

## SURREY COUNTY COUNCIL

## LOCAL COMMITTEE (WAVERLEY)



**DATE:** 5 JULY 2013  
**LEAD OFFICER:** ANDREW SAINT

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

**DIVISION:** WAVERLEY EASTERN VILLAGES

**SUMMARY OF ISSUE:**

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

Members may recall resolving at their meeting of 15<sup>th</sup> March 2013 to publish a Notice of Intention to make an all year round Traffic Regulation Order on BOAT No. 278 (Bramley). This would replace the current Temporary Prohibition of Traffic Order. The notice was published on 3 May 2013 for a statutory objection period ending on 17 June 2013. No objections were received to the notice.

The route was first closed by a Temporary Prohibition of Traffic Order on 23 June 2010 to prevent damage and has been subsequently extended until 23 June 2014 if required. Following the making of this closure great crested newts (GCN) and fairy shrimps were discovered in pools and water filled ruts on the byway. Both are projected species under the Wildlife and Countryside Act 1981, and the former under the Habitats Regulations 2010.

A TRO closing the way to vehicles would prevent further damage to the road and safeguard the aforementioned species.

Members are asked to consider whether the legal and policy criteria for making the Order still apply given the current conditions. Alternatively, Members can decide to hold a Public Inquiry to decide the matter, although there is no legal requirement to do so.

**RECOMMENDATIONS:**

**The Local Committee (Waverley) is asked to agree that:**

- (i) 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 278 (Bramley) to prevent damage to the road as shown on Drawing Number 3/1/2/H16 (Annex 1)

## **REASONS FOR RECOMMENDATIONS:**

The physical condition of this byway means that it is in need of significant repair. Prior to the discovery of the endangered species a schedule of repair was being put in place. We have since commissioned an independent ecological report and taken advice from the County Ecologist. Their advice is that repairs can be undertaken (given suitable mitigation techniques) without the need to apply to Natural England for a 'conservation licence' which was discussed in the previous report of March 2013. Their advice is summarised in this report. Repairs will be carried out in line with this advice before the above Traffic Regulation Order is made. Once in place the TRO will allow us to manage the way to accommodate both (legal) users and the endangered species.

## **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 2010<sup>1</sup> 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 A report was taken to the 15 March 2013 Waverley Local Committee where it was resolved:

*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.*

1.4 The BOAT is currently assessed as condition 3 in the countywide assessment. Condition 3 is the highest level as detailed below:

(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.

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<sup>1</sup> And subsequently extended by the Department for Transport until 23 June 2014.

- 1.5 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).
- 1.6 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)
- 1.7 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 (ANOB). 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.
- 1.8 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.
- 1.9 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.

- 1.10 In addition GCN and fairy shrimps were discovered in pools and water filled ruts on the byway during 2010. Both are protected species under the Wildlife and Countryside Act 1981, and the former under the Habitats Regulations 2010. It is an offence for any person to intentionally kill, injure, take sell or intentionally damage their habitat and so we must have regard for them.
- 1.11 Local committees deal with all non-executive functions relating to public rights of way set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, except for those separately referred to in the Scheme of Delegation (or within the terms of reference of other Committees). There is no scheme of delegation to Officers for decisions on this matter.

## **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 used it in a harmful manner. Equestrian and motorbike use does not appear to have contributed to the level of erosion caused by 4x4s.

### **Ecological Issues and repairs:**

- 2.3 When the current closure was first made repairs were scheduled for Spring 2011. Before this took place 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) (as amended) fully protects GCN<sup>2</sup>.
- 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 report<sup>3</sup> was commissioned which confirms that the rutting and standing water along the way had arisen due to heavy use by 4x4

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<sup>2</sup> ...and their breeding sites, making it an offence to deliberately kill, injure or capture GCN; 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 GCN or parts of GCN.

<sup>3</sup> 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.

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 GCN and their eggs in some of the deeper pools; which are indicative of their preferred habitats.

2.6 Where GCN are present it may be necessary to make an application to Natural England for a conservation licence. These issues are considered in depth by the County Ecologist<sup>4</sup> in sections i-xii below.

