

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – MR R TONGE

DEPARTMENT OF NEIGHBOURHOOD AND PLANNING

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REFERENCE: HT-012-10

**BYWAYS OPEN TO ALL TRAFFIC LUDGERSHALL 30 AND CHUTE 32, 34 AND 36
PROPOSED TRAFFIC REGULATION ORDER**

Purpose of Report

1. To:
 - (i) Report on the objections and representations received to the formal consultation regarding the proposal to place a Traffic Regulation Order (TRO) on Byways Open to All Traffic Ludgershall 30 and Chute 32, 34 and 36 in order to prohibit members of the public from using these rights of way with motor vehicles at any time.
 - (ii) Recommend that a permanent Traffic Regulation Order be placed on the section known as Honey Bottom, Byways Open to All Traffic Ludgershall 30 and Chute 32. Recommend that a non-statutory Public Inquiry takes place to discuss the proposed Traffic Regulation Order for Byways Open to All Traffic Chute 34 known as Chantry Lane, and Chute 36, to prohibit members of the public from using these rights of way with motor vehicles at any time.

Background

2. Ludgershall Byway 30 and Chute Byway 32 are referred to in this report as Honey Bottom and are shown on the map attached at **Appendix 1** running from point A in the northerly direction to point B. Chute Byway 34 is referred to as Chantry Lane and is shown on the attached map running from point B in the northerly direction to point C. Chute Byway 36 is shown on the attached map running from point C in an easterly direction to point D.
3. Chute Parish Council has expressed concern for several years about the safety and surface condition of these byways. Parish Council minutes from May 2004 state, *“trail riders, often without registration plates and travelling at excessive speeds on and off paths inappropriate for such vehicles remain a problem”*. A Temporary Traffic Regulation Order (TTRO) was placed on these rights of way by Wiltshire County Council on 14 March 2008 and has been extended until 23 May 2010, to allow time for a decision on the proposed permanent TRO to be made. During this time, much of the required repair works have taken place including clearance, regrading and reseeding of the surface at Honey Bottom and drainage works at Chantry Lane. It has been reported that the recreational use of these byways by walkers and horse riders has vastly increased since the TTRO has been in place and the repairs have been undertaken.

4. An informal consultation to ascertain the views of known interested parties about placing a permanent TRO on the way was carried out in January and February 2009. The formal public consultation was advertised from Thursday 8 October and concluded on 2 November 2009. Any comments received after this date, prior to the submission of this report, were also included. 16 letters of support were received during the formal consultation and 70 were carried forward from the preliminary consultation. 75 letters of objection were received during the formal consultation and 56 were carried forward from the preliminary consultation.
5. An information letter was sent on 10 March 2010 to all who had commented during the consultation process informing them that the report to Cllr Mr. R. Tonge would recommend that a permanent TRO be placed on the section known as Honey Bottom, BOAT Ludgershall 30 and Chute 32 and that a non-statutory Public Inquiry be held to discuss the proposed TRO for BOAT Chute 34 known as Chantry Lane, and Chute 36, the effect of both Orders being to prohibit members of the public from using these rights of way with motor vehicles at any time. People were given 21 days, i.e. until Wednesday 31 March 2010, to forward any comments they wanted to add before the report was finalised. 14 objection comments were received and 1 letter supporting the TRO for Honey Bottom but objecting to the proposed independent Public Inquiry for Chantry Lane and Chute Byway 36.
6. Copies of the correspondence received from the objectors and the supporters have been provided to the Cabinet Member for information.

Main Considerations for the Council

7. The Council, as the Highways and Surveying Authority, has a duty to protect and assert the rights of all legitimate users. TROs to prevent vehicular traffic are used as a last resort and in response to specific rather than “perceived” problems. A BOAT is a carriageway and thus a right of way for vehicles, but one which is used mainly for the purposes for which footpaths and bridleways are used, i.e. by walkers and horse riders. It is reasonable to consider the use of a TRO if the statutory grounds are satisfied and the majority of users are being endangered or substantially inconvenienced by the minority. Council policy, set out in the Rights of Way Improvement Plan, states:

