



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

**BYWAY OPEN TO ALL TRAFFIC 521 (ASH) (D68)
REQUEST TO CONSIDER A
TRAFFIC REGULATION ORDER
ROAD TRAFFIC REGULATION ACT 1984**

13 MARCH 2013

KEY ISSUE

This report seeks approval to make an all year round Traffic Regulation Order (TRO) for Byway Open to All Traffic (BOAT) 521 (Ash) (D Road 68) known as Drovers Way.

SUMMARY

Members may recall resolving at their meeting on the 28 November 2012 to publish a Notice of Intention to make an all year round Traffic Regulation Order on BOAT No. 521 (Ash). This would replace the current Seasonal Traffic Regulation Order. The notice was published on 11 January 2013 for a statutory objection period ending on 25 February. Four objections have been received from the Open Spaces Society, Jason Butcher, Peter Jones and The Green Lane Association. Ash Parish Council fully supports the proposal. Members are asked to consider whether the legal and policy criteria for making the Order still apply. Alternatively, Members can decide to hold a Public Inquiry to decide the matter, although there is no legal requirement to do so.

OFFICER RECOMMENDATIONS

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

The grounds for making an all year round Traffic Regulation Order as outlined are met, and an Order should be made for Byway Open to All Traffic 521 (Ash) (D68) to prevent damage to the surface and to facilitate the passage of all other class of traffic on the byway, as shown on Drawing Number 3/1/54/H17 (**Annexe 1**).

1 INTRODUCTION AND BACKGROUND

- 1.1 The byway is situated in Ash Green and runs between its the northern continuation along Drovers Way in the north, to Ash Green Lane East (BOAT 518) in the south. The byway runs through a SNCI (Site of Nature Conservation Importance). It is currently subject to a Seasonal TRO that closes it from 30 September to 1 May each year.
- 1.2 A report was taken to the 28 November 2012 Guildford Local Committee where it was resolved 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 521 (Ash) (D68) to prevent damage to the surface and to facilitate the passage of all other class of traffic on the byway, as shown on Drawing Number 3/1/54/H17 (**Annexe 1**).
- 1.3 The BOAT 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”.
- 1.4 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).
- 1.5 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
 - 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)

1.6 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 we 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 the route are in poor condition e.g. deep/founderous mud and/or significant rutting/erosion.

2 ANALYSIS

2.1 During the summer months the BOAT has suffered from significant vehicular damage, which has created deep ruts and wallows in the clay surface. This made the surface difficult for walkers, cyclists and horse riders to use. The route deteriorated to Condition 3 last summer and so it was closed earlier than 30 September with a temporary order. Some filling in of the ruts has taken place and the surface levelled to improve it for most users.

2.2 An all year round TRO would protect the surface from further significant damage. Barriers with a 1.52m (5 feet) width gap will be retained at points A and C (see **Annexe 1**) to allow walkers, cyclists, horse riders, quads and motorbikes access.

3 OPTIONS

- 3.1 Members are asked to consider whether the legal and policy criteria for making the Order still apply. Members must then decide whether the Order should be made.
- 3.2 Another option would be to do nothing. The byway is currently subject to a Seasonal TRO that closes the route from 30 September to 1 May each year. This would remain in place. Without an all year round TRO the natural clay surface is likely to deteriorate during the summer months.
- 3.3 Alternatively, Members can decide to hold a Public Inquiry to decide the matter. There is no legal requirement to hold a Public Inquiry.

4 CONSULTATIONS

4.1 The statutory notice advertising the Council's Intention to make a Traffic Regulation Order, together with a copy of the Draft Order, Statement of Reasons for making the Order and guidance on submitting objections, was published on 11 January 2013 for a statutory objection period ending on 25 February. All the statutory bodies and other local interested parties were consulted, including Surrey Police who raised no objections. A Letter of support was received from Ash Parish Council. The CPRE (Council for the Protection of Rural England) raised no objections. Four objections have been received from the Open Spaces Society (OSS), Jason Butcher, Peter Jones and The Green Lane Association.

