



**REVIEW OF TRAFFIC REGULATION ORDER  
THE BOROUGH OF ELMBRIDGE (BOAT 47, NEW ROAD,  
CLAYGATE) ROAD CLOSURE ORDER 1996**

**SURREY COUNTY COUNCIL  
LOCAL COMMITTEE (ELMBRIDGE)  
18 JULY 2005**

**KEY ISSUE AND SUMMARY:**

The County Council as the Highway Authority has the power to rescind or modify Traffic Regulation Orders (TROs) (made subject to Parts I to III of Schedule 9 of the Road Traffic Regulation Act 1984). This report considers a formal request from the All Wheel Drive Club (AWDC) to review a TRO, which prohibits vehicular traffic from using the above public right of way. The AWDC consider that there may be a case for rescinding the Order, or modifying it to allow vehicular traffic in certain circumstances (for example, in drier weather or one-way). The report considers the views of a range of consultees and members of the public. It concludes that the provisions of the Road Traffic Regulation Act relating to Traffic Regulation Orders are satisfied and that the Order should remain in force.

**ELECTORAL DIVISION AND MEMBER:**

Hinchley Wood, Claygate and Oxshott - Mr Mike Bennison

**OFFICERS' RECOMMENDATION:**

The Committee is asked to agree that The Borough of Elmbridge (BOAT 47; New Road, Claygate) Road Closure Order 1996 should remain in force.

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<b>LEAD OFFICER:</b>	Sue Todd Head of Rights of Way and Countryside Access
<b>CONTACT OFFICER:</b>	Christina Smith Rights of Way Assistant
<b>TELEPHONE NUMBER:</b>	020 8541 9342
<b>BACKGROUND PAPERS:</b>	File containing representations to the County Council, including 4 petitions (available from the Community Support Team from 11 July and at the Local Committee Meeting)

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## 1 INTRODUCTION AND BACKGROUND

- 1.1 Byway Open to All Traffic (BOAT) 47, Claygate and Esher is known as 'New Road', and runs from Coverts Lane in Claygate, south over the A3 to reach the B280 Fair Oak Lane (**Appendix A**).
- 1.2 Elmbridge Borough Council made the Order (**Appendix B**) in 1996 under the Road Traffic Regulation Act 1984, acting as agents for Surrey County Council (SCC). It prohibits vehicles from using the BOAT without lawful authority. Unfortunately the paperwork supporting the Order has not been found, including the 'Statement of Reasons' for making the Order.

## 2 THE REQUEST TO REVIEW THE ORDER

- 2.1 The County Council received a formal request from the All Wheel Drive Club to review the Traffic Regulation Order that is currently in place. The Club considers that remedial works have reduced the danger to users of the route, and that there may be a case for rescinding the Order, or modifying it to allow vehicular use in certain circumstances (for example, in drier weather or one-way).
- 2.2 As the statement of reasons is not available, Members of the Committee will have to base their decision on the information available, and look at the matter in terms of the current situation. The grounds under which a Highway Authority may make a Traffic Regulation Order, (subject to Parts I to III of Schedule 9 of the Road Traffic Regulation Act 1984) are outlined in **Appendix C**.

## 3 CONSULTATION

- 3.1 A list of those consulted is attached as **Appendix D**. Notices were also displayed along the BOAT. Copies of representations are available in the file of background papers.
- 3.2 The All Wheel Drive Club (AWDC), Land Access & Recreation Association (LARA) and Green Lane Association (GLASS) support the removal of the order, and an individual representing the AJS & Matchless Owners club stated a preferred direction of traffic should a one-way system be adopted. Arguments put forward in favour of the TRO being rescinded include:
  - The byway has sufficient width to accommodate all users without any danger to a single user group.
  - The surface of the byway is in good condition and now suitable for vehicular use since remedial works took place. As circumstances have changed in terms of the surface condition of the BOAT, the TRO should be rescinded.
  - The TRO is invalid due to the loss of the Statement of Reasons and an unsigned alteration on the Order itself, and that the Order has been incorrectly applied and the route incorrectly signed.

- A review of the TRO cannot take place if the original reasons for making the Order are unknown, and consultees are not in a position to make a decision without information regarding why the Order was made, which users precisely it applies to, and the effect of remedial works.

3.3 The following groups consider that the TRO should remain:  
The warden for the landowner – The Crown Estate; Elmbridge Borough Council; Claygate Parish Council; SCC Local Transportation Service; the Ramblers Association; British Horse Society; Cyclists Touring Club; and Campaign to Protect Rural England (CPRE) Surrey. Local opinion is strongly against the removal of the order. Officers have received letters or emails from over 170 local residents or users of the route, and 4 petitions (of 254, 148, 112 and 103 signatures) opposed to the removal of the TRO. Arguments put forward by those opposed to the TRO being rescinded include:

Danger to persons or other traffic using the road or any other road

- Potential danger to other users from sharing the track with vehicles, and insufficient width in places to allow safe passing. The route is well-used by horse riders, cyclists and pedestrians, including organised walking groups for Health Walks, and annual charity bike rides. The BOAT is currently a relatively safe area for horse riding, walking a dog or cycling with children.
- Danger to users from potentially high volume of vehicular traffic, due to location of the BOAT and the limited number of existing roads out of Claygate.
- Knock-on safety and congestion implications for traffic on surrounding roads. Cars currently park both sides of Coverts Road making it already difficult for cars to pass safely.

Damage to the road or to any building on or near the road

- Deterioration of the surface of the route due to use by vehicles, making it less suitable for, or unusable by other users. The construction of the track is wet clay soil, unsuitable for regular vehicular use. The light surface is currently suitable for users, but would not be sufficiently robust for vehicles. The surface is already prone to becoming waterbound during wet weather and would deteriorate quickly with frequent vehicular use.

For facilitating the passage of any class of traffic (including pedestrians)

- The firm surface of the BOAT is narrow. Vehicles would churn up verges that are currently suitable for walkers and horse riders, and widening the track would require the removal of vegetation and mature trees.

For preserving the character of the road

- Extra noise from motorised vehicles would disturb local residents.
- The character of the Coverts Road end of BOAT is quiet and residential, and not suitable for increased motorised traffic.

- Permitting vehicular use of the track would change the character of a relatively tranquil area for the worse.

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

- Regular vehicular use would have serious detrimental impact on the character and surrounding environment.
- Damage would be caused to the natural flora adjacent to and overhanging the BOAT, and the banks of the adjacent watercourse.
- There would be increased levels of noise and pollution.
- Vehicles might trespass onto adjacent land, or illegally use the adjoining public bridleway.
- The BOAT would be open to fly-tipping, and dumped cars.
- There may be illegal and irresponsible vehicular use of the BOAT.

#### **4 OFFICERS' COMMENTS**

- 4.1 Surrey County Council Legal Services consider that the current TRO remains valid. The validity of the Order was not challenged during the relevant period immediately following its making.
- 4.2 In the past few years SCC has resurfaced several waterlogged lengths of the BOAT, improved drainage with a new short ditch and cleared out existing drains. The surface is now suitable for all other users, but more frequent works would be required if there were vehicular use. The remedial works have not significantly changed the route so as to reduce danger to users.
- 4.3 The definitive width of the BOAT varies and is recorded as 55 feet from fence to fence at one point. The surfaced track is 2-4 metres wide along the majority of the BOAT. If the BOAT were to be used by vehicles, consideration would have to be given to creating passing places, which would require the removal trees and vegetation.

#### **5 IMPLICATIONS**

- 5.1 **FINANCIAL** – If the TRO remains in force there are no financial implications.
- 5.2 If the Committee decides that notice of intention to rescind or modify the order should be published, advertising costs for two notices in a local newspaper would be in the region of £1200. If objections were received during the statutory consultation period that would follow, the Committee may chose to hold a Public Inquiry. Costs for an Inquiry would be in the region of £1,000.
- 5.3 If vehicles were to use the route, it is likely that more frequent maintenance would be required.
- 5.4 These costs would have to be met from the Rights of Way budget.

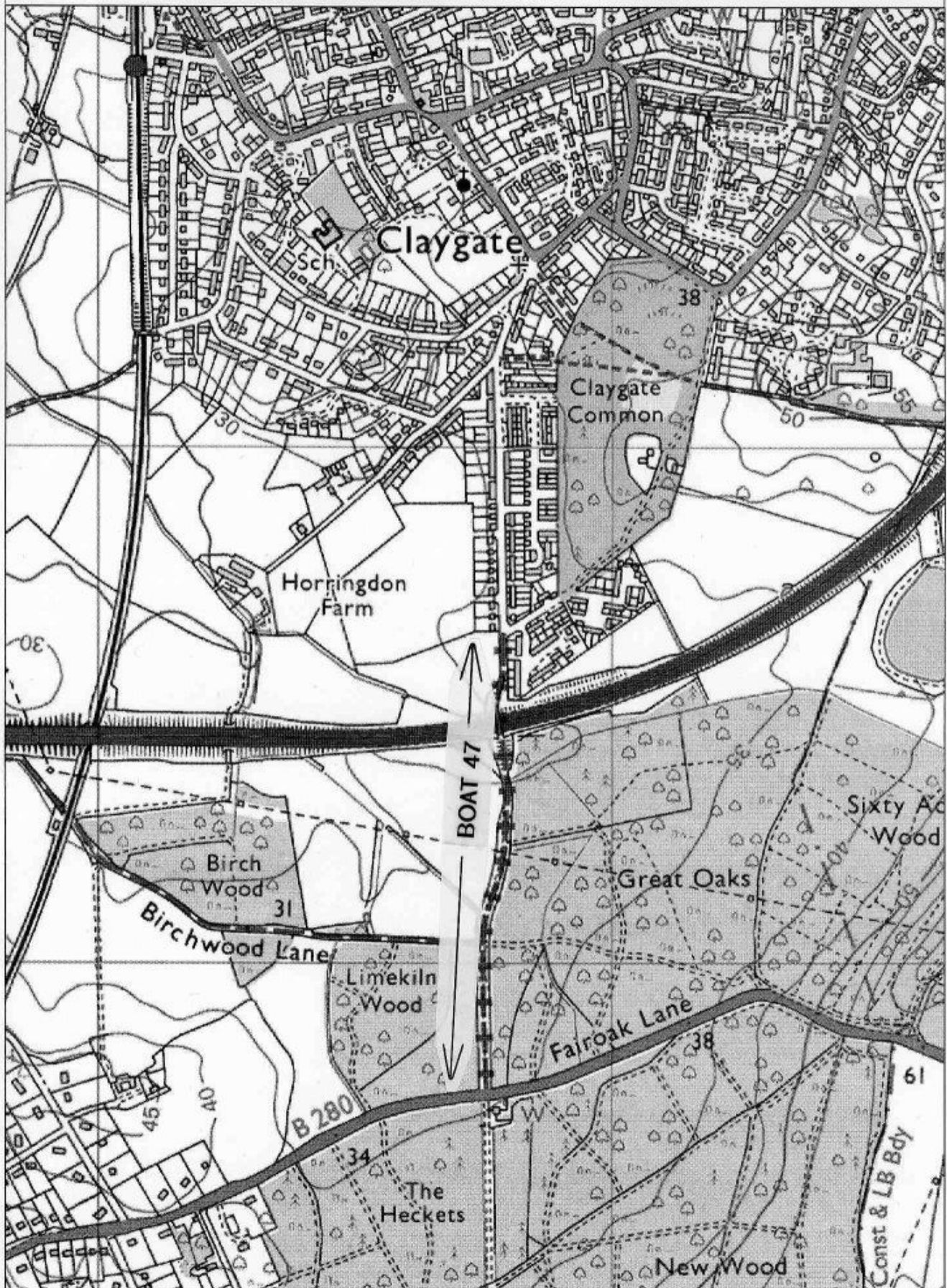
- 5.5 **SUSTAINABLE DEVELOPMENT** – If the TRO remains in force there are no sustainable development implications. There are concerns that rescinding the TRO would be detrimental to wildlife, allow fly tipping, and result in traffic problems on connecting roads.
- 5.6 **CRIME AND DISORDER** – If the TRO remains in force there are no crime and disorder implications. If the TRO were rescinded, there are concerns that fly tipping may occur along the BOAT as mentioned above.
- 5.7 **HUMAN RIGHTS** – Under section 6(1) of the Human Rights Act 1988, local authorities are required to act, as far as possible, in a way that does not breach rights contained in the European Convention on Human Rights. This includes the right to property, under Article 1 of the First Protocol to the Convention and the right to respect for private and family life and the home, under Article 8. It is the officer's view that no Convention right is engaged by this proposal and that the proposal has no human rights implications.
- 5.8 **EQUALITIES** – The existing TRO prevents people from accessing the BOAT in vehicles. While this may include some people with mobility problems who may not otherwise be able to enjoy the countryside, pedestrians with mobility problems may find the surface less easy to navigate if the TRO was rescinded and vehicles were to use the route. On balance, the officers' view is that the current situation is likely to be of more benefit to those with mobility problems.

## 6 CONCLUSION AND REASON FOR RECOMMENDATION

- 6.1 The desire of user groups to exercise their right of access is understandable, but in officers' view the Order satisfies the requirements of the Road Traffic Regulation Act 1984, set out in **Appendix C**.
- 6.2 Members have the option of seeking to modify the terms of the existing TRO. However, a one-way system is not considered practical by officers in terms of enforcement, and in itself would not resolve the problems of vehicles needing to pass non-vehicular users. Seasonal regulation may lessen damage to the surface of the BOAT, but would not address concerns around users passing each other safely, or the effect on the character or amenity of the route.
- 6.3 The BOAT provides an important off road link for horse riders, cyclists and pedestrians, linking Claygate to Arbrook, Esher and Oxshott commons. The benefits from maintaining the byway as a peaceful route suitable for safe recreation by pedestrians, cyclists and horse riders, are considered to outweigh the advantage to user groups of reopening the byway for vehicular use.

**Plan**

**BOAT 47, NEW ROAD, CLAYGATE**



**Scale 1:10000**

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Date: 05/04/05

**Copy of Order**

EB 1950/2

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**THE BOROUGH OF ELMBRIDGE**

**(BOAT 47; NEW ROAD, CLAYGATE)**

**ROAD CLOSURE ORDER 1996**

Elmbridge Borough Council pursuant to arrangements made under Section 101 of the Local Government Act 1972 with The County Council of Surrey in exercise of the powers of the County Council under Section 1 of the Road Traffic Regulation Act 1984 (hereinafter referred to as "the Act of 1984) and of all other enabling powers and after the consultations required by the Act of 1984 HEREBY MAKES the following Order:-

1. No vehicular traffic shall proceed in that part of the Byway Open to All <sup>Traffic</sup> Public 47 (Esher) known as New Road Claygate from it's junction with the B280 Fair oak Lane northwards for a distance of approximately 890 metres to the southern side of the junction of Holroyd Road with Coverts Road Claygate.
2. The Interpretation Act 1978 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.
3. This Order shall come into operation on the 10<sup>th</sup> day of ~~March~~ 1997 and may be cited as The Borough of Elmbridge (BOAT 47; New Road, Claygate) Road Closure Order 1996.

THE COMMON SEAL of ELMBRIDGE )  
BOROUGH COUNCIL was hereunto )  
affixed in the presence of:- )



7583

*Hugh Ashton*  
Mayor  
*T. Chant*  
Solicitor to the Council

**THE BOROUGH OF ELMBRIDGE**  
**(BOAT 47; NEW ROAD, CLAYGATE)**  
**ROAD CLOSURE ORDER 1996**

**ORDER MADE:** 13<sup>th</sup> February 1997

**OPERATIVE DATE:** 10<sup>th</sup> March 1997

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**Appendix C****Extract from Road Traffic Regulation Act 1984****Traffic Regulation Orders outside Greater London**

1 – (1) An order under this section (in this Act referred to as a “traffic regulation order”) may, subject to Parts I to III of Schedule 9 to this Act and to subsection (4) below, be made as respects any road outside Greater London where it appears appropriate to the authority making the order that it is expedient to make it -

- 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
- 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 vehicles 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 foot, or
- f) for preserving or improving the amenities of the area through which the road runs.’

**Appendix D****List of consultees**

The Crown Estate	Green Lane Association
SCC Local Transportation Service	Trail Riders Fellowship
Elmbridge Borough Council	Auto Cycle Union
Claygate Parish Council	Surrey Police
Claygate Village Residents Association	Surrey Ambulance Service HQ
Ramblers Association	Freight Transport Association
Open Spaces Society	Road Haulage Association
British Horse Society	RAC Touring Information
Cyclists Touring Club	The AA
Surrey Byways User Group	The Secretary of State for Transport
Land Access & Recreation Association	<u>Households:</u>
Byways and Bridleways Trust	Coverts Road: 115, 117, 119, 121 to 129, 131
British Driving Association	to 155, 158 to 169, 171, 173
All Wheel Drive Club	Glebelands: 1 to 25 odd no's
Range Rover Register	Fairoak Lane: 1 & 2 Highgate Cottages