

SURREY COUNTY COUNCIL**CABINET****DATE: 29 NOVEMBER 2022****REPORT OF CABINET MEMBER: MARISA HEATH, CABINET MEMBER FOR ENVIRONMENT****LEAD OFFICER: KATIE STEWART, EXECUTIVE DIRECTOR ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE****SUBJECT: TRAFFIC REGULATION ORDER POLICY****ORGANISATION STRATEGY PRIORITY AREA: ENABLING A GREENER FUTURE/EMPOWERING COMMUNITIES**

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Purpose of the Report:

The purpose of the report is to secure agreement from Cabinet to remove Surrey County Councils Traffic Regulation Order (TRO) Policy for Byways Open to All Traffic ("BOATs") on Public Rights of Way and to seek approval for a new BOATs policy which sets out how the Council will manage BOATs in the future including the use of TROs.

Recommendations:

It is recommended that Cabinet:

1. Agree to remove the SCC Traffic Regulation Order (TRO) Policy for byways open to all traffic (BOATs) on Public Rights of Way.
2. Agree the new policy which sets out how the Council will manage BOATs in the future including the use of TROs.

Reason for Recommendations:

Surrey County Councils current Traffic Regulation Order (TRO) Policy for Byways Open to All Traffic ("BOATs") on Public Rights of Way is under review. The current policy does not make reference to all the grounds on which a TRO can be made. Therefore, the current policy is being removed and a new policy has been drafted for agreement by Cabinet.

Executive Summary:**Background**

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. A BOAT is a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used. Some are also D roads. There are 118 BOATs

in Surrey, making up 3.73% of the total rights of way network in the County and totalling 125km in length.

3. The County Council does not encourage the use of BOATs by Mechanically Propelled Vehicles (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. A TRO may be made by the Council as the traffic authority where it appears to it to be expedient to make it on one or more of the grounds set out in section 1 of the Road Traffic Regulation Act 1984 ("RTRA 1984"). These are outlined in Appendix 1.
5. Section 22 and 22A of the RTRA 1984 also provide additional grounds, that in the case of Areas of Outstanding Natural Beauty (AONB) and certain other environmental designations as set out, the Council should also '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'. For other roads, a TRO may be made for the purpose of conserving or enhancing the natural beauty of the area, which includes conserving its flora, fauna and geological and physiographical features.
6. Moreover, in making a TRO, the Council must comply with its duty contained in s122 of the RTRA 1984. A balancing act must be undertaken in order to properly balance competing matters which specifically includes the need, when making a TRO, to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) so far as that is practicable having regard to the matters to which the Council must have regard as set out in s122(2) of the RTRA 1984 (See appendix 1).
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 a decision to make a TRO can be subject to challenge by way of judicial review.
8. Surrey County Council's current policy does not make reference to all the grounds on which a TRO may be made as outlined in Appendix 1. Therefore, the policy is being removed and a new policy has been drafted for agreement by Cabinet in November 2022. (Appendix 2)

Revised Byways Open to All Traffic (BOATs) Management Policy including the use of Traffic Regulation Orders (TROs)

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% of reports were for intimidating behaviour by users, the remainder (97%) 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 been confirmed by external legal advice, each TRO must be considered on its own individual merits, and will be different for and reflect the characteristics of each BOAT and the local area which it is in.
12. One proposal for how SCC might improve upon our current approach which has been put forward by some stakeholders is whether it is possible to use a blanket or grouped approach to TROs in Surrey. Officers have sought Counsel's advice on whether this approach is possible. Whilst multiple route TROs can be grouped in the same order, Counsel's advice makes it clear that each BOAT must be considered independently on its facts and merits, so it is not one TRO, but a collection of individual TROs.
13. Moreover, Counsel highlighted 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 in 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. 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' and any further guidance set out by DEFRA on the issue of TROs.
15. As stated earlier in this report, the Council's current policy does not make reference to all the grounds on which a TRO may be made as outlined in Appendix 1.
16. The proposed new policy is set out in Appendix 2. It incorporates DEFRA's advice on the actions to take before considering a TRO and the grounds set out in legislation to have regard to, amongst other factors, in considering whether to make a TRO. In addition, we must perform a general balancing duty between all factors. 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.

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| Consultation: |
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17. The Council's Communities, Environment, and Highways Select Committee was consulted on 6th October 2022.

18. Since this change to policy is non-statutory, reflects current legislation and advice from DEFRA, was not previously subject to consultation and will lead to a wider and more equitable decision making, no additional consultation has been required.