4.2 The OSS has objected on the following grounds:

- a) Prohibiting 4 wheel motor vehicles is unlikely to improve the condition of the track as they have already been banned for several months and the recent damage is apparently the result of frequent use by motorbikes, whose use it is not proposed to prohibit.
- b) It would seem that the proposed Order would be contrary to the Council's published policy, which states "that Traffic Regulation Orders be used pro-actively 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". This would seem to indicate that the Council's policy is to use on temporary TRO's in the circumstances referred to.
- c) It would seem that the County Council's proposal to permanently prohibit 4 x 4s from using this BOAT is based on a lack of resources to carry out the necessary repair work. The OSS acknowledges that resources for this type of work are limited and likely to remain so for the foreseeable future. However the House of Lords has ruled (R v East Sussex County Council ex parte Tandy 1998) that alleged lack of

resources is not a valid reason for a local authority failing to perform a statutory duty. The proposed Order would therefore appear to be unlawful. The OSS also argues that to close a highway or restrict its use solely on the grounds of lack of resources sets a very dangerous precedent. Once set such a precedent might in the economic climate lead to the closure or restricted use of other rights of way across the county.

- d) As Highway Authority the Council is required by law (s130 HA 1980) "To assert and protect the rights of the public's use and enjoyment of the highway". A lack of resources should not be accepted as a reason for permanently abrogating this legal responsibility.
- e) Until resources are available to make proper repairs the OSS does not object to the current practise of closing this BOAT during the winter season though, given its apparently frequent use by motorbikes, it doubts whether this will result in a significant improvement of the surface.

4.3 Jason Butcher has objected on the following grounds that the 'excessive erosion' as quoted by SCC is due to several factors:

- a) The total lack of maintenance to the surface of the byway and other maintenance to the byway such as vegetation clearance, construction of drainage channels or ditches to aid drying of the byway.
- b) Use by all users, whether by foot, bicycle, equestrian, motorcycle or motor vehicle. All users have an impact on the byway and this is evident by the witness marks visible on the byway. To single out '4x4's' suggests that a closure of the byway and the subsequent non use by 4x4's would provide a right of way with no access or erosion issues which would not be the case.
- c) Severe wet weather.

He would propose a further temporary TRO to help the byway recover through draining and offers assistance in maintaining to provide a more sustainable byway. Closing the byway to motor vehicle users will not solve the issues, as it will still need work to bring it up to standard and maintain after. Access for all on rights of way is a reasonable expectation, and motor vehicle or horse and carriage are methods used by those with restricted mobility, and therefore enjoyment by those users will be stopped by this decision and with no future maintenance.

4.4 Peter Jones objects for the following reasons:

- a) The BOAT is entitled to be used by all traffic and it is clear the general public enjoy the use in motor vehicles.
- b) County Councils have a statutory requirement to maintain not only commensurate with use but also by entitlement of use.
- c) Byways governed by laws and considered part of the highway network. They shall be free from restriction and vehicles pass and repass as they please. They can be used for the purpose of pleasure.

- d) One argument by SCC is one of unsuitability of use and they are seeking to redefine who is permitted to use the highway. There are defined procedures by which rights are determined; this is not one of them. In any case rights may have existed for sufficient time that a simple examination of modern use may need to a determination.
- e) By implications the BOAT has not been maintained for use by motorised vehicles. This is a failure of SCC to upkeep the statutory duties. It cannot claim the highway is now unsuitable for motorised vehicles – it has directly contributed to the current state of affairs. It cannot conscribe the public rights on the basis of current fashion, or arbitrary reason. It has a statutory obligation to do the opposite – maintain the network for the use by the public and preserve those rights for future generations.
- f) SCC seeks to discriminate against certain types of users, although it gives little justification for doing so. It would seem SCC has decided certain of its people are more entitled to the pleasure of the byway than others.

4.5 Dale Wyatt of the Green Lane Association (GLASS) objects on the basis that it is a duty to maintain highways and the Council cannot use a TRO to avoid this duty. SCC should consider:

- Voluntary help (GLASS and Tread Lightly) to help repair/resurface/drain the lane in question
- Opening up the lane to aid the drying out process
- A 12 month full time temporary order to aid recovery
- A one way TRO, if appropriate
- Consider all option before using the finality of a full time TRO.

