

LOCAL COMMITTEE (EPSOM & EWELL)

DATE: 28TH MARCH 2022

LEAD OFFICER: ZENA CURRY, ENGAGEMENT
AND COMMISSIONING MANAGER

SUBJECT: OLD LONDON ROAD

DIVISION: TOWN AND DOWNS

**SUMMARY OF ISSUE(S):**

In July 2021 Committee authorised the advertisement of a prohibition of traffic order to enable the section of Old London Road (D2319) leading from Tattenham Corner Road to the Top Car Park on Epsom Downs to be closed overnight. The order was advertised early in 2022. A total of 234 representations were received altogether, of which 168 (72%) were objections. Committee is asked to decide the next steps for this proposal.

RECOMMENDATIONS:

The Local Committee (Epsom & Ewell) is asked to choose between three options:

- (a) Abandon the proposal, with minimal further cost implications.
- (b) Modify the proposal and authorise the advertisement of an amended proposal, for which Committee would need to identify £5,000 to draft and advertise a modified prohibition of traffic order.
- (c) Call a public inquiry to decide the outcome of the proposal, for which Committee would need to identify a budget of up to £40,000 to cover the likely costs of a public inquiry.

REASONS FOR RECOMMENDATIONS:

Regulation 9(3)(a) of The Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996 states that where a proposed order that has the effect of prohibiting loading on and unloading from vehicles before 7am, between 10am and 4pm or after 7pm is advertised and objections are lodged, a public inquiry must be called to decide the outcome of the proposal. What this means is that to continue with the proposal as agreed in July 2021, Committee must call a public inquiry to consider the proposal, the representations already received, and any further representations that might be submitted to the inquiry once called. The inspector appointed to run the public inquiry would then decide the outcome.

1. INTRODUCTION AND BACKGROUND:

- 1.1 The section of Old London Road (D2319) leading from Tattenham Corner Road to the Top Car Park on Epsom Downs is Public Highway. In the late 1990s Epsom & Ewell Borough Council approved the advertisement of a prohibition of traffic order for this section of Old London Road. The prohibition of traffic order was intended to prevent motor vehicles entering this section of Old London Road overnight. At the time Epsom & Ewell Borough Council was acting as Highway Authority under an agency agreement with Surrey County Council.
- 1.2 Unfortunately neither Epsom & Ewell Borough Council nor Surrey County Council have any record that the intended prohibition of traffic order was sealed. Nevertheless Old London Road has been closed overnight since the late 1990s. During winter months the road was closed at 5pm; during summer months the road was closed at 9pm; the road was reopened at approximately 6am every morning. This arrangement seemed to be generally accepted by the local community as part and parcel of the operation of the Downs. In July 2021 Committee authorised the advertisement of a prohibition of traffic order to prevent overnight motor vehicle access into Old London Road from Tattenham Corner towards the Top Car park, with the hours of operation and exemptions as detailed in Table 1 below.

Table 1 Proposed prohibition of traffic order for Old London Road

Time of year	Days of operation	Hours of operation
1 st April to 30 th September	Sunday to Friday	7pm to 12noon (the following day)
	Saturday	7pm to 9:30am (the following day)
1 st October to 31 st March	Sunday to Friday	5pm to 12noon (the following day)
	Saturday	5pm to 9:30am (the following day)
Exemptions		
Anything done with the permission or at the direction of a police constable in uniform or in certain circumstances, for example ambulance and fire brigade purposes or the safeguard of life and property.		

- 1.3 The proposed hours of operation detailed in Table 1 were requested by the Epsom & Walton Downs Conservators following their meeting of 21st June 2021, and would be an extension of the hours that have been operating on the ground since the late 1990s. The report that was considered by the Conservators is available online here [Epsom and Ewell Democracy \(epsom-ewell.gov.uk\)](https://www.epsom-ewell.gov.uk), and includes information about the concerns that the Conservators would like to address in requesting extended hours.

2. ANALYSIS:

- 2.1 The prohibition of traffic order, as agreed by Committee in July 2021, was advertised early in 2022. We received 234 representations altogether, of which 168 (72%) were objections. A redacted version of all the representations is included in Annex A.

- 2.2 The issue we now have relates to the provisions of The Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996. Regulation 9(3)(a) states that where a proposed order that has the effect of prohibiting loading on and unloading from vehicles before 7am, between 10am and 4pm or after 7pm is advertised and objections are lodged, a public inquiry must be called to decide the outcome of the proposal. It is quite a technical issue from a legal point of view but nevertheless Committee is bound by these regulations.