Risk Management and Implications:

19. Whilst the impact of this change to requests for TROs is not yet known, officers are familiar with the three TROs currently being investigated and given the changes reflect current legislation, an influx of requests is not anticipated. No significant impact of resourcing requirements is expected, but this will be monitored.

Financial and Value for Money Implications:

20. There may be an increase in the number of TROs being proposed and the impact upon budgets will be monitored by officers. Only three TROs are currently being considered, and this risk is therefore deemed to be low at the current time. Recent TRO proposals have garnered very large numbers of responses. It is estimated that internal staff, administrative and legal costs are now around £5,000 per application. Advertising costs are a further £1,000. If a public inquiry is required to decide the matter, this would be around £10-15,000, including the cost of an external inspector. Where gates are required to enforce the Order this would cost around £6,000. Cost implications will be monitored on an ongoing basis.

Section 151 Officer Commentary:

21. Although significant progress has been made to improve the Council's financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium-term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
22. The new policy may result in an increase number of TROs however volumes are currently low, and the associated costs are expected to be managed within the approved Environment, Transport & Infrastructure budget envelope. As such the Section 151 Officer supports the recommended approach.

Legal Implications – Monitoring Officer:

23. The powers and duties of Surrey County Council as traffic authority under the RTRA 1984 to consider and make TROs are set out in the Background above. The proposed replacement Policy sets out how the County Council intends to manage its BOATs including the use of the TRO process as appropriate where the impact of vehicular use falls within the specific grounds contained in the RTRA 1984.

Equalities and Diversity:

24. The request for a TRO remains open to all residents. Amending SCC’s policy to refer to the grounds on which a TRO may be made enables the full range of grounds set out in legislation to be considered.

Other Implications:

25. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

| Area assessed: | Direct Implications: |
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| Corporate Parenting/Looked After Children | No direct impacts. |
| Safeguarding responsibilities for vulnerable children and adults | No direct impacts. |
| Environmental sustainability | <i>Could prevent damage to sensitive areas due to improper use.</i> |
| Compliance against net-zero emissions target and future climate compatibility/resilience | No direct impacts. |
| Public Health | No direct impacts. |

What Happens Next:

26. Next Steps will be:
- a. Removal of the current policy from the Council’s website.
 - b. Notification of change in policy to all key partners
 - c. Publication of the new policy on the Council’s website.
 - d. Annual monitoring of costs associated with TRO applications.

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Appendices:

Appendix 1: Grounds for a Traffic Regulation Order

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

Appendix 1 – Grounds for a Traffic Regulation Order

The County Council, as a Highway Authority, has the power (not a duty) to make a TRO on BOATs subject to Parts I and II of Schedule 9 of the RTRA 1984 (powers reserved to the Secretary of State) under certain circumstances. 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.

Seven grounds are set out in S. 1 of the RTRA 1984 for making a TRO, which are set out below.

- (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, [or
- (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).]

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), 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. For other roads, a TRO may be made for the purpose of conserving or enhancing the natural beauty of the area, which includes conserving its flora, fauna and geological and physiographical features.

In making a TRO, the Council must comply with its duty contained in s122 of the RTRA 1984. A balancing act must be undertaken in order to properly balance competing matters which specifically includes the need, when making a TRO, to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) so far as that is practicable having regard to the matters to which the Council must have regard as set out in s122(2) of the RTRA 1984.

- a. The desirability of securing and maintaining reasonable access to premises;
- b. The effect on the amenities of any locality affected;
- c. The national air quality strategy;
- d. The importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
- e. Any other matters appearing to the Council to be relevant.

Appendix 2

Policy for Managing Byways Open to All Traffic (BOATs) and MPVs in Surrey

The aim of this policy is to set out how the Countryside Access Team will manage BOATS for the benefit of all users, in line with the legislation and to reduce conflict and damage. This policy is not looking to promote or encourage the use of Surrey's BOATS by motorised users but recognises that we have a duty under S. 130 Highways Act to assert and protect the rights of all users.