“The council will seek to apply permanent or seasonal Traffic Regulation Orders in response to specific safety or maintenance problems, and where a reasonable degree of enforcement can be taken”.
8. A TRO may provide for the prohibition, restriction or regulation of the use of a road, or any part of the width of a road, by vehicular traffic or by traffic of any class specified in the Order, either generally or subject to such exceptions as may be specified in the Order. This may be at all times, on certain days or during periods so specified. The formal consultation was carried out in order to ascertain the opinion of known interested organisations and the general public regarding the possibility of placing a permanent TRO to prohibit all public use with motor vehicles on BOAT Ludgershall 30 and Chute 32, 34 and 36.
9. The enabling legislation is found at Sections 1 and 22A of the Road Traffic Regulation Act 1984. Sub-section 1(1) permits TROs to be made for a number of reasons. The following are applicable to this case:

“(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*
- (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 especially 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”*

10. Additionally, following the implementation of the Countryside and Rights of Way Act 2000, Section 22A was added to the Road Traffic Regulation Act 1984. Sub-section 22A (1) allows TROs to be made on any byway for:

“the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area or recreation or the study of nature in the area”

11. Section 122 (1) of the Road Traffic Regulation Act 1984 states that:

“ 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)) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) ...”

Subsection (2) states:

“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”*

12. The proposed TRO will have no adverse effect upon securing and maintaining reasonable access to premises. Heavy commercial vehicles do not, and are unlikely to, use these byways other than on an occasional basis for access to premises. Any such vehicles will be there by invitation of the owners of properties or land served by the lane and will be outside the scope of any TRO. The safe use of the byways by pedestrians, horse-riders, cyclists and carriage drivers will be improved.

13. The effect upon vehicular traffic that will no longer be permitted to use these byways, which can be regarded as an amenity in themselves, has been considered by the Council’s officers. In the local context envisaged by Section 122, there are many country lanes and metalled roads around Chute offering exceptional views. It has been established and agreed by all parties that Chantry Lane and Byway 36 are hard surfaced and do not provide the ‘off road’ experience. Byway 36 has a tarmac surface, as does Chantry Lane, from the intersection with Bridleway 3 to Chute Causeway; the remaining section of the lane has a hard flint surface. Only Honey Bottom has a natural surface on which to drive or ride off road, i.e. a length of 2.4 km and only 0.3% of the total byway network in Wiltshire.

14. Access to the northern end of these byways with motor-vehicles is via the C road, Chute Causeway, from Tidcombe and Fosbury byway 9. Access to the next southerly byway from Ludgershall 30 is via the C road, to the Biddesden Lane crossroads and either southwards to Redenham or east along New House Lane to Redenham Drove in Hampshire.
15. On a county-wide and regional basis, comparison with the eight neighbouring local authority areas shows that Wiltshire has a higher number and length of byways open to all traffic. Wiltshire's public rights of way network totals 6,162 km in length. 13% of the network is made up of BOATs, comprising 587 individually recorded byways with a total length of 819 km. Byways Chute 32, 34 and 36 and Ludgershall Byway 30 total 4.65 km in length, which is less than 0.6% of the total length of byways in Wiltshire.
16. For comparison the surrounding authorities' overall public rights of way network length and the percentages which are BOAT are as follows:

| Authority | Overall network length km | Byway network length km | Byway length as percentage of network length |
|-----------------|---------------------------|-------------------------|--|
| Gloucestershire | 4511 | 15 | 0.3% |
| Somerset | 6117 | 8 | 0.1% |
| Oxfordshire | 2796 | 79 | 2.8% |
| Berkshire | 1178 | 165 | 14% |
| Hampshire | 3312 | 285 | 9% |
| Dorset | 2852 | 24 | 0.8% |
| BANES | 2256 | 45 | 2% |
| Swindon | 340 | 9 | 3% |

17. The length of BOATs in Wiltshire represents 22.6% of all byways open to all traffic in England and is over twice the length of that in any other county. In terms of the loss of the public rights of way currently available to motorised users, both locally and nationally, the effect of this proposed TRO can be described as minimal.
18. WSC Wadrup is the Inspector who was appointed by Hampshire County Council through the Planning Inspectorate to preside over the non-statutory Public Inquiry in November 2008 regarding a TRO at East Meon in the South Downs Area of Outstanding Natural Beauty (AONB) made for similar purposes to those for which a TRO on Byways Ludgershall 30 and Chute 32, 34 and 36 would be made. The Inspector concluded that:

