

WEST SUSSEX COUNTY COUNCIL

REVISED POLICY ON THE
MANAGEMENT OF PUBLIC
RIGHTS OF WAY

TRAFFIC REGULATION ORDERS

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The Management of Public Rights of Way – Traffic Regulation Orders

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1. Introduction and Definitions

- 1.1 The County Council is the Highway Authority responsible for the definition, protection and maintenance of all public rights of way in West Sussex, The purpose of this paper is to set out the Council's policy on use of Traffic Regulation Orders on public rights of way in West Sussex.

A key target of the County Council's Corporate Strategy is to protect and enhance the environment and heritage of West Sussex. This includes ensuring that the countryside of the County is conserved for future generations.

The Council also aims to maintain and enhance access to that countryside.

It is a principle of this policy that where there is a conflict between these two aims then the former will prevail.

- 1.2 This paper covers the following rights of way:

- Footpath - i.e. a highway over which the public have a right of way on foot only, but this does not include a pavement or footway at the side of a public road.
- Bridleway - i.e. a highway over which the public have a right of way on foot and a right of way on horseback or leading a horse, and over which there may be a right to drive animals of any description. If a way is classified as a bridleway then it may also be used by pedal cyclists.
- Byway Open to All Traffic (BOAT) - i.e. a highway over which the public have a right of way for motorised vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are used.
- Road Used as a Public Path (RUPP) - i.e. a highway other than a footpath or bridleway. This class of highway will cease to exist upon the enactment of Section 47 of the Countryside and Rights of Way Act, 2000 expected in 2006. All RUPPs will then be automatically reclassified as Restricted Byways, until then a RUPP is a highway over which the public may walk, ride, cycle and there is a presumption of vehicle use.
- Restricted byway -i.e. a highway over which the public have a right of way, on foot, horseback, pedal cycle, in a horse drawn carriage but not in a mechanically propelled vehicle.

Where this paper refers to "traffic" that should be taken to include any form of use allowed by the status of the route concerned.

Invalid carriages are also allowed to use all classifications of right of way

2. Identifying the Problem

2.1 General Background

The number of people using public rights of way is rising leading to a need at certain times to consider ways of managing different uses. The current use is mainly leisure but with the encouragement of walking and cycling as a means of getting to school and work it is hoped that numbers will rise even more. Consequently managing the different uses of rights of way is likely to become a more significant issue.

2.2 The first means of management will always be:

- to make users of the rights of way more aware of the needs of other users
- with new routes and where reported problems exist to look at the design of the route to avoid problems
- to discuss solutions with representatives of users, landowners and the local community

The type of conflict that has received most publicity and generates considerable concern is the use of motorised vehicles on RUPPs. This stems from the amount of damage that can be caused to the surface of the right of way, the noise of motorised vehicles in generally quiet areas, the potential danger to other users and the illegal driving off the right of way causing damage to adjoining land.

There are also occasional conflicts of use between users of other rights of way, for example between horse riders, cyclists and walkers or between walkers and cyclists but these tend to be restricted to specific areas and can usually be resolved using various management techniques.

2.3 The Procedure

The steps that the County Council will follow when the type of problems referred to above occur are:

- Investigation and analysis
- Check legal definition of route where there is uncertainty
- Identify management options and assess the costs and benefits. If there are opposing views these may need consultation with local communities, user groups and landowners.
- Carry out maintenance

- Consider Traffic Management which may include:
- Voluntary Restraint
- Traffic Regulation Order, temporary or permanent

This will be the general order of the steps in the procedure but each case will be dealt with on its merits and some steps may be left out and others run concurrently.

2.4 Investigation and Analysis

When a problem comes to light the Council will investigate it and analyse it to ascertain what the nature of the problem is and the possible solutions. In coming to a decision to proceed further the nature of the problem and the level of damage will be taken into consideration. In some cases users of private rights may also contribute to the cause of concern.

A site visit will be used to assess the actual damage. To establish the causes the files will be reviewed for previous reports and also the issues will be discussed with the landowner, user groups and any other parties involved.

A review of the status of the path will be carried out where this is an issue, i.e. a legal dispute. However this will not delay other action from being taken that may be necessary to prevent further damage.

