks into two lengths, the western and eastern parts.
11. The western part runs along the spine of the ridge with the ground falling sharply away to the north and south. This section is particularly wide, in excess of 100 metres in parts.
12. The eastern part runs along an existing unsurfaced track across the northern slope of the ridge with the ground sloping down to the north and rising steeply to the south.
13. There are no crossing, branching or intersecting rights of way, tracks or other routes joining the route between the terminus points of the proposed TRO, significantly simplifying the signing and, if necessary, enforcement of the TRO.
14. Farm or agricultural traffic is at a minimum because the way does not afford access to adjoining land or properties, with the exception of a minimum access to a water company covered reservoir. Currently there is localised damage to the western part and significant damage to the eastern part.

Grounds for the TRO

15. A copy of the Order, which includes a statement of the County Council's reasons for proposing to make the Order, is attached at **Appendix C**. Members may wish to note that there has been some opposition to the Order on the grounds that the County Council has a duty to assert and protect the rights of all legitimate users, which does of course include vehicle users of BOATs. However, Parliament has recognised that there are occasions where conflict between users is inevitable and has provided a management solution through the provision and subsequent amendments of the Road Traffic Regulation Act 1984 under which TROs can be made. Section 1(1) gives six (amended to eight) reasons for invoking a TRO to control the use of any road. In this instance the authority is citing reasons (b), (c), (e) and (f) as set out below. An outline of the various relevant sections of the Road Traffic Regulation Act 1984 is attached at **Appendix D**.

Reasons cited for invoking the TRO

16. The reasons for invoking this TRO are set out below.

(b) For preventing damage to the road, or any building on or near the road

The existing route is being damaged. There is a minimum of agricultural traffic and no evidence of damage by horse use. The damage is clearly caused by motor vehicle traffic. The Order would prohibit use by motor vehicles with certain exceptions, eg agricultural vehicles, maintenance vehicles associated with the reservoir.

(c) For facilitating the passage on the road or any other road of any class of traffic (including pedestrians)

The western part of the Order route is wide and this reason has little application. However, the eastern part, because of the topography, would derive benefits for the passage of pedestrians, equestrians and cyclists.

(e) For preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot

Smeathe's Ridge forms part of the National Trail which was designated to enable the public to make long journeys away from motor vehicles. The prohibition of motor vehicles could be considered expedient, ie advantageous, suitable and appropriate. It is important to consider the existing character of this route, a wide unsurfaced tract of land. This section of the Act should not be used to facilitate improvements to the character but to maintain the existing character of the route.

(f) For preserving or improving the amenities of the area through which the road runs

There is little case law to define amenity with regard to the countryside and rights of way. Members will therefore have to form an opinion as to the amenity afforded by the Order route and be mindful that the amenity is currently available to all users. By prohibiting one class of user for the benefit of another class of user, will that preserve or improve the amenity overall and does a benefit accrue to one class of user?

17. It is left to the County Council, as Traffic Authority, to decide whether and when the power should be used. Any proposed suspension of the rights of one or more classes of user will need to be reasonable and justifiable in terms of the proportionate benefit it will bring to the remaining users.

Observations from the public

18. As a result of the advertisement 397 letters or emails have been received. There are 323 in support and 74 against. Not all of the respondents have given permission for their names and addresses to be included in this report as required by County Council policy with regard to the Freedom of Information and Data Protection Acts.

19. Full copies of the letters and emails are available in the **Members' Room**. The representations and comments thereon are summarised in **Appendix E**. A breakdown of objections is at **Appendix F**.

Main considerations for the Council

20. Since the Cabinet resolution of 20th June 2003, Parliament has enacted the Railways and Transport Safety Act 2003 which contains a section (Section 108, Traffic Regulation on long distance routes) amending the Road Traffic Regulation Act 1984 by adding Section 22B enabling the Secretary of State to make a TRO to prevent use of a long distance route (National Trail) by vehicular traffic. The Minister for Rural Affairs and Local Environmental Quality has indicated that he will not use these powers until local Highway Authorities have had the opportunity to manage their local responsibilities.
21. Unlike an Order under Section 116 of the Highways Act 1980 where the public's rights are stopped up permanently, a TRO is not a legal event. Therefore it would not remove the rights in perpetuity nor cause them to be removed from the Definitive Map and Statement of Public Rights of Way. However, it is seen as a long-term measure but with the facility to rescind the Order at any time in the future.
22. In deciding whether to suspend the rights of one class of user, Members should consider a number of issues. There are factors that are relevant and others that, whilst being concerns for individuals or groups, are irrelevant within the terms of reference for TROs and highway management.
23. A TRO may be made:-
- "where it appears to the authority making the order that it is expedient to make it."
- Expedient is defined in law as:-
- "advantageous, advisable on practical grounds, suitable, appropriate."
24. Members might wish to consider whether because Smeathe's Ridge is within an AONB and is part of a National Trail (and National Trails are designated to provide long distance routes for cyclists, walkers and equestrians, through the finest landscapes in England and Wales) it would be advantageous, suitable and appropriate to confirm the Order.
25. Motor vehicle users currently enjoy the same right of access to the amenity as other users. Prohibiting the use of motor vehicles does not prevent people parking vehicles and walking or cycling on Smeathe's Ridge. There is an alternative route which is available for motor users who are passing through the area, not just visiting Smeathe's Ridge.

