

Highways Committee

13 March 2015



Wolsingham Byway 157 (Hexham Lane) Proposed Traffic Regulation Order to prohibit motor and horse-drawn vehicles

**Report of Ian Thompson, Corporate Director of Regeneration and
Economic Development**

**Councillor Neil Foster, Portfolio Holder Regeneration and Economic
Development**

1.0 Purpose

- 1.1 To obtain endorsement to make a permanent Traffic Regulation Order (TRO) to prohibit motor and horse drawn vehicles being driven along Byway 157 (Hexham Lane).

2.0 Background

- 2.1 Wolsingham Byway 157 (Hexham Lane) is a byway open to all traffic which is a category of highway over which the public have a right of way for all kinds of traffic including pedestrians, cyclists, equestrians, motor vehicles and horse drawn vehicles, but which is used mainly for the purpose for which footpaths and bridleways are used. A legal definition can be found in the Appendix A
- 2.2 The byway is 4km (2½ miles) long, starting from just north of Wolsingham at the end of Thistlewood Lane and heading northwards and uphill to Salters Gate. It is largely unsurfaced, at two separate places has a gradient of 1:6 and passes across remote country of rough pasture and some moorland within the North Pennines Area of Outstanding Natural Beauty. The byway's location is shown on the plan at Appendix B.
- 2.3 The byway has been fully available to motor vehicles since 2005 having been registered as a byway following a Public Inquiry. It was previously recorded as part bridleway and part footpath.
- 2.4 Since 2010 the Access and Rights of Way Team has been aware of the byway's deteriorating condition following reports from users, due to usage by motor vehicles. In June 2012 contact was made with off road motor vehicular user groups and notices erected on site encouraging responsible use of the route to help reduce damage to the surface. However, over the next winter the condition worsened such that its condition required a permanent solution to address the continued deterioration. It was rutted in places and there were numerous areas of standing water and mud making passage extremely difficult for all users.

- 2.5 During summer 2013, drainage work was undertaken to improve the surface of the byway in the area of Ninety Acre Allotment and 2 collapsed culverts were replaced at either ends of the route. The section of byway directly north of Thistlewood Lane is also very rough, being a surface of compacted bricks and stones that have suffered from wash out and surface deterioration.
- 2.6 Temporary closure orders to all users, except pedestrians, have been in place since summer 2013 in order to allow the ground to recover and to keep its condition under review. There has been a significant improvement particularly to the south of Ninety Acre Allotment. However, the area with a culvert at the watercourse crossing here still remains wet together with localised areas towards Salters Gate.
- 2.7 The unsurfaced condition of the byway makes it highly vulnerable to damage and unsustainable for motor vehicular use and hence the proposals for a Traffic Regulation Order (TRO).

3.0 Legal Framework for making a Traffic Regulation Order

- 3.1 The reasons for making a TRO are set out in section 1(1) of the Road Traffic Regulation Act 1984 (the 1984 Act). Section 122 of the 1984 Act also imposes other duties on the Council when exercising functions under the 1984 Act. See Appendix A.
- 3.2 The starting point in the decision making process is to consider the purposes for making an order as set out in Section 1(1). Satisfied that one or more of these purposes are relevant it is then incumbent on the decision maker to consider the duty imposed by section 122. Section 122(1) is a duty imposed on the highway authority, which requires, so far as practicable the securing of expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians). However, in coming to a view the highway authority is also required to take into consideration the factors in section 122(2). The duty in section 122(1) can in some instances be at odds with the provisions of section 122(2). When there are tensions between the competing priorities within these two sections the decision maker must weigh up all the factors which are relevant but it is not clear which provision carries the greater weight. Recent case law suggests that because the duty in section 122(1) is qualified by the wording 'having regard so far as practicable to the matters set out in section 122(2)' means that the absolute nature of the duty in section 122(1) has been qualified by the duty in section 122(2).

4.0 Proposals and grounds for the making of the TRO

- 4.1 The proposal is to make a permanent Traffic Regulation Order (TRO) to prohibit motor and horse drawn vehicles being driven along the byway. It is considered the TRO is required to protect and preserve the route for pedestrians, cyclists and equestrians
- 4.2 **Section 1(1) of the 1984 Act**
- 4.3 The traffic regulation order is to be made under the provisions of the Road Traffic Regulations Act 1984. The following is the Statement of Reasons (section 1(1) of

the 1984 Act) accompanying the Notice of intention to make the TRO which was advertised on 19 November 2014 with the officers' reasoning included in italics:

Section 1(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

Hexham Lane is a largely unsurfaced remote byway with a gradient of 1:6 at two separate locations. Its surface is very vulnerable to damage and liable to becoming rutted and uneven. It is very slippery in places, particularly for wheeled vehicles. It is considered that continued motor vehicle use of the route will add to its deterioration including unevenness, poor drainage and a generally more difficult and dangerous environment for all users. It is not known whether any horse drawn vehicles have made use of Hexham Lane but it is considered that the whole byway environment is likely to be dangerous for such users.

Section 1(b) for preventing damage to the road or to any building on or near the road

The route has been subject to significant damage in the past. Repairs to the Ninety Acre Allotment section of the byway carried out over summer 2013 dealt with creating a more formal drainage system which has made significant improvement