From the information gathered, it should be possible to analyse the nature of the problem and determine whether it results from the traffic using the way (lawfully or unlawfully), the maintenance of the way or uncertainty as to the status of the way or a combination of the three. Uncertainty of status may arise in the case of Restricted Byways (upon enactment of CROW) where a higher right is claimed although the onus will then be on the claimant to prove that right exists, but also possibly on other paths where for example bridleway rights have been acquired through long use or there is a claim that a way is wrongly recorded on the Definitive Map and Statement.

3. Identifying Management Options

3.1 Once the nature of the problem has been identified and analysed, the Council needs to look at what management options are available and identify the appropriate action.

3.2 The Council has wide powers with regard to the sorts of problems encountered and these can be summarised in accordance with the nature of the problem identified as follows:

- Powers in respect of the legal definition of ways and enforcement
- Powers in respect of misuse

- Powers as to maintenance
- Powers of traffic management

3.3 However the Council also has duties which it must consider in making any decisions, the key ones in relation to making decisions on rights of way are set out below.

One of the Council's primary duties as a Highway Authority is to assert and protect the rights of the public to the use and enjoyment of any highway. The Council also has the duty to protect Areas of Outstanding Natural Beauty and Sites of Special Scientific Interest and Scheduled Ancient Monuments. Any action taken by the Council must reflect compliance with these duties and balance the needs or desires of the public with the overriding duty to protect the environment.

4 Management Options

4.1 Legal Definition/Enforcement

The main area of doubt as to the status of any way applies to RUPPs and for the foreseeable future following reclassification, may apply to Restricted Byways. It will be open to anyone to make a claim for a public vehicular right on a Restricted Byway by providing evidence of motorised vehicular rights and the County Council has a duty to investigate. The claimants have until 2026 to claim additional rights over a route if they are based on, historical evidence. The onus of proof will be on the claimant and involves gathering evidence and making an application for a Definitive Map Modification Order to the County Council.

Uncertainty over the status of RUPPs stems from their definition as set out in Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949 which provided that the showing of a way on the Definitive Map and Statement was conclusive evidence only of the public's right to use it on foot or horseback. Once Section 47 of the Countryside and Rights of Way Act 2000 is implemented, the rights to use the way will be those in section 1.2 (e) Restricted Byway, which will be enforced, unless a claim to higher rights is subsequently established and the Definitive Map modified as a result. The rights on a Restricted Byway include driving a horse and carriage/trap down the route.

Where the status of a way is correctly recorded on the Definitive Map and Statement, problems may result from use by the public beyond their rights, or through exercise of a private right of landowners so that it substantially interferes with the public's rights. In such cases consideration will be given to appropriate legal or practical action. Practical action would normally be used in the first instance and may include the display of penalty notices where appropriate, advising of the penalties in law for illegal use. Fines up to the maximum of level 3 on the standard scale can be imposed for

driving on a footpath or bridleway under the Road Traffic Act 1988 s34, which is extended to cover Restricted Byways by the CRoW Act. Additionally driving that causes damage to a SSSI can attract a fine up to £20,000.

The police also now have additional powers under the Police Reform Act 2002, which allows them to seize and impound vehicles which are found illegally using a route. The powers allow the police to take action where the vehicles are or are likely to cause annoyance to members of the public.

Barriers would also be considered where they can be legally and practically installed. Barriers cannot be installed on a RUPP or BOAT. However, Restricted Byways, once introduced, will benefit from the provision of S66(2) of the HA 1980 allowing for the provision of rails, fences, barriers etc. by the Highway Authority for the purpose of safeguarding persons using the highway. Local HA's, in using this provision, should recognise that any barriers erected must not hinder the legitimate users of Restricted Byways such as those driving horse and carriages.

4.2 Maintenance

The Council has a duty to keep the public rights of way that are publicly maintainable in such a state as to be safe and fit for the ordinary traffic which uses the path throughout the year.

This is largely achieved through the routine maintenance programme that ensures each right of way is inspected and maintained at a frequency of not less than once in every 9 months. At the time of the visit, maintenance requirements such as clearance, waymarking, limited bridge repairs, etc., are carried out. As regards more major defects, which require substantial work, such as surfacing works or large bridge renewals, it is necessary for these to be deferred pending consideration as part of the annual minor and major works' programmes. This approach to maintenance does not, however, restrict the possibility of special maintenance and/or management being given to any right of way.