If a full time TRO is implemented, consider giving recreational users an alternative route to make up for the loss perhaps a permissive route or a dedicated BOAT on a sustainable unsurfaced lane. More restrictions mean remaining lanes have to take more traffic opening up alternatives would help rebalance the situation. We urge you to reconsider the TRO and seek alternative solutions.

5 COMMENTS ON THE OBJECTIONS

5.1 It is not denied that SCC has a statutory duty to maintain the BOAT. However, the legislation as quoted in 1.5 above allows the Council to make TROs under certain criteria. SCC also has its own policy for dealing with TROs (quoted in 1.6 above). It is considered that the criteria for making an all-year round TRO has been met.

5.2 As stated in the published Statement of Reasons for making the Order, BOAT 521 Ash has suffered from excessive erosion caused by vehicular use. The clay sub soil cannot handle the axle load of even light 4x4 vehicles in these conditions. This has resulted in the BOAT becoming difficult to use for other user groups such as those on foot, horseback or on bicycle. Equestrian and motorbike use does not appear to have contributed to the level of erosion caused by 4x4s. A TRO will prevent damage to the surface and facilitate the passage of all other class of traffic on the byway. The making of a TRO is a

proactive response in line with policy as agreed by the Executive on 6 January 2009. In response to the comments:

- a) The BOAT has suffered significant damage to the surface during the summer months that resulted in it being closed in August last year, earlier than the Seasonal closure would have come into effect. The damage was not caused by motorbikes but by 4 wheeled vehicular traffic.
- b) The decision to make an all year round TRO is in line with county policy.
- c) The decision to prohibit 4x4s is not based on a lack of resources. Improvements to the surface and ditching works were carried out last autumn to repair the ruts and wallows caused by 4-wheeled traffic. Maintenance will be carried out in the future. The natural clay surface is not suitable for withstanding such use.

6 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

6.1 If a TRO were made, advertising costs in the region of £500 would be met from the Countryside Access budget.

7 EQUALITIES AND DIVERSITY IMPLICATIONS

7.1 The TRO would improve accessibility for a wide range of users. Although less able users in motorised vehicles over 1.52m (5ft) wide would be prevented, the surface would be easier to use for walkers, those in mobility vehicles, on quad bikes/ motorbikes and horseback.

8 CRIME AND DISORDER IMPLICATIONS

8.1 Surrey police have no objection to TROs where suitable barriers can be installed to aid enforcement, as they have no additional resources to police vehicle bans.

9 CONCLUSION AND RECOMMENDATIONS

To safeguard the BOAT from further deterioration Members are asked to approve that an Order be advertised in the following terms:

‘THIS Order may be cited as “The Surrey County Council Byway Open to All Traffic No. 521 (Ash) (D 68) Traffic Regulation Order 2013” and shall come into operation on 26 April 2013.

- (i) In this Order unless the context otherwise requires-
 - “enactment” means any enactment whether public general or local and includes any order byelaw rule regulation scheme or other instrument having effect by virtue of an enactment
 - “motor cycle” has the same meaning or is to interpreted in accordance with the provisions specified for that expression in

column 2 of the Table contained in the Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078) “motor vehicle “ has the same meaning as in Section 136 of the Act

- (ii) Any reference in this Order to any enactment shall be construed as a reference to that enactment as amended applied consolidated re-enacted by or as having effect by virtue of any subsequent enactment

NO person shall use, cause or permit any motor vehicles or any horse drawn carriages with four or more wheels, wider than 1520mm (5ft) from entering or proceeding in that length of the BOAT which extends from the driveway at a point (grid ref. 9042:5008) 71 metres south of Drovers Way in a southerly direction for 316 metres to the junction with Ash Green Lane East during the prohibited period.

10 REASONS FOR RECOMMENDATIONS

10.1 Officers do not have delegated powers to make a Traffic Regulation Order. The proposed TRO will help prevent any further damage to the surface.

11 WHAT HAPPENS NEXT

11.1 Should Members decide to proceed, a Traffic Regulation Order will be made. It will be published in a local newspaper and on site and all interested parties and user groups will be consulted.

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BACKGROUND PAPERS:	BOAT 521 Ash – TRO file