

THURSDAY, 6 OCTOBER 2022

## **PUBLIC RIGHTS OF WAY TRAFFIC REGULATION ORDER POLICY REVIEW**

Purpose of report:

- To inform the Committee of the intention to remove the out-of-date Surrey County Council (SCC) Traffic Regulation Order (TRO) Policy for byways open to all traffic (“BOATs”) on Public Rights of Way
- To give the committee the opportunity to provide comment and views on a new BOATs policy which sets out how the Council will manage BOATs in the future including the use of TROs, ahead of consideration by the Council’s Cabinet to adopt it in November 2022

<b>Introduction:</b>
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1. Surrey County Council is responsible for maintaining over 3,500km of rights of way in Surrey. These include footpaths, bridleways, Byways Open to All Traffic (BOATs) and restricted byways.
2. BOATs are public rights of way open to all traffic, including walkers, bike riders, horse riders, horse drawn carriages and mechanically propelled vehicles (MPVs). Some are also D roads. There are 118 BOATs in Surrey, making up 3.73 per cent of the rights of way network in Surrey and totalling 125 kilometres (km) in length.
3. The County Council does not encourage the use of BOATs by MPVs, but it recognises that it has a statutory duty under S. 130 Highways Act to assert and protect the rights of all public users of rights of way including MPVs.
4. Section 122 Road Traffic Regulation Act 1984 (RTRA 1984) gives the County Council, as a Highway Authority, the power to make a Traffic Regulation Order (TRO) on BOATs. TROs are a management tool which can be used to place restrictions on the use of Public Rights of Way including BOATs in response to issues such as safety and inappropriate use of BOATs by MPVs. There are seven grounds on which a TRO can be made are outlined in Appendix 1, Grounds for a Traffic Regulation Order.

5. Section 122 RTRA 1984 also lists various factors which authorities must consider when using their TRO powers. This includes the requirement to secure the expeditious, convenient, and safe movement of vehicular and other traffic (including pedestrians).
6. Section 22 and 22A of the 1984 Act also provide additional grounds, that in the case of Areas of Outstanding Natural Beauty (AONB) and certain other environmental designations, the Council should, in addition to (a) to (g) in Appendix 1, Grounds for a Traffic Regulation Order, consider 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, or recreation or the study of nature in the area. Together paras. 4 and 6 can be considered “the grounds” or reasons for making a TRO.
7. TROs generally restrict users by type or designated time periods and reflect local needs in the type of restrictions in place and can be applied to all public rights of way. Enforcement is carried out by the Police. A TRO usually invites considerable interest from all parties and can be subject to judicial review in the High Court.
8. Surrey County Councils current policy does not include all the grounds on which a TRO can be made as outlined in Appendix 1, Grounds for a Traffic Regulation Order, prioritising only conditions (a) and (b) and as a result is susceptible to legal challenge. Therefore, the outdated policy is being removed and a new policy has been drafted for agreement by Cabinet in November 2022. (Appendix 2, Policy for Managing Byways Open to All Traffic & MPVs)

<p><b>Revised Byways Open to All Traffic (BOATs) Management Policy including the use of Traffic Regulation Orders (TROs)</b></p>
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9. The Council’s Rights of Way database currently contains 32,790 records of issues across the rights of way network in Surrey. Since 2016, 1,023 have been registered as issues relating to BOATs. Of these 3 per cent of reports were for intimidating behaviour by users, the remainder (97 per cent) reflecting the condition of the BOAT with issues such as trees and vegetation, the surface and terrain.
10. Of the 118 BOATs in Surrey, 39 have TROs which have been put in place over the last 20 to 30 years to address safety, for example, where blind bends and sunken lanes create dangerous blind spots where cars would be unable to see walkers, or to protect Scheduled Ancient Monuments or geological features where BOATs are not safely passable to certain classes of MPVs.

11. Under the current legislation, which has now been confirmed by legal advice, each TRO must be considered on its own individual merits, and will be different for and reflect the characteristics of each BOAT.
12. Counsels Opinion was also sought regarding the use of a blanket or grouped approach to TROs in Surrey. Although multiple route TROs can be bundled in the same order, Counsel's advice makes clear that each BOAT must be considered independently on its facts and merits, so it is not one TRO, but a collection.
13. Moreover, there is a significant risk associated with multiple-route TROs being considered at one time if the facts of each route are not separately considered and distinct. If the case one BOAT fails, then the entire order and all routes included in it would be put at risk. There are also many situations where the grounds for making a TRO on BOATs in Surrey will not be met, which would limit the applicability for a blanket prohibition of off-road vehicles on BOATs across Surrey.
14. Department for Environment, Food & Rural Affairs (DEFRA) advice is that a TRO is made as a last resort after all other interventions such as surface repairs, and partnership working with landowners and users have been implemented. Advice on the measures a local authority should take before consideration of a TRO is set out in DEFRA's publications, 'Making the Best of Byways,' and 'Regulating the Use of Motor Vehicles on Public Rights of Way and Off Road'.
15. The Council's current policy considers just two of "the grounds" on which a TRO can be made as outlined in Appendix 1, Grounds for a Traffic Regulation Order, and does not have any regard to our duties under S. 22 and 22A of the RTRA 1984 as notes at para. 6.
16. The proposed new policy is set out in Appendix 2, Policy for Managing Byways Open to All Traffic & MPVs. It includes DEFRA's advice on the actions to take before considering a TRO and the seven grounds set out in legislation to have regard to, amongst other factors, in considering whether to make a TRO. It also sets out the measures the Countryside Access Team will continue to put into place in partnership with the Police, landowners, statutory bodies and other partners prior to implementing a TRO.

<b>Recommendations:</b>
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1. Remove and no longer reference the current out of date Public Rights of Way Traffic Regulation Order Policy.

2. Agree the attached new policy which sets out how the Countryside Access Team will manage and maintain BOATs.

<b>Next steps:</b>
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1. Adjust recommendations and new policy to take account of feedback from the Communities, Environment and Highways (CEH) Select Committee in advance of presentation to and consideration by the Council's Cabinet in November.

**Report contact**

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**Contact details**

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**Sources/background papers**

Appendix 1: Grounds for a Traffic Regulation Order (taken from Road Traffic Regulation Act 1984)

Appendix 2: Policy for managing Byways Open to All Traffic (BOATs) and MPVs in Surrey

Annex 2a for Appendix 2: List of BOATs and TROs in Surrey April 2020

Annex 2b for Appendix 2: Public Rights of Way (PRoW) Maintenance and Enforcement Priority Statement