For the greatest part BOATs are managed as if they form part of the main rights of way network, and for this reason they are not treated separately to other classes of rights of way under the maintenance programme. They can however present specific problems on some soils and often need to be maintained on a regular basis to prevent minor problems escalating.

Where considered necessary for a way to be repaired or to recover, a temporary Traffic Regulation Order can be made (see paragraph 4.5 below)

4.3 Traffic Management

The management of traffic can be undertaken using practical means on the ground to separate different types of user, e.g. Walkers and drivers where the width of the route allows. Where legally possible barriers may be erected to prevent illegal use or an agreement reached to use voluntary restraint to reduce the effect of a particular type of use. Voluntary restraint will usually be used to reduce the damage caused by motorised vehicles on RUPPs or BOATs, however in some cases, as set out in 4.5, it may be necessary to use Traffic Regulation Orders. There is a total of 10km of BOATs in West Sussex.

Whenever possible provision will be made to allow use of a route by people with mobility problems. Where barriers have to be erected to prevent Illegal use then provision will be made to provide a key where a request is made.

4.4 Voluntary Restraint

The Department of the Environment's circular 2/93 on public rights of way states that "conflicts over the type of use may occur on some public rights of way and authorities should look to solve these where possible by management measures, based on co-operation and agreement. User groups will often agree to measures involving voluntary restraint, which they themselves will help monitor".

Voluntary restraint has no legal status, however it can prove effective in the right circumstances, particularly where a temporary reduction of traffic on an unsurfaced right of way can help to resolve maintenance problems. The use of voluntary restraint can have the following advantages over compulsory restraint:

- Voluntary schemes encourage co-operation elsewhere, compulsory restraint can alienate users.
- They can be put in place quickly and do not involve the same amount of expenditure.
- The negotiations with the users can often identify lasting solutions to the benefit of all parties.

When considering the use of voluntary restraint the following questions will be asked before the implementation of a voluntary restraint:

- *Is it relevant?* Restraints must be likely to solve a real problem, and likely to actually stop the damaging use.
- *Is it finite?* The scheme can extend for as long as the parties agree but usually lasts for three months extendible for another three months if real progress is being made and more time is seen to be needed. It must be reviewed to assess the impact.

- *Is the arrangement legal?* This requires agreement for signs to be erected. Some of the problem may stem from private use and therefore private users will need to restrain their use if possible as well.
- *Are all relevant users also offering restraint?* A problem of general overuse will not be resolved if only vehicle use ceases. For example do riders need to stop using the path as well?
- *Do all local users agree?* Ideally this would be the way forward but it is appreciated that not all users are members of groups and therefore it may not be possible to get a user led agreement. Compliance will be limited if users have no "ownership" of the deal, it needs to be well publicised both on the site and in the relevant press in advance of the voluntary restraint coming into force.
- *Are there alternative routes?* If there are alternative routes they should be signed but if there is no alternative this will not preclude the use of voluntary restraint.

While voluntary restraint should generally be the first consideration of the Council when considering traffic management options, voluntary restraint may not be sufficient to solve the problem as it is usually a temporary option and therefore compulsory restraint i.e. a TRO may be considered.

4.5 Compulsory Restraint - Traffic Regulation Orders (TROs)

Normally TROs will be used, for environmental and safety reasons, after other means of management have been tried or are considered inadequate. TROs are made by highway authorities under the powers given by the Road Traffic Regulation Act, 1984, which has been amended by the Road Traffic (Temporary Restrictions) Act, 1991 and Section 66 of the Countryside and Rights of Way Act, 2000. TROs can be made to ban lawful public use and it is arguable that it could be considered to ban illegal uses. Advice from DEFRA received in March 2003 supported this view. Therefore illegal use (e.g. horse riding on footpaths or mechanically propelled vehicles on restricted byways), can be tackled by a TRO.