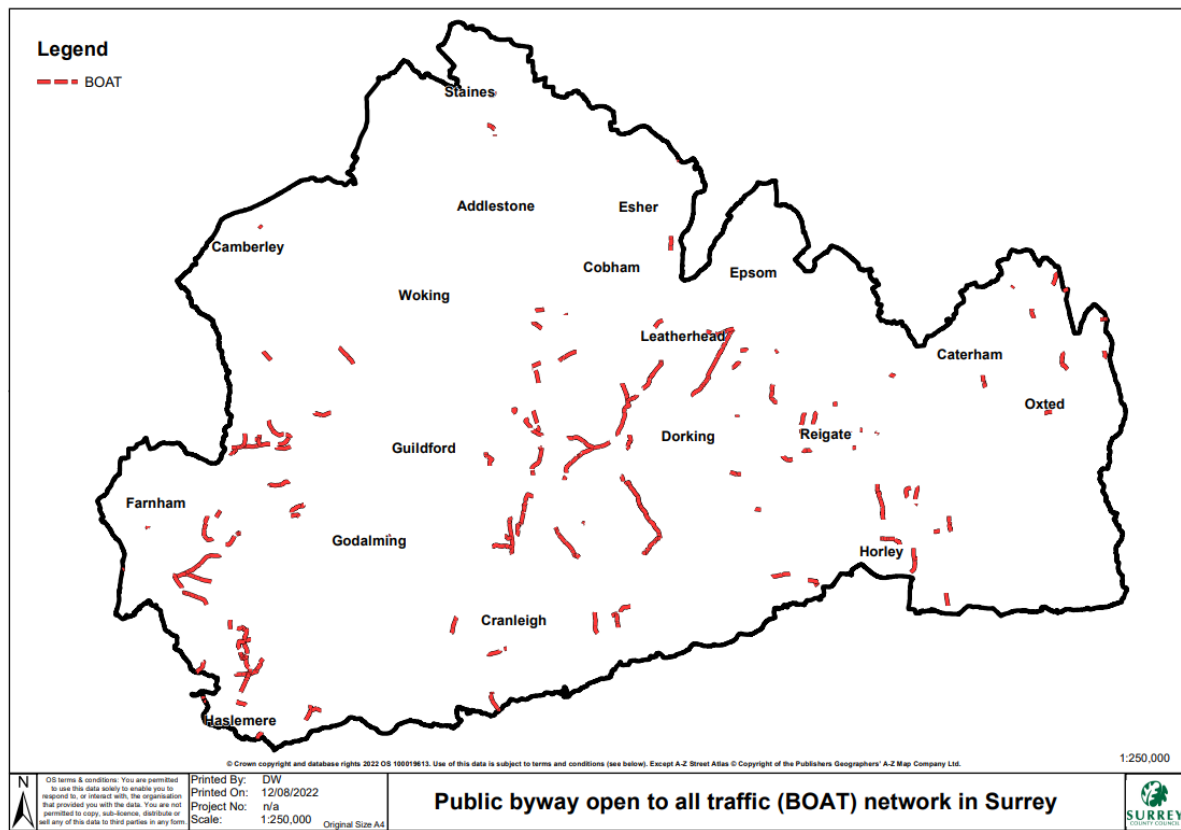
Background

A BOAT is a way over which the public have a right of passage with mechanically propelled vehicles (MPVs) and all other traffic including walkers, cyclists, horse riders, horse drawn carriages and mobility vehicles. Although MPVs have a right there is no requirement on the County Council to maintain the highway to a standard suitable for all of the ordinary traffic using them.

There are over 3500km of public rights of way in Surrey, 125.8 kms are BOATs made up of 118 paths and is 3% of the network. 39 paths have a historical Traffic Regulation Order which make them unavailable either to motor vehicles >1500mm or are unavailable to all motorised users.

Overall, throughout the country they account for 2% of the public right of way network. In 2006 the Natural Environment and Rural Communities Act (NERCA) removed the vehicular rights to 50% of the available national network by changing the category of RUPP (Roads Used as a Public Path) into Restricted Byways. This had differing levels of impact on Local Authorities. As Surrey did not have any RUPPs the BOAT network remained unaltered during these changes.

Surrey's BOATS are not evenly spread throughout the county with fewer in the East. Existing TROs have also impacted the connectivity of the network.



The Need for a Policy

Surrey's public rights of way network is well used by its 1.2m residents as well as tourists and visitors from neighbouring counties who use the network to access and enjoy Surrey's picturesque countryside. In certain locations this can put pressure on routes and adjacent areas, creating conflict between users and residents or affect the character and amenity of an area.

The County Council recognises the rights that MPV users have along BOATs. S. 54(7) of the Wildlife and Countryside Act 1981 however states that nothing obliges us to provide a BOAT with metalled carriageway or a surface suitable for the passage of vehicles. Surrey is not looking to encourage or promote use by motor vehicle users.

In DEFRA's Making the Best of Byways ([Making the Best of Byways](#)) section 2.1 states that 'in general, there is minimal direct conflict between byway users'. This is reflected in the incidents reported to Surrey Countryside Access Team. However, many non-motorised users and residents believe that motor vehicles should not be on the rights of way network. Where conflict does exist the main areas of concern are:

- a) Damage to the surface or inappropriate use and damage of boundary banks, or lack of maintenance.
- b) Perceived risks to the safety of all users.
- c) The impact of noise on a surrounding community or residence.
- d) Damage and disturbance to the environment, ecologically or landscape protected areas.