26. The Ridgeway Management Group has considered management techniques for various lengths of The Ridgeway. The preferred option for Smeathe's Ridge is the all-year TRO but the Group makes no recommendation as to whether there should be a Public Inquiry. With regard to Human Rights considerations, Members need to consider the desired outcome, ie prevention of damage, facilitating the passage of pedestrians, cyclists and horseriders, preserving the character of the route and preserving or improving the amenity of the area, in order to assess whether the solution of imposing a ban on motor vehicles is reasonable and proportionate. Members may do this by considering the issues and forming a judgment on balance.

Human Rights considerations

27. In prohibiting motor vehicle users, rights as defined by the European Human Rights Convention are being both infringed and enhanced.
28. In forming the judgment Members need to consider the function of a National Trail and its official bias against motor vehicles, in conjunction with the Highway Authority duty to assert and protect highway rights for all classes of user. The route is shown on the Definitive Map and Statement as a BOAT, ie it is legally available for use by all classes of user. Members might also consider that at the time The Ridgeway was designated as a National Trail the Minister did not address the possible conflict of user interest by imposing a TRO from the outset.
29. The current use of the route is causing damage to the surface. There is a general consensus that agricultural vehicles use it at a minimum and are not causing the damage. If there was more use by agricultural vehicles and therefore some of the damage was attributable to their use, it could be considered unreasonable to ban public vehicular use without addressing the agricultural use.

Environmental Impact of the Proposal

30. Smeathe's Ridge is part of The Ridgeway National Trail and is within the North Wessex Downs AONB. This section is unsurfaced, ie it is a grass area. The banning of motor vehicles should have a beneficial environmental impact.

Risk Assessment

31. No health and safety risks have been identified with regard to this proposal. However, some user groups have indicated they could challenge a confirmation of the Order through a Judicial Review which could involve considerable costs for the Authority. A Public Inquiry would avoid such a challenge.

Financial Implications

32. There is an existing financial provision to cover this proposal and a 50% contribution is available from the Countryside Agency. However, as identified in the Risk Assessment, the existing financial provision only covers the cost of the Order, not possible legal action. The cost of a Public Inquiry could be met from the existing provision.

Options Considered

33. The options considered are:-
- To not proceed with any form of restraint (do nothing)
 - Seek voluntary restraint agreements with user groups
 - Invoke a seasonal TRO, ie Winter months only
 - Confirm the Order as advertised
 - Refer the Order to the Secretary of State for a Public Local Inquiry
34. The do nothing option is likely to result in continued use of Smeathe's Ridge by motor vehicles. The majority of respondents in favour of the TRO cite loss of amenity or enjoyment caused by the intrusive nature of motor vehicles. The existing damaged surface will still have to be repaired and would most likely be damaged again if no management of actual use were initiated.
35. Voluntary restraints are generally seasonal or related to weather conditions and are used by other highway authorities to protect environmentally sensitive surfaces, with success. However, a significant reason for this TRO is the protection of the amenity, which is non-seasonal. In addition, unfortunately there are some motor and motorcycle users who have little understanding or knowledge of voluntary restraints. With regard to seasonal TROs, the same comments apply as for the voluntary restraint approach.
36. The role of the Regulatory Committee is to fulfil the legislative function of the County Council. Its decisions have to be based on legal issues and must be reasonable given the relevant facts. Members could consider that the issues raised as objections should be explored and decided upon in the more public and formal arena of a Public Inquiry. Members could therefore decide not to confirm the Order and instruct officers to refer the issue to the Secretary of State and request a Public Local Inquiry. The Secretary of State's recommendations to the Council following the Inquiry would then be reported back to Members to help them decide whether or not to confirm the Order.

Reasons for Recommendation

37. Smeathe's Ridge is in an AONB and is part of a National Trail. National Trails were devised to provide a high quality experience for walkers, cyclists and horseriders. The majority of support for the TRO cites the amenity value of Smeathe's Ridge. An all-year TRO would protect this amenity, prevent continuing damage and would provide formal management of this unique section of The Ridgeway National Trail.
38. Given the physical characteristics of Smeathe's Ridge, the damage that has occurred to the surface of the eastern section of the route, and the amenity value afforded, particularly to pedestrians and horseriders, it is reasonable and proportionate to suspend the motorised vehicular rights of the public.

Recommendation

39. That:-

- (i) The Traffic Regulation Order as advertised be confirmed without modification and implemented as soon as is reasonably practicable to prevent the use by motor vehicles of Smeathe's Ridge, part of The Ridgeway National Trail;
- (ii) Officers monitor use of the route that is subject to the Order and the other routes in the area to determine any benefits or damage which might occur;
- (iii) The objectors be notified accordingly.

GEORGE BATTEN

Director of Environmental Services

Report Author

PAUL GERRARD

Highway Project Manager

The following unpublished documents have been relied on in the preparation of this Report:

Correspondence with DEFRA with regard to the Ridgeway Management Group's Ridgeway National Trail Surface Standard Draft Action Plan