'The local road network provides convenient, adequate and commodious alternative routes for the motor traffic'.
19. There is no clear definition of "amenity" as it is referred to in the Road Traffic Regulation Act 1984. The byways can be regarded as amenities in themselves because they give access to the public to enjoy the further amenities of the area in the form of the beauty, flora and fauna of this part of the North Wessex Downs AONB. It is clear that while the motorised vehicle users amongst the objectors to the proposed TRO believe that this access should not be denied to them; supporters of the proposed order consider that the amenities will be improved if the TRO is implemented.
20. Objections and representations have been received regarding the proposal to make a TRO on Byways Ludgershall 30 and Chute 32, 34 and 36 to prohibit use by vehicles on a permanent basis. Copies of the letters of objection and representation have been given to the Cabinet Member. The main points are summarised in **Appendix 2**, together with the Officer's response.

21. Chute Parish Council has stated that the repairs carried out since the TTRO have been in place have resulted in an extensive increase in usage of the byways by walkers and horse riders. This has been corroborated by individual letters of support received in the preliminary consultation. Enforcement of TROs on remote byways can be difficult, but Byways Ludgershall 30 and Chute 32 and 34 make up a spinal route which runs parallel to the village approximately ½ km away and are linked directly to the village by Byway Chute 36. The local Police Officer has written in support of the TRO stating that enforcement would be possible. Motorised traffic has been kept off the byways during the period over which the TTRO has been in place partly due to the erection of suitably worded notices and barriers. Any permanent barrier would require a key for horse drawn carriage drivers to enable them to enter the BOAT from highways, thereby making the barriers effective whilst not penalising legitimate users. It will be seen from the report attached at **Appendix 4**, that WSC Wadrup, the Inspector referred to in paragraph 10, considered the provision of keys to carriage drivers was acceptable in the case of East Meon.

Environmental Impact of the Proposal

21. Natural England (NE) has stated that:

“the byways run through farmland located in the Area of Outstanding Natural Beauty (AONB) and which is part of two Countryside Stewardship schemes and an Entry Level Stewardship Scheme. NE expects the schemes to provide an enhanced countryside for visitors to enjoy and feel welcome.

NE is working with farmers and landowners in this area to provide environmental improvements for wildlife, landscape and public enjoyment. NE’s objectives include the encouragement of visitor access to the countryside for quiet informal recreation, for both health and wellbeing purposes, as well as to enjoy the landscape and wildlife.”

22. The North Wessex Downs AONB has stated that quiet recreation and tranquillity are key characteristics of the AONB. The management plan states:

“RA1 Strong support will be offered for positive and consistent AONB-wide control of off-road vehicular use of byways of the North Wessex Downs, stating that it is critical to the character of the North Wessex Downs that off-road motorised traffic is not allowed to detract from the tranquillity and quiet enjoyment of this national landscape.”

23. Wiltshire Wildlife Trust states:

“the use of these byways by off-road vehicles for pleasure purposes is inconsistent with their function as a conduit for the passage of wildlife between the important designated Wiltshire Wildlife sites adjacent to it.”

Risk Assessment

24. The Council has a duty to assert and protect the rights of all types of users. Vehicular users would normally be expected to be in a minority on a BOAT. It is reasonable to consider the use of a TRO if the statutory grounds are satisfied and the majority of users are being endangered or substantially inconvenienced by the minority. Voluntary restrictions of several BOATs in Wiltshire have proven to have little effect on those determined to use them. The types of incident described by some of the residents of Chute suggest that the majority of motorised vehicle users would not abide by a voluntary closure.

Evidence

25. Making the Best of Byways gives guidance as follows:

'The type and quality of evidence required before making a TRO: Sufficient substantiated reports in one year which show that the byway has become unsafe for users not using mechanically propelled vehicles.'

26. The evidence in this case is provided by eye witnesses and is not substantiated by arrests and convictions. However, it is clear that it was perceived by local people that the byways were not being used by non-motorised vehicle user groups prior to the TTRO being in place. The local policeman stated that:

"It was regularly raised at Parish Council level, to the point that I always had to carry a video camera in an attempt to photograph offenders. That has not been needed, or raised at PC level since the TTRO. I do not keep specific figures as generally the vehicles have mud-covered numbers or in the case of motor-bikes no plates.