- i. Both species, i.e. GCN and fairy shrimp are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (WCA) and GCN have additional protection under the CHSR. There is considerable guidance relating to great crested newts but in contrast very little on fairy shrimps. Having studied the documentation available on each species I believe the proposed works can be undertaken without licences if some safeguarding measures can be incorporated into the proposals and some simple ongoing management can be carried out.

#### Fairy Shrimp

- ii. There is no provision within the WCA which allows Natural England to issue a wildlife licence where a protected species under this Act is affected by development activities. This means that where works affect a species that is protected under the WCA (as amended) this may be a breach of the legislation and a developer would only be able to seek to rely on the 'incidental result of an otherwise lawful operation' defence, if enforcement proceedings were brought due to the breach. If a developer can show that the works carried out followed good practice and are being carried out in accordance with a lawfully granted permission, such as planning permission, it may support their defence.

#### Great Crested Newts

- iii. GCN are protected under both Schedule 5 of the WCA and also the HR. As noted above, we need to be aware of the protection under the first Act but the most important consideration is that of the requirements of the HR.
- iv. Wildlife licences permit otherwise unlawful activities, and can only be granted for certain purposes. Natural England apply the 3 tests set out in Regulation 53 of the CHSR when granting licences. These tests are:
- v. The consented operation must be for "*preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment*"; and
- vi. There must be "*no satisfactory alternative*"; and
- vii. The action authorised "*will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range*".

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<sup>4</sup> John Edwards – Countryside Management and Biodiversity Manager  
[www.surreycc.gov.uk/Waverley](http://www.surreycc.gov.uk/Waverley)

- viii. Natural England's National Wildlife Licensing Unit issues licences for various reasons and in respect of development these are generally for the purpose of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment" [Regulation 53(2)(e)].
- ix. The bridleway has sufficient width to permit the proposed works and to allow the part with ruts favoured by the Fairy Shrimp to remain. Virtually all of the significant habitat for the two species will not be adversely affected. The high profile cases involving GCN are almost invariably linked to development where ponds supporting GCN are either to be destroyed or substantially altered. This is not the case at Hascombe and the works will lead to an enhancement of the existing habitat. This can be maintained by running a tractor along the unmade up part of the byway to keep the wheel ruts clear of vegetation.
- x. The Natural England Pond Management Work and great crested newts leaflet<sup>5</sup> gives some helpful advice regarding the need for a conservation licence for pond management work. Please note the following; "*A conservation licence is only required if the work would otherwise be an offence in relation to great crested newts, for example deliberate killing or injury, deliberate disturbance or damage or destruction of a breeding site or resting place*".
- xi. Natural England has introduced a new chargeable pre-submission screening of licences for European Protected Species<sup>6</sup>. The likely cost would be £1350. While seeking to apply for a licence may be prudent, my view is I do not think there is a suitable category of licence to apply for and that we can mitigate any potential harm to the GCN. I consider that any licence application will require more detailed survey work and I do not think this is appropriate.
- xii. For the site works, I recommend that there is an ecologist present as a Clerk of Works who holds a great-crested newt handling licence. It may be unnecessary for them to be present for the duration of the work but I consider they should be at least present to inspect the site immediately before works start to ensure no harm occurs to the two protected species. The purpose would be to rescue any stray newts should they be found.

2.7 In summary his conclusions are that we can proceed with repairs on this route without the need to apply for a licence to mitigate any harm.

2.8 £20,000 has been allocated to works which are anticipated to be substantial. 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 escalate costs considerably.

<sup>5</sup> [http://www.naturalengland.org.uk/Images/GreatCrestedNewts\\_tcm6-21705.pdf](http://www.naturalengland.org.uk/Images/GreatCrestedNewts_tcm6-21705.pdf)

<sup>6</sup> <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/epsscreening.aspx>

2.9 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

2.10 In summary the works involved will include:

- Approximately 155m surface repairs
- Approximately 420m ditch clearance
- Installation of 4 barriers at A, B, C and D to enforce TRO (if confirmed)

### **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 Members must also decide (in the light of commentary given from the County Ecologist laid out in section 2.6, on the basis of advice from the Independent Ecological Consultant) whether we proceed with repair works without seeking licence from Natural England.
- 3.3 Another option would be to do nothing. The byway is currently subject to a temporary closure that has been extended until 23 June 2014. This cannot be extended indefinitely and currently precludes access by all forms of user. If this closure elapses and no alternative is in place it is likely that further damage will occur to the route whilst also endangering further the species found there.
- 3.4 Alternatively, Members can decide to hold a Public Inquiry to decide the matter. There is no legal requirement for this to happen.

### **4. CONSULTATIONS:**

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 3 May 2013 for a statutory period ending on 25 February 2013. All the statutory bodies and other local interested parties were consulted, including Surrey Police. No objections were received. 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. I confirm that this will be the case.

### **5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:**

If a TRO were made, advertising costs in the region of £500 would be met from the Countryside Access budget. The costs of repairs is discussed in section 2.8.

## **6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

The TRO would improve accessibility for a wide range of users. Although less able users in motorised vehicles over 1500mm (4'11") wide would be prevented, the surface would be easier to use for walkers, those in mobility vehicles, on quad bikes/ motorbikes, cyclists and horseback.

## **7. LOCALISM:**

The route is most likely used by local users. The Order will improve the surface of the route for these users, prevent future damage and help maintain biodiversity. The route does not however serve a large local community directly and the prevention of use by those vehicles over 1500mm is not deemed to have a significant impact on local needs.

## **8. OTHER IMPLICATIONS:**

Area assessed:	Direct Implications:
Crime and Disorder	<i>See para. 4.</i>
Sustainability (including Climate Change and Carbon Emissions)	No significant implications arising from this report
Corporate Parenting/Looked After Children	N/A
Safeguarding responsibilities for vulnerable children and adults	N/A
Public Health	N/A

## **9. CONCLUSION AND RECOMMENDATIONS:**

9.1 To protect the BOAT from further deterioration and to safeguard the endangered species found along it Members are asked to approve that an Order be advertised in the following terms:

9.2 This Order may be cited as "The Surrey County Council Byway Open to All Traffic No. 278 (Bramley) (Hascombe Road) Traffic Regulation Order 2013" and shall come into Operation on the day it is made.

In this Order unless the context otherwise requires:-

- i. "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 be 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.

9.3 NO person shall use, cause or permit any motor vehicles with four or more wheels, wide than 1500mm (4'11") from entering or proceeding in that length of the BOAT which extends from the driveway at a point (grid ref. 0238 3863) ,385 metres north of Dunsfold Road and 60 metres north of Painshill Farm Cottage to the south side of its junction with Nore Drive (grid ref: 0251 3900); then from the northern side of its junction with Nore Drive (grid ref. 0252 3901) to its junction with Horsham Road (A281) (grid ref 0257 3922); as shown on the drawing 3/1/2/H16 during the prohibited period.

## **10. WHAT HAPPENS NEXT:**

Should Members decide to proceed, a Traffic Regulation Order will be made. It will be published in a local newspaper, posted on site and deposited with the Borough Council and local library. All interested parties will be informed.

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**ANNEXES:** Annex 1: Order plan 3/1/2/H16

**SOURCES /**

**BACKGROUND PAPERS:**

File 3/1/2/278 TRO and all contents, including correspondence and objections, responses to consultations, intention to make notices, site photographs, the ecological report, the temporary closure and assorted mapping can be viewed by appointment.

**CONSULTED:**

Byways and Bridleways Trust, Surrey BUG and Trail Riders Fellowship, The Ramblers Association, British Driving Society, CTC, The Open Spaces Society, Range Rover Register, All Wheel Drive Club, Access Unlimited, CPRE, Guildford Access Group, Surrey Hills AONB, National Trust, Bramley Parish Council, LARA, British Horse Society, Surrey Ambulance Service HQ, Surrey Fire Brigade, Freight Transport Association, Surrey Ambulance Station, Surrey Police, Traffic Management Division, The Secretary of State for Transport, Mr Ian Wilks, EDF Energy, National Grid, Scotland Gas Networks, Road Haulage Association, AA, Mr Steve Godwin-Austen (Landowner), adjacent properties, Andrew Povey and Pat Frost (County Councillors), Waverley Borough Council, Mr Brian Cohen.

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