The Department of the Environment circular 2/93 gives guidance on the use of TROs and concludes that the Secretary of State *"commends the use of such orders to prevent inappropriate use to protect the countryside where this is necessary and other management measures have failed or are considered inadequate"*.

There are two classes of TRO: permanent and temporary, although the term "permanent" is not used in the legislation. A permanent order stays in force so long as it is not cancelled or suspended by a subsequent order of the Highway Authority. Temporary orders are widely used to control traffic during carriageway repairs or to exclude the public from the highway for the duration of specific events and

are also often used for rights of way problems. A TRO does not extinguish public rights over a highway, it merely prevents all or some of those rights being exercised for the duration of the order.

The Road Traffic Regulation Act, 1984 empowers the Highway Authority to make orders where it appears to the authority that it is expedient (i.e. advantageous, advisable on practical grounds, suitable, appropriate) to do so. There is a wide discretion whether to make TROs. The grounds are:

- For avoiding danger to persons or other traffic using the road (i.e. any highway or other road to which the public has access and including any bridges over which they pass) or any other road or for preventing the likelihood of such danger; or
- For preventing damage to the road or any building on or near the road; or
- For facilitating the passage on the road or any other road or any class of traffic (including pedestrians); or
- 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
- Without prejudice to the generality above for preserving the character of the road in a case where it is specifically suitable for use by persons on foot or horseback; or
- For preserving or improving the amenities of the area through which the road runs;
- In certain cases such as an Area of Outstanding Natural Beauty or a long distance route Section 22 of the Act adds the additional reason of 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 recreational study of nature in the area. Section 66 of CROW extends Section 22 and inserts a Site of Special Scientific Interest (within the meaning of the Wildlife & Countryside Act, 1981) - The CROW Act states that "the reference to conserving the natural beauty of an area shall be construed as including a reference to conserving its flora, fauna and geological and physiographical features".

The general procedures for making a TRO are set out in Paragraph 6 along with the process followed by the County to consult.

TROs may be helpful in the right circumstances. They will suspend

the cause of the problems for the duration of the TRO. The barriers and signage associated with a TRO are specified and may be inappropriate for some rural locations but this may not be a significant problem where it is preventing ongoing damage or disturbance to the area.

Temporary TROs may be justified in circumstances where there is damage or danger from the condition of the route, which means that traffic should be excluded pending the work needed to put the route back in repair or to make it safe again. TROs are also justified in cases of permanent damage or danger e.g. where erosion or obstruction caused by the traffic would be of an irreparable nature if allowed to continue particularly in Areas of Outstanding Natural Beauty or where a TRO would assist in the conservation of Sites of Special Scientific Interest (SSSIs). Permanent danger would cover circumstances where the route had become dangerous and it was not capable of repair in accordance with Council's duties or where one use of the route poses a danger to other users.

The policy of the Council towards TROs will apply to all requests in respect of public rights of way. Where claims for modification orders to add ways (particularly BOATs) to the Definitive Map and Statement, consideration will be given to the likely impact of such use and whether a TRO should be made to protect the way or conserve or enhance the natural beauty of the area in accordance with this policy, in the event that the claim is successful.

5. **Conclusion**

The Authority is prepared to use all legal means to inhibit and prevent illegal use or inappropriate use which it judges is damaging to the right of way and adjoining land and impeding the peaceful use of the way for other users. Traffic Regulation Orders will be used where all other means have failed to prevent further damage or conflict or are felt to be inadequate.

Each case will be considered on its own merits, and there may be circumstances which require a different order of action to be taken than that outlined above, for example for reasons of immediate actual danger. In cases where the Council has discretion whether or not to act it will have regard to its duties to protect the rights of way and those to protect an AONB and SSSI. The cost of any action will be compared with the benefit that the action may bring when deciding how to proceed.

The options put into practice under this policy in the future will need to be carefully monitored by the County Council and reviewed on a regular basis to ensure they are achieving their purpose. Further action will be considered where necessary, as will the relaxation of any restrictions, which are no longer required. Consultation will continue as part of the monitoring process.

In order to strengthen the policy, further resources will be required

as each TRO costs around £4,000 and each will cost more if there are objections leading to a public inquiry. However this should be set against the cost of continuously dealing with the problem on site and any damage caused to the environment.

