



**OFFICER REPORT TO LOCAL COMMITTEE
(WAVERLEY)**

**BYWAY OPEN TO ALL TRAFFIC 278 BRAMLEY:
REQUEST TO CONSIDER A TRAFFIC REGULATION ORDER
(ROAD TRAFFIC REGULATION ACT 1984)**

15 March 2013

KEY ISSUE

This report seeks approval to publish a Notice of Intention to make a Traffic Regulation Order (TRO) for Byway Open to All Traffic (BOAT) 278 (Bramley) known as Hascombe Road.

SUMMARY

The BOAT has extensive surface damage. The erosion caused by an irresponsible element of 4x4s users has resulted in deep ruts, severe degradation of the byway surface and ponds of standing water. BOAT 278 is currently assessed as condition 3 in the countywide assessment. Condition 3 is the highest level for which the criterion states:- "in need of significant repair - whole route or substantial sections of route in poor condition e.g. deep/founderous mud and/ or significant rutting/erosion."

This route was closed on 23 June 2010 with a Temporary Prohibition of Traffic Order to prevent further damage and subsequently extended until 23 June 2013. Following the making of this closure Great Crested Newts and Fairy Shrimps were discovered in the pools and water filled ruts on the byway. These are both protected species under the Wildlife and Countryside Act 1981 and of Conservation Concern under the United Kingdom Biodiversity Action Plan and to which then County must have regard. The latter also has protection under the Conservation of Habitats and Species Regulations 2010.

A traffic regulation order closing the way to vehicles would prevent further damage to the road and safeguard the aforementioned protected species.

The order will be made following repairs to the route. Barriers with a 1500mm (4ft 11ins) width gap would be placed at points A, B, C and D (see ANNEX 1) to allow walkers, cyclists, horse riders, quads, most horse drawn carriages and motorcycle access.

Any repairs will have regard to the presence of the protected species and any conditions or mitigation measures stipulated by Natural England.

OFFICER RECOMMENDATIONS

The Local Committee (Waverley) is asked to agree that the grounds for making a TRO as outlined are met, and a Notice of Intention to make an Order should be published for Byway Open to All Traffic 278 (Bramley) to prevent damage to the road and to preserve and protect the endangered species found therein as shown on Drawing Number 3/1/2/H16 (Annex 1) The results of the consultation and any required repair mitigation will be reported back to a future meeting of the committee for a decision.

1 INTRODUCTION AND BACKGROUND

- 1.1 The Byway is situated 3km west of Cranleigh, 5.5km south of Bramley and 2km northeast of Dunsfold. It falls entirely within the Surrey Hills Area of Outstanding Natural Beauty (AONB). The section to be closed extends from a point 385 metres north of Dunsfold Road and 60 metres north of Painshill Farm Cottage to the southern side of its junction with Nore Drive (bridleway 203 Bramley); then from the northern side of its junction with Nore Drive to its junction with the Horsham Road (A281); as shown A-B and C-D on drawing 3/1/2/H16
- 1.2 The route is currently subject to a Temporary Prohibition of Traffic Order made under section 14(1) of the Road Traffic Act 1984, which was made on 23 June 2010¹ due to the likelihood of danger to the public and whilst repairs are being carried out to the surface. This currently prevents all traffic on foot or by any other means from entering along the above mentioned section of the byway.
- 1.3 Members are 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).
- 1.4 The County Council as the Traffic Authority has the power to make a Traffic Regulation Order, (subject to Parts I to III of schedule 9 of the Road Traffic Regulation Act 1984) where it considers it expedient: -
 - 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

¹ And subsequently extended by the Department for Transport until 23 June 2013.

- c) for facilitating the passage on the 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)

1.5 The County Council as the Traffic Authority also has an additional power to make a Traffic Regulation Order as above, for special areas in the countryside. Byway 278 lies within the Surrey Hills Area of Outstanding National Beauty (AONB). This means a TRO can be made where the County Council considers it expedient:-

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.

1.6 The Council's policy as agreed by the Executive on 6 January 2009 states:

(a) That Traffic Regulation Orders be used proactively where a countywide assessment indicates a Byway Open to All Traffic is in poor condition, in need of significant repair and it is considered necessary to restrict traffic, coupled with programmes of repair as resources permit.

(b) That where a countywide assessment indicates a Byway Open to All Traffic is in reasonable condition a Traffic Regulation Order be only made on grounds of significant danger to users of the route, or to prevent significant damage to the route

(c) That the revised Priority Statement and Targets for Public Rights of Way be adopted.

