

**SURREY COUNTY COUNCIL**

**LOCAL COMMITTEE (TANDRIDGE)**

**DATE: 25 September 2015**

**SUBJECT: Public Question**

**DIVISION: LINGFIELD**



Horne Parish Council would like to request that BOAT Road 329– Wilmots Lane be formally de-classified as it is not safe for members of the public, dogs or horses to walk along with motorised traffic. It is a single track road which has a 3-4 foot ditch on one side and a steep bank on the other, therefore pedestrians or equestrians are unable to safely get out of the way to allow a motorised vehicle to pass.

**Response:**

The northern section of Wilmots Lane is classified both as a Byway Open to All Traffic (BOAT 329 Outwood) and also recorded as a 'D' class road on the council's List of Maintainable Streets. The route is used mainly for recreational purposes and has an unsealed surface, so for management purposes the County Council treat it as a BOAT, managed by the Countryside Access Team, rather than a D-road managed by the Highways Service.

There are essentially three legal options that could be considered to change the use/status of a BOAT. All of which are quite complicated processes and it is unlikely that the County Council would be able to proceed with any of them, as the necessary criteria do not apply:

1. Reclassify the BOAT on the basis that it was originally added to the Definitive Map and Statement incorrectly and it should have been recorded as a bridleway or footpath - To do this the Council would have to prove that public vehicular rights do not exist over the BOAT. This particular route was reclassified to a BOAT in 1989. At that time it would have gone through a legal process where historic evidence of vehicular use would have been carefully considered. User groups, landowners, and statutory bodies, including parish councils would have also have been consulted. As this exercise was carried out relatively recently and would have been thorough, it appears that the reclassification process correctly established that vehicular rights do exist and the council has a legal duty to record the route as such. The County Council is able to Modify the Defintive Map and Statement on the discovery of evidence that the status of the route shown incorrectly, but this would be very unlikely bearing in mind the relatively recent Reclassification process. The parish council is free to supply any relevant evidence if available to this effect.

2. Extinguish (vehicular) rights on the basis that they are not necessary for public use via the Magistrates Court - Although the existing recreational vehicular use of the BOAT may be relatively infrequent, it would be difficult to prove this legal test as it appears that Wilmots Lane is essentially the same as most other BOATs across the county, in terms of its character and use. There does not appear to be any unique circumstances that would make Wilmots Lane different to other BOATs and therefore a candidate for extinguishment of rights. Whilst it is recognised that sections of it are narrow and effectively 'single track', it is not unusual and many other BOATS across the county have similar circumstances, with little evidence of accidents occurring where users meet in these situations. An application to the Magistrates Court by the County Council (as the Highway Authority) would need to show that the necessary legal criteria under s116 Highways Act 1980 apply. These are: 1. that the route is unnecessary for vehicular traffic, or 2. That it can be diverted to make it nearer or more commodious to the public. The parish council would need to provide evidence that these criteria can be shown to apply to Wilmott's Lane, for the County Council to progress the matter in this way.

3. Restrict vehicular use by a Traffic Regulation Order(TRO) - Traffic Regulation Orders recognise the legal rights of classes of users, but can impose restrictions on use of rights of way, or other highways. The council has a specific policy covering the application of TROs to restrict vehicles on BOATs. The criteria for a TRO of this type specifies that it can only be applied where there are significant safety issues or where significant damage is occurring to the route. Countryside Access staff have inspected the route recently and found that on the whole, it is in a good condition and suitable for public use. To apply a TRO in this case it would be necessary for the County Council to either make an exception to its current policy or to change the policy. There is no formal application process for a TRO. The County Council considers requests against the relevant policy criteria and legislation against the situation regarding the route in question.

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