3. OPTIONS:

- 3.1 Committee has three options:

a) **Abandon the proposal.**

This would result in the road being left open 24-7.

b) **Amend the proposal.**

The rationale behind this option is that some of the objectors have objected specifically to the extended day-time hours, and so may withdraw their objections if the proposed hours of operation were exactly as they were pre-lockdown. However some of the objectors have made clear their objection is to any road closure – these may maintain their objections even if the amended hours of operation were to be amended. Still other objectors have not been specific; their motivation is unknown. Officers would suggest that an amendment to the proposal to the pre-lockdown hours of operation (as originally intended in the 1990s) may reduce the number of objections, but would not eliminate them all. A single objection is enough to trigger the public inquiry requirement. The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 provide that an order making authority may modify an order, whether in consequence of any objections or otherwise, before it is made and must then take steps as appropriate for:

- Informing persons likely to be affected by the modifications,
- Giving those persons an opportunity of making representations; and,
- Ensuring that any such representations are duly considered by the authority.

c) **Call a public inquiry to resolve the matter.**

In this scenario the matter would be taken out of Committee's hands. Funding would need to be identified for the public inquiry. An Inspector would consider the proposal, the representations already made, and any new representations made directly to the public inquiry. An Inspector would also consider the legal technicalities, which would include scrutiny of the reasons for the proposal, and the validity of those reasons in the context of the relevant legislation, in this case the Road Traffic Regulation Act 1984. There are weaknesses here which could play a part in an inspector's decision. An Inspector might recommend that the order be confirmed, modified and then confirmed or not confirmed. It is also theoretically possible that an Inspector may be unable to make a recommendation and would have to provide reasons. The view of Surrey County Council's Legal Team, having reviewed the proposal and representations already received, is that the most likely outcome of an inquiry would be that the Inspector would recommend an order should not be confirmed.

- 3.2 It is recommended that Committee decide which option to take, which will determine the next steps for this proposal.

4. CONSULTATIONS:

- 4.1 The advertisement of the prohibition of traffic order constituted a formal, statutory public consultation. A redacted version of all the representations is included in Annex A.
- 4.2 The Jockey Club is a significant stakeholder in this proposal insofar as the land through which the subject section of Old London Road runs is owned by the Jockey Club. The horse racing industry is a major user of the Downs for training purposes. Horse racing trainers are represented by the Training Grounds Management Board (TGMB). A combined representation from the Jockey Club and the TGMB is included in Annex B.
- 4.3 A number of objections were received from members of the Epsom Downs Model Flying Club, including the Vice Chairman and Secretary. This are included in Annex A.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

- 5.1 Option (a) carries no further financial implications, other than to remove the signs currently on site. The gates could remain to facilitate closure of the road on race days and preparation days in accordance with the Epsom & Walton Downs Regulation Act 1984.
- 5.2 Option (b) would require additional funding of approximately £5,000 to be identified to draft and advertise a modification to the prohibition of traffic order, and to consider any further representations.
- 5.3 Option (c) would require additional funding to be identified to pay for the public inquiry. We would need to pay for an inspector and a suitable venue. We would also appoint Counsel to represent Surrey County Council in this context, which in and of itself would cost between £10,000 to £20,000. The costs would tend to be proportional to the length of the hearing, and the number and nature of representations that an inspector would have to consider. The total cost of this option could lie in range £20,000 to £40,000. It is a somewhat open-ended process.

6. EQUALITIES AND DIVERSITY IMPLICATIONS:

- 6.1 A number of the representations raise concerns about access to the Downs for less able members of our communities, were the proposal to go ahead. The Downs are highly valued by the local community, who are entitled under the Epsom & Walton Downs Regulation Act 1984 to access the Downs for air and exercise. A number of respondents specifically suggest that if access to the Downs via the subject section of Old London Road were to be restricted as proposed, that less able members of the community would be excluded from certain areas of the Downs.
- 6.2 Disability is a protected characteristic under the Equality Act 2010.

7. LOCALISM:

- 7.1 The vast majority of representations have been received from local residents of Epsom, Ashted, Banstead and Tattenham Corner. A very small minority of representations were received from people who live further afield.

8. OTHER IMPLICATIONS:

Area assessed:	Direct Implications:
Crime and Disorder	Some stakeholders suggest have alleged antisocial behaviour in the subject section of Old London Road. Surrey Police have said that a closure is not necessarily an appropriate response to this. The Road Traffic Regulation Act 1984 does not list prevention of antisocial behaviour as a valid reason for making an order. Some respondents assert that the closure of the Top Car Park during lockdown led to inconsiderate parking elsewhere.
Sustainability (including Climate Change and Carbon Emissions)	If the subject section of Old London Road were to remain open to motor vehicles, it is possible that residents will be encouraged to drive to the Downs. On the other hand if the road were to be closed residents may choose to drive further to access open space.
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	If disabled residents were to be excluded from certain areas of the Downs, as has been suggested by a number of respondents to the consultation, this could have a detrimental affect on their health if these residents were to be discouraged from taking exercise as a result.

9. CONCLUSION AND RECOMMENDATIONS:

- 9.1 Given the nature and number of representations, it is unlikely that Committee would be able to promote a prohibition of traffic order for the subject section of Old London Road – either the current or an amended proposal – without calling a public inquiry.
- 9.2 It is suggested that the proposal in its current form is unlikely to be recommended for confirmation by an Inspector.
- 9.3 There is no guarantee that a modified proposal would be successful.

10. WHAT HAPPENS NEXT:

- 10.1 Subject to Committees decision, and identification of funding if option (b) or option (c) were to be preferred, officers would make preparations to deliver the preferred option.

Contact Officer: Nick Healey

Consulted: See above.

Annexes: Two.

Sources/background papers: None