1.7 The Priority Statement and Targets for Public Rights of Way states that the County will process TROs in accordance with County policy as the need arises. Processing TROs is number 8 of 9 in the Priority Statement.

1.8 Level of physical condition in the annual byway assessment:

(1) Good- predominantly good throughout length of route.

(2) In need of some repair- e.g. short section of mud or limited rutting/erosion.

(3) In need of significant repair- whole route or substantial sections of route in poor condition e.g. deep/founderous mud and/or significant rutting/erosion.

2 ANALYSIS

Condition:

2.1 The physical condition of Byway 278 (Bramley) means it is in need of significant repair. Substantial sections of the byway are severely rutted and water-filled throughout much of the year, mostly along its eastern side, which qualifies it to be classed as a condition 3 byway, as described above. The policy as agreed by the Executive on 6 January 2009 states that a Traffic Regulation Order be used proactively on these condition 3 byways where it is considered necessary to restrict traffic, coupled with programmes of repair as resources permit.

2.2 The surface of BOAT 278 has been badly damaged and it will cost a significant amount to improve it. The surface of the byway had been degraded significantly until its closure in 2010 by an element of 4x4 users that use it irresponsibly and in a harmful manner. Equestrian and motorbike use does not appear to have contributed to the level of erosion caused by 4x4s. The photographs below show the degraded surface.



Photos above taken in May 2010 after a dry winter and spring



Photos above taken February 2013

Ecological issues

2.3 When the current closure was first made repairs were scheduled for Spring 2011, but before this took place Great Crested Newts (GCN) and Fairy Shrimps were discovered in pools and water filled ruts along the byway. These are both protected species under schedule 5 of the Wildlife and Countryside Act 1981, which makes it an offence for any person to intentionally kill, injure, take sell or intentionally damage their habitat. They are also both a species of conservation concern under the United Kingdom Biodiversity Act Plan. In addition the Conservation of Habitats and Species Regulations 2010 (CHSR 2010) (as amended) fully protects GCNs².

2.4 The County are therefore unable to proceed here with normal restoration of the byway due to its regard for the above conservation and habitat requirements.

2.5 An independent ecological report³ was commissioned which confirms that the rutting and standing water along the way had arisen due to heavy use by 4x4 and the heavy rains of recent years. They also confirm the presence of, and detail the distribution of, fairy shrimp in some of the shallower ruts and GCNs and their eggs in some of the deeper pools; which are indicative of their preferred habitats.

² ...and their breeding sites, making it an offence to deliberately kill, injure or capture GCNs; to deliberately disturb GCNs; damage or destroy GCN breeding places or resting places; possess or transport a GCN or any part of a GCN; sell (or offer for sale) or exchange GCNs or parts of GCNs.

³ McGibbon, R. and Underhill-Day, J. (2012) Status and management of fairy shrimp *Chirocephalus diaphanus* and great crested newt *Triturus cristatus* on a section of the Old Hascombe Road, Bramley, Surrey.

2.6 The report confirms that any management options should only be considered after consultation with Natural England.

Repairs

2.7 Repairs are anticipated to be substantial, costing in the region of £10-15,000. These costs would be mostly due to the clearance of drainage ditches, fencing off of certain ponds and wallows, vegetation clearance and some surfacing. If arising material needs to be removed from site this may triple the above costs. Any such works will only commence with agreement from Natural England who may require that the County apply for a mitigation licence under regulation 53(2)(e-g) and 53(9)(a-b) of the CHSR 2010⁴. Given the risks of committing an offence under any of the regulations outlined in paragraph 2.3 it seems unlikely that the County can begin repairs until permission is obtained from Natural England.

2.8 A permanent TRO would prevent further damage to the surface following byway repairs, which will be carried out in the next 6 months weather and licence permitting. A permanent width restriction prohibiting 4x4s and wider vehicles will enable the repairs to be engineered to preserve the character of the road in a case where it is suitable for equestrians, cycles and motorcycles. Repairs done on well-used byways, which have not been closed to vehicles, show that the life expectancy of an unsealed surface is less than 10 years; bridleways typically have a life expectancy of more than 15 years.

