

SURREY COUNTY COUNCIL

LOCAL COMMITTEE (GUILDFORD)

DATE: 19 September 2017



LEAD OFFICER: Steve Mitchell, Countryside Access Team Manager

SUBJECT: Proposed Prohibition of All Vehicles on park of Byways Open to All Traffic Nos. 518 & 519, Ash, Normandy and Tongham – Amendment Order

DIVISION: SHALFORD

SUMMARY OF ISSUE:

The Committee resolved on 6 July 2017:

- (i) That a Notice of Intention to make a Traffic Regulation Amendment Order (TRO) be published as shown on Drawing No. 3/1/54/H22 (**Annex A**). Where significant (and relevant) objections are received, or no objections are received, to delegate to the Countryside Access Manager the ability to agree whether an Order may be made, in consultation with the Divisional Member, and the Local Committee Chairman and Vice-Chairman. The TRO would not be made until a detailed highway improvement works plan for Ash Green Lane West has been approved.
- (ii) To delegate to the Countryside Access Manager in consultation with the Chairman, Vice-Chairman and Divisional Member the ability to accede to any unresolved objections and decide whether the TRO may be made.
- (iii) Where substantial (and relevant) objections are received, or significant modifications proposed, the Countryside Access Manager in consultation with the Divisional Member and the Local Committee Chairman and Vice-Chairman, may refer the decision on whether the TRO be made back to the Committee.

The Notice, Draft Order, Statement of Reasons and details for making Objections to Traffic Regulation Orders were published on 14 July. Twenty-eight objections were received within the statutory period. In light of the public interest evidenced by the number of objections the Countryside Access Manager has referred this matter back to Committee. Members are asked to consider the objections and to decide whether the legal and policy criteria for making the TRO Amendment Order still apply. Members may then decide whether the Order should be made. Alternatively, Members may decide to hold a Public Inquiry to decide the matter. There is no legal requirement to hold a Public Inquiry. The recommendation to Members is that the TRO Amendment Order should be made as advertised.

RECOMMENDATIONS:

The Local Committee (Guildford) is asked to agree that:

The Surrey County Council Ash Green Lane West (Right of Way No. 518, D80) and Spoil Lane (Right of Way No. 519, D74) in the Parishes of Ash, Normandy and Tongham) (Prohibition of Through Traffic) Amendment Order 2017 as shown on Drawing No. 3/1/54/H22 be made.

REASONS FOR RECOMMENDATIONS:

Officers support the application to make an Amendment Order to allow public vehicular access to the new housing development on the basis that the BOAT will be surfaced to withstand traffic. The Order would meet the legal and policy criteria for making such Orders.

1. INTRODUCTION AND BACKGROUND:

- 1.1 Byway Open to All Traffic (BOAT) 518 (Ash Green Lane West), also known as 'D' Road No. 80, is subject to a Traffic Regulation Order (TRO), made in 1994, under sections 1 and 2 of the Road Traffic Regulation Act 1984. The grounds on which the TRO were made were primarily public safety due to the poor condition of the lane at that time. A section of the BOAT was often water logged during the winter months and use by vehicles had damaged the surface to an unacceptable degree. The cost to the County Council of surfacing the BOAT to an acceptable standard for motorised vehicular use at that time was prohibitive. The 1994 Order and the committee reports dated 10 November 1993 and 16 February 1994 giving the background to the original Order are attached at **Annexes B, C and D**. A copy of the County Council's Policy for making TROs is attached at **Annex F**.
- 1.2 Members will recall resolving at their meeting on 6 July 2017 to advertise a Notice of Intention to make a TRO Amendment Order. The Order is attached at **Annex G**. The Amendment Order would only affect a section of BOAT 518. The effect would be to allow motorised vehicles to use the section of BOAT for a 430 metre section from a point past the boundary with Ash Manor School in an easterly direction to the entrance to a new housing development at Minley Nursery. Planning Permission was granted for 55 dwellings with permanent access via Ash Green lane West by an independent Planning Inspector following Guildford Borough Council's refusal of permission. At the Appeal Hearing the Inspector considered the impact of the development on the BOAT.
- 1.3 Motorised vehicles are currently prohibited from using that section due to the TRO described above. The remainder of the BOAT would remain restricted for motorised vehicles. The Order has been advertised in accordance with the regulations and during the statutory objection period 28 objections and 4 representations were received. A summary of these is attached at **Annex E**. The reasons for objecting include the surface of the BOAT, drainage, ownership of the land, the amenity of the area and the temporary closure that is in place.
- 1.4 Due to the amount of interest from Members and the public the Countryside Access Manager has decided that the matter be referred back to Committee for the decision on whether the TRO Amendment Order should be made.