In Making the Best of Byways DEFRA recommends “that a clear policy is developed by Highways Authorities to manage BOATs and to minimise conflict”. This policy will set out how Surrey will manage the BOAT network, what action it will take, in what order, and where they will work in partnership to provide the best possible conditions for users, within the relevant legal, budgetary, and environmental constraints.

BOATs by their nature have an individual character and topography and run over differing geological conditions ranging from sandstone, chalk to Wealden Clay. They can be sunken with steep banks, run through open areas, such as Heathland or through woodland. They can also run through protected areas like SSSIs. Therefore, each BOAT must be considered on its own merits, issues, and considerations, creating an individual, tailored solution.

Although BOATS are available for walkers, cyclists, and horses, we recognise that the network provides access to people in vehicles who would otherwise be unable to reach the wider countryside such as the elderly or people with disabilities, and that many enjoy the historic right of accessing the countryside by driving or riding motorbikes. Most users remain within the width of the BOAT and act in a lawful and responsible manner. However, some BOATs suffer from anti-social behaviour and extreme damage by those users looking for a challenging or technical experience.

It is these routes which can become the focus for request for the rights of motorised users to be removed as they are often seen as the cause of damage to the surface. However, it may be the fact that the BOAT requires maintenance or repair which is the responsibility of the Highway Authority.

Each local Authority is required to have a Rights of Way Improvement Plan. The statutory guidance issued by DEFRA states: “wherever possible, proposals for improving rights of way should not unduly benefit one class of user at the expense of another. Improvements that are intended to benefit cyclists, harness-horse drivers, horse riders, horse riders or walkers should not unduly restrict lawful motorised use of public vehicular rights of way.”

Private access should not be affected by any actions necessary to manage a BOAT. It may be necessary to give combinations or keys to those who have a private right or need to access land adjacent to an affected BOAT.

Management of BOATs and Motorised Vehicle Use

The Countryside Access Team will manage the inspection, assessment, and maintenance of BOATs in line with their priority statement focussing on issues where there is a concern regarding safety of users. (Statement available on request). They will consider local issues and requirements on a case-by-case basis and to the benefit of walkers, cyclists, and horse riders.

The Countryside Access Team will look to reduce the potential for conflict, environmental and ecological pressures and misuse of BOATs, including anti-social behaviour, when within our powers, and will work with landowners and land managers as well as the Police to help resolve such issues.

It may be necessary to continue to monitor the BOAT, its condition and reported activity. Associated reports will be recorded to provide a full picture.

Following application for a TRO, the Countryside Access Team will inspect the BOAT in line with the Council's priority statement, and depending on funding, take any action necessary on safety grounds or to enforce an existing TRO.

Any repair works that may be needed to avoid a TRO will be prioritised in line with the SCC Public Rights of Way Maintenance and Enforcement Priority Statement and identified as part of the capital programme is followed alongside the policy. All options available will be fully explored and all partners engaged to try and resolve the issue.

Before considering any requests for a TRO we will consult with the Surrey Countryside Access Forum (SCAF). The SCAF are a statutory independent forum created under the Countryside and Rights of Way Act 2000 and made up of representatives of user groups, landowners, and other interest groups such as health and conservation. They are there to advise decision making regarding public access in Surrey.

Section 1 of the Road Traffic Regulation Act 1984 sets out the grounds and describes the criteria that can be considered in the making of a TRO.

It provides that a TRO may be made where it appears to the authority making the order that it is expedient to make it –

- 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, [or*
- 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).]*

Section 22 and 22A of the 1984 Act then provides, in addition to the above, 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), 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. For other roads, a TRO may be made for the purpose of conserving or enhancing the natural beauty of the area, which includes conserving its flora, fauna and geological and physiographical features.

In making a TRO, the Council must comply with its duty contained in s122 of the RTRA 1984. A balancing act must be undertaken in order to properly balance competing matters which specifically includes the need, when making a TRO, to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) so far as that is practicable having regard to the matters to which the Council must have regard as set out in s122(2) of the RTRA 1984.

Making a TRO should be considered as a last resort option. The Countryside Access Team will consult with stakeholders including user groups, communities and users before committing to processing a permanent TRO. The preferred option would always be to maintain the rights of as many categories of users as the BOAT will support.

How it Works in Practice

Figure 1. Process for the Management of Byways and Mechanically Propelled Vehicle Use