2.9 Alternatively seasonal TROs have been successful in Surrey where the surface is prone to erosion during the wet winter months and where the surface condition is the predominate issue – typically these have been level clay routes such as this one, where the clay subsoil has a much reduced bearing capacity when hydrated. Recent years, however, have also seen heavy rains throughout the summer leaving the ground waterlogged and prone to damage throughout the year. If the byway were open during the summer months, the Police would have difficulties policing it successfully due to its relatively remote location. This is likely to mean that the byway could be damaged further, requiring repairs which the current Countryside Access Team Maintenance budget would not be able to cover.

2.10 Any repairs or other works will have regard to the presence of the aforementioned protected species and any conditions or mitigation measures stipulated by Natural England.

3 OPTIONS

3.1 It is the Officer's recommendation that a Notice of Intention to make a TRO prohibiting all vehicles over 1500mm (4ft 11ins) width be published, and the results of the consultation be reported to a future meeting of this Committee for a decision. A width restriction of 1500mm (4ft 11ins) will effectively exclude

⁴ Required if work/activities would affect GCNs and would involve one or more of the following; capture, disturbance, transport and/or damage/destroy the breeding sites or resting places of GCNs; provided that there is no satisfactory alternative and action will no be detrimental to the population.

all motor vehicles, except quad- and motorbikes, whilst permitting use by many horse drawn carriages.

- 3.2 The alternative solution would be to do nothing and allow the current temporary closure to elapse. If reopened and without the TRO, the condition of the route is likely to further deteriorate and would soon be unusable to anything other than a specially adapted 4x4 vehicle. This might also have a detrimental affect upon the two protected species. When the byway is then repaired it would require much more imported material at much greater cost, which the Countryside Access Maintenance Budget local allocation will not be able to cover.

4 CONSULTATIONS

Consultation replies	Officers Comments
<p>Supporter: Raymond Cook I am wholly in favour of this change. The passage of inappropriate 4x4 vehicles along this byway is not beneficial to anyone. I look forward to hearing that this order is enacted.</p>	None
<p>Supporter: Denis Holmes (Ramblers Footpath Secretary) On behalf of the Ramblers I support the proposed Order.</p>	None
<p>Supporter: Anthony Kerby (Neighbourhood Specialist Officer, Cranleigh Police Post) I have spoken to my Sergeant and the Force rural officer. We do not have any objections to your proposals.</p> <p>Supporter: Graham Cannon (Road Safety and Traffic Management Officer, Surrey Police) I can confirm that we have no objection.</p>	None
<p>Supporter: Tim Harrold (Campaign to Protect Rural England) I can confirm that the byway is in poor conditions...people confirm that the BOAT is impassable in places as it is so overgrown, muddy and flooded. I can confirm from my own inspection that there is still significant rutting and erosion from earlier 4x4 activity. The most northerly section of C to D seems to have either a stream or ditch running through it for at least part of its length. Repair of this BOAT would be expensive at any time and impossible in the winter. The presence of protected species would in any case many extensive renovation undesirable in the vicinity of where they have been located.</p>	None

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<p>Supporter: Clive Smith (Surrey Hills AONB Planning Officer) I note the reasons set out in your letter for the County Council wishing to avoid any further damage to the BOAT and ecology of the area. I would ask that our policy is given weight in decisions relating to the future of this BOAT: <i>“The quiet enjoyment of the Surrey Hills on public rights of way will be protected. Whilst recognising lawful and responsible use, actions to minimise the negative and illegal impacts of vehicular use on the landscape will be implemented by working in conjunction with landowners, the Police and Highway Authority.”</i> (Plan Policy RT6)</p>	<p>None</p>
<p>Bramley Parish Council: Has discussed the proposed TRO and has no objection or comments to make.</p>	<p>None</p>
<p>Supporter: Steve Sharp (The Trail Riders Fellowship) I support the fact that the proposal maintains rights for responsible trail riders to use the route.</p>	<p>None</p>
<p>Commenter: Ralph Holmes (The Open Spaces Society) Considering the appalling state the byway is currently in, we welcome the making of a TRO. We would prefer the TRO to close the byway to all motorised traffic irrespective of the width of the vehicle. I would ask that Surrey County Council look at this further and find ways to repair Bramley 278- hopefully to the same sort of standard achieved along Lions Lane, Cranleigh. Surrey did that brilliantly and now it is a great pleasure to walk or cycle along it.</p>	<p>The Council believes that the byway can be repaired sufficiently to allow some users in mechanically propelled vehicles to continue to use it and where this is possible it should endeavour to do so. In addition the ecological survey suggests that some disturbance of the surface is actually beneficial to the fairy shrimp although not to the extent that the surface is made impassable.</p>
<p>Brian Cohen (Member of Surrey Countryside Access Forum- SCAF). It is my understanding that the SCAF are to comment on all such matters prior to decisions being made and due time made available for this to happen. Is there documentary evidence for the continued presence in this byway of the 2 protected species?</p>	<p>It is not usual practice to consult the SCAF on individual orders, only on strategic and policy matters. The final draft of the ecological report from “Footprint Ecology” was received in April 2012. We have no</p>

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<p>Why was maintenance to this byway undertaken in 2011 but no such mention of shrimps or newts was made.</p> <p>There is a pond and drain to the east of the byway- I suspect the pond has overflowed. If the landowner has not maintained his drainage something should be done about this too.</p>	<p>reason to suspect that the situation with regard to these species has changed since.</p> <p>The clearance work was undertaken as a precursor to resurfacing works. It was during this work that both the fairy shrimp and the great crested newts were discovered.</p> <p>The issue of drainage is certainly important here and will be a core part of our strategy to restore this route.</p>
<p>Objector: Steve Sharp (Surrey Byways User Group)</p> <p>I object to the proposal on the grounds that the Council should maintain access for all vehicular users. The Byway should not have been allowed to deteriorate to the extent that Great Crested Newts and Fairy Shrimps have somehow found their way into water filled ruts.</p>	<p>Surrey County Council policy states that where a TRO is made due to the byway being in poor condition, repairs will be carried out as resources permit. We must also have regard to the likelihood that future uncontrolled use by 4x4 might rapidly damage the repaired byway.</p> <p>The Council endeavours to prevent the deterioration of byways wherever possible although this is not always financially nor logistically possible given that huge damage can often be caused by 4x4 in a short period after very wet weather.</p>

5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 5.1 If a Notice of Intention to make a TRO is published this would incur an advertising cost of approximately £500-700 which would have to be met from the Countryside Access budget.
- 5.2 Repairs are scheduled, which will cost £10-15,000 from the Capital budget allocated to the Countryside Access Team. If the landowner does not agree that ditch dredgings can be placed on adjacent land then this cost could triple. This figure includes the clearance of ditches along its full length and some surfacing at both ends.
- 5.3 The costs of applying for and accommodating a licence from Natural England are currently unknown in terms of both time, finance and mitigation works. These costs are likely to be unavoidable.

5.3 If alternatively a Seasonal TRO were subsequently made, advertising costs in the region of £500-700 would have to be met from the Countryside Access budget.

5.4 Barriers, traffic signs and installation costs in the region of £2000* would be met from the Countryside Access Team Maintenance budget. Temporary barriers are currently in place but these will be replaced with new barriers or bollards which would permit use by vehicles narrower than 1500mm (4'11").

6 EQUALITIES AND DIVERSITY IMPLICATIONS

6.1 The TRO will prevent further damage to the surface and once repaired it will improve accessibility for most users.

6.2 Motorised vehicles and some horse drawn carriages over 1500mm (4ft 11ins) wide will be restricted.

7 CRIME AND DISORDER IMPLICATIONS

7.1 Surrey Police have no objection to the proposed TRO.

8 REASONS FOR RECOMMENDATIONS

8.1 Officers do not have delegated powers to make or advertise TROs. Officers support the decision to make a TRO because it would meet Surrey County Council Policy and would protect the durability of the byway by preventing damage to the road. It would also help us to meet the requirements placed upon us to have regard to the ecology and nature conservation of the two protected species found along it.

9 WHAT HAPPENS NEXT

9.1 Should Members decide to proceed with the TRO, a Notice of Intention to make a Traffic Regulation Order will be published in a local newspaper and on site and all interested parties and user groups will be consulted.

9.2 An application will be made to Natural England for a Mitigation Licence, if required.

9.3 After the advertising period has expired, Members will be asked to consider any further representations at a future Committee meeting to decide whether the legal and policy criteria for making the order still apply.

9.4 Further information will also be provided at this Committee regarding the mitigation licence and the detail of any proposed works and ongoing management conditional upon it.

**LEAD/ CONTACT
OFFICER:**

Daniel Williams, Countryside Access Officer

**TELEPHONE
NUMBER:** 020 85419245

E-MAIL: Daniel.williams@surreycc.gov.uk

**BACKGROUND
PAPERS:** Available to view at Countryside Access offices,
Merrow Depot, Guildford by appointment

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