RESPONSE TO THE OBJECTIONS**Surface of the BOAT**

- 1.5 Concerns have been raised that the BOAT is narrow and un-made and there is no clear statement over the adoption of the finished road. In response, as well as being a BOAT the route also has 'D' road status and as such is already a publicly adopted highway. The Highway Authority when consulted on the planning application had no objections in terms of highway safety and

considered that the improvements to the BOAT would improve access for all users. The Inspector found it at least arguable that the proposed surfacing would improve accessibility. The current tarmac surface is temporary whilst any building works are in progress and the top course will be laid prior to occupation. The new access road will be constructed over the BOAT to full highway standards, including a separate footway and carriageway, approved by the County Council's Transportation Development Planning Team. Bewley Homes is required to surface the BOAT with block paving, as specified in the planning permission, which was requested by Guildford Borough Council to aid drainage. One of the planning permission conditions states that "the development hereby approved shall not be commenced until the proposed improvements to Ash Green Lane West, including raised tables and tactile paving, have been constructed in accordance with the approved plans....The above improvements will first require the alteration of the Traffic Regulation Order prior to commencement of the development." The housing development will clearly increase traffic along this section but Officers are satisfied that the proposed works will provide a safe route for all users including walkers, horse riders and cyclists. The BOAT has a legal width of 20 – 60 feet and is therefore wide enough to allow for the passage of all users.

Temporary closure

- 1.6 Representations have been received relating to the current temporary closure. The closure is essential to safeguard the public during the works and will be removed when safe to do so. The 1994 TRO allows Bewley Homes a private right of entry to those roads in connection with any of the following operations namely: building, industrial or demolition operations and the maintenance, improvement or reconstruction of the road.

Landownership

- 1.7 The land under the BOAT is unregistered at the Land Registry, so ownership of it is unclear. Under common law it may be that the adjoining landowners own up to the middle or historically it may have been in the ownership of the Lord of the Manor. The County Council as the highway authority is responsible for the surface and can authorise improvement works. There is no registered common land along the route.

Amenity

- 1.8 Ash Residents' Association are concerned that any changes will have a negative impact on the local environment and community and may facilitate future changes leading to the loss of a local motor-free bridleway. Ash Parish Council has stated that the right of way should remain for amenity use and horse riding. The Inspector accepted that "the character of that part of the BOAT that is proposed to be surfaced would significantly alter from that of a rural track to a conventional engineered road and that this would be an additional urbanising influence...If the BOAT was the only practical means of gaining access to the site a substantial change in its character was unavoidable." He considered that the BOAT's undeniable rural character was already diminished by the presence of other permitted built development. Whilst the access road will have a more 'urban' feel any future planning proposals and requests for access along the BOAT would have to be considered in accordance with the legislation.

ITEM 8

Drainage

- 1.9 Guildford Borough Council as the Drainage Authority has been consulted and has approved the drainage conditions relating to the works.

2. ANALYSIS:

- 2.1 The reason for making the TRO in 1994 is no longer relevant due to the agreed surface improvements.

3. OPTIONS:

- 3.1 It is the Officer's recommendation that a TRO Amendment Order be made. This Amendment Order would allow public vehicular use of the BOAT to the new housing development.
- 3.2 If the Committee decide not to agree with the recommendation then the TRO restricting vehicular use on the BOAT will remain.

4. CONSULTATIONS:

- 4.1 The following have been consulted: Guildford Borough Council, Ash Parish Council, The Ramblers, Open Spaces Society, Cycling UK, British Horse Society, Mr Matt Furniss County Councillor, South Eastern Transport Assoc., Department of Transport, Road Haulage Assoc, Surrey Police, Guildford Fire Station, Tongham Ambulance Station, Ash Manor School, Trail Riders Fellowship, Surrey Byways User Group, British Driving Society, Range Rover Register, All Wheel Drive Club, Access Unlimited, CPRE, Guildford Access Group, LARA, Auto Cycle Union, Freight Transport Assoc, Byways and Bridleways Trust, GLASS, statutory utilities and SCC Legal Services.
- 4.2 A summary of the objections and representations received is attached at **Annex E.**

LEGAL SERVICES COMMENTS

- 4.3 Where a Traffic Regulation Order is made pursuant to s1 of the Road Traffic Act 1984 to prevent danger to persons or other traffic using the road or for preventing the likelihood of any such danger arising because of the poor surface of the way, as in this case, it is open to the Highway Authority to agree an amendment to the Order to allow vehicular use where planning permission has been granted subject to a condition requiring improvements to be made by a developer in receipt of the appropriate planning permission. Surrey Transport Development Planning Officers did not object to the Bewley Homes development because they considered that there would be no impact on highway safety and in fact the improved surface required by them as a pre-commencement condition would improve access for all users. The experienced Inspector at the Appeal Hearing considered the objections on character and appearance at length but held that while there would be an urbanising influence this was acceptable. A planning condition was imposed to ensure proper surfacing preceded commencement of any development. A s106 planning obligation approved by the Inspector provides for the payment of resurfacing costs. Current objections relating to surfacing and amenity were before the independent Inspector and were dealt with by him having

interrogated the evidence presented by the Borough Council. Bewley Homes, and a local resident. His decision to grant permission was unchallenged.

- 4.4 In the absence of new considerations not raised before him any decision to go against officer recommendation may be open to legal challenge.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

- 5.1 The cost of making the TRO will be approximately £2,000 including administrative and advertising charges. These will be met by Bewley Homes Plc. They will also meet the costs of surfacing the route and re-locating the barrier and signs.
- 5.2 There will be no cost to the County Council.

6. EQUALITIES AND DIVERSITY IMPLICATIONS:

- 6.1 The surface improvement will make it more suitable and safer for all users

7. LOCALISM:

- 7.1 The amendment of the TRO would allow vehicular access to the new housing development.

8. OTHER IMPLICATIONS:

Area assessed:	Direct Implications:
Crime and Disorder	No significant implications arising from this report
Sustainability (including Climate Change and Carbon Emissions)	No significant implications arising from this report
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Public Health	No significant implications arising from this report

9. CONCLUSION AND RECOMMENDATIONS:

- 9.1 Officers support the decision to make an amendment to the TRO because the surfacing of the BOAT would improve the route for all users including walkers, horse riders and cyclists.

10. WHAT HAPPENS NEXT:

- 10.1 Power for the Council to make TROs is contained in section 1, and subsequent sections, of the Road Traffic Regulation Act 1984. Should Members decide to proceed with the TRO Amendment Order; the Order would be made and all interested parties and user groups notified in accordance with the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996.

ITEM 8

10.2 If Members decide that a Public Inquiry is held by an independent inspector to decide the matter the costs of this would be in the region of £4,000. There is no statutory obligation to hold a Public Inquiry.

Contact Officer:

Steve Mitchell, Countryside Access Team Manager
Tel. 020 85419343 email: debbie.prismall@surreycc.gov.uk

Consulted:

Listed in section 4.1

Annexes:

- A – Drg. No. 3/1/54/H22
- B - 1994 TRO
- C – 1994 1st cttee report
- D - 1994 2nd cttee report
- E – Objection summary
- F - SCC policy on making TROs
- G - Draft 2017 TRO Amendment Order

Sources/background papers:

File for BOAT No. 518 – Proposed TRO Amendment Order