6. **The General Procedure for a TRO**

The general procedure for Traffic Regulation Orders is set out in the Local Authorities Traffic Orders (Procedure) (England & Wales) Regulations, 1996.

- The authority must consult with one or more organisations representing users of the route (unless it considers there are none) before making the order.
- Notice of the proposal to make the order must be published in the local paper, sent to consultees and, if the authority considers it desirable in the interests of giving adequate publicity to the proposal, placed on site.
- Details of the proposal, a map showing its effect and alternative routes for diverted traffic, and a statement of the Authority's reasons for proposing to make an order must be made available for public inspection during the objection period. That period must be at least 21 days after all the notices have been displayed.
- The Authority must consider all the objections received and may hold an inquiry, although it is not obliged to do so. Prior to making the order, it must notify objectors and then publish further notices.

The requirements for holding a public inquiry (some of which are more relevant to highways generally than to the public rights of way network) are as follows:

- Before making any TRO the authority may hold a public inquiry in connection with the proposed order.
- Before making a TRO which prohibits or has the effect of prohibiting, the loading or unloading of vehicles in any road, either at all times or for any period of time (unless such period falls wholly between 07.00 - 10.00 hours or 16.00 - 19.00 hours) in any day the authority shall hold a public inquiry in connection with that order if an objection is duly made within the objection period and is not withdrawn unless the authority is satisfied that the objection is frivolous.
- Before making a TRO which requires vehicular traffic generally, or vehicular traffic of any class, to proceed on a road in a specified direction, or prohibit such traffic from so proceeding, the authority shall hold a public inquiry if an objection has

been duly made within the objection period by a person who provides a relevant service on any road to which the order relates and the objection has not been withdrawn.

A "relevant service" means a service, which is a local service, or any other service for the carriage of passengers for hire or reward at separate fares. If the authority does hold a public inquiry then they must appoint an inspector from a panel of persons chosen by the Planning Inspectorate for the purpose.

It is the duty of the Council when exercising the functions conferred on them in respect of TROs:

- *So far as practicable having regard to the matters specified below to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.*
- *The matters referred to above as being specified in this sub section are:*
 - *The desirability of securing and maintaining reasonable access to premises.*
 - *The effect on the amenities of the locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas throughout which the roads run.*
 - *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*
 - *Any other matters appearing to the Council to be relevant.*

In summary:

- Within the County Council there are well-established procedures for the making of TROs. The County Council would need to investigate any proposal and consider whether or not it is justified and meets the necessary criteria of the Road Traffic Regulation Act, 1984 (RTRA) or Section 66 of the Countryside and Rights of Way Act 2000 which extends section 22 of the RTRA. The County Council would need to be supplied with evidence of mis-use or damage, which it can investigate.
- Consultation would then be carried out with the local County Council member, the police, the district and parish councils, user organisations and the emergency services and, if

appropriate, affected frontagers and the National Farmers' Union, and the Country Landowners' and Business Association. This stage of the procedure would on average take approximately three to four months to complete providing that no problems arose. If the proposal received support from the police, and the local member's formal approval had been given, notice of the order would be drafted. If the police were unable to support the making of an order as proposed, further consideration may be needed to improve the likelihood that the implementation arrangements would be self-policing. This would involve erecting barriers that prevent access by motorised vehicles but in order to do this any person with a legal private right to use the route would need to be able to gain access and/or a remaining public right would need to be accommodated.

- The County Secretary would draft the notice of the proposal and the statement of reasons and arrange advertising. The proposal would then be open to objection for a period of three weeks. If there were no objections to the proposal the necessary signing would be carried out and on completion the Traffic Regulation Order would be made.
- If, however, objections were received to the proposal, the Authority must consider all the objections received and may hold an inquiry, although it is not obliged to do so. It would be necessary to report the representations firstly to the Cabinet Member for Strategic Environmental Services and then notification in MIS (Members' Information Service). The matter would be subject to the call-in process and may be considered by the Strategic Environmental and Public Safety Services Select Committee. The Cabinet Member would then decide whether or not to make the order as advertised or make any amendment. If the decision to go ahead is made then the necessary signing would be carried out and the TRO would be made.

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