We can enforce the TRO either with tickets or seizing vehicles of persistent offenders. All three have reduced the problem...It was raised as a local issue at the PC meeting and by local farmers so it was one of our local priorities and therefore a Wilts Police matter.

Unfortunately a majority of the 4x4 drivers leave the Highway Code on the country lanes and drive in an intimidating, bullying way and the bikes use inappropriate speed on the byways..."

27. WSC Wadrup, the Inspector who was appointed to preside over Hampshire County Council's non-statutory Public Inquiry in November 2008, stated in his decision letter in respect of East Meon:

"In overall safety terms I conclude that use of the Byway by motorcyclists would constitute a danger to other users despite the very responsible attitude of TRF members."

As there is no specific statistical evidence of illegal use and confrontation an independent Public Inquiry would offer an opportunity to debate the issue of safety and obtain the view of an independent Inspector.

Surface Damage

28. Photographic evidence shows a marked improvement to the surface condition of Honey Bottom since the TTRO has been in place. This is in part due to the extensive surface repairs that have taken place and are taking place but also that motorised vehicular use has been prevented (see **Appendix 3**). Experience has shown that once repairs have been completed on other byways in Wiltshire and re-opened to all users the surface condition is damaged very quickly (see **Appendix 13**).
29. During the winter months there has been significant surface damage to Chantry Lane and Chute byway 36 (see **Appendix 12**), this cannot be put down to motorised vehicular use but is due to weather damage and water erosion. It could be argued that this damage would have been more extensive if motorised vehicles had been using the byway, but there is no direct evidence of this.

Public Inquiry

30. A number of objections have been received during the formal consultation, raising concerns that political motivation and bias against motorised vehicle users of these public rights of way are behind the proposed Order, particularly Chantry Lane and Chute Byway 36 as they are hard surfaced byways which are less vulnerable to damage by the passage of motor vehicles. The TRF has indicated that they will pursue a judicial review if the Council decides to implement a TRO without first holding a Public Inquiry. The proposal has resulted in over 200 items of correspondence being received, either in support of or objecting to the TRO. It is clear that there is substantial public interest.
31. The Council is not statutorily required to hold a Public Inquiry where there are objections to a TRO, but may choose to do so as a means of providing an open and independent forum for discussion of the issues before an independent Inspector, who will make a recommendation to the Council about the proposed Order. The Council is not bound to follow the Inspector's recommendation but will have to be able to show that it has good reasons for its decision should it decide not to do so.
32. Following the consultation process it is believed by officers that the benefit of a TRO on the Honey Bottom section has been positively established. The safety and conflict concern are the same for Honey Bottom and Chantry Lane but there is no specific statistical evidence. However, the previous surface damage to Honey Bottom and the potential surface damage to this route is evidential.

Financial Implications

33. Budgetary provision has been made for the implementation of the TRO.

Options Considered

34. To:
 - (i) Implement a permanent Traffic Regulation Order for Byways Open to All Traffic Ludgershall 30, Chute 32, 34 and 36 to prohibit members of the public from using these rights of way with motor vehicles at any time.
 - (ii) Not implement a permanent Traffic Regulation Order for Byways Open to All Traffic Ludgershall 30, Chute 32, 34 and 36 to prohibit members of the public from using these rights of way with motor vehicles at any time.
 - (iii) Hold a non-statutory Public Inquiry to consider the proposed Traffic Regulation Order.
 - (iv) Implement a permanent Traffic Regulation Order for Byways Open to All Traffic Ludgershall 30 and Chute 32, known as Honey Bottom and hold a non-statutory Public Inquiry to consider the proposed Traffic Regulation Order for Byways Open to All Traffic Chute 34, known as Chantry Lane and Chute 36.

Reason for Proposal

35. To ascertain the views of an independent Inspector on the proposed implementation of the TRO.

Proposal

36. That:

- (i) A permanent Traffic Regulation Order be placed on the section known as Honey Bottom, Byways Open to All Traffic Ludgershall 30 and Chute 32.
 - (ii) A non-statutory Public Inquiry be held, to obtain the views of an independent Inspector on whether to implement a Traffic Regulation Order on Byways Open to All Traffic Chute 34, known as Chantry Lane and Chute 36 to prohibit members of the public from using these rights of way with motor vehicles at any time.
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The following unpublished documents have been relied on in the preparation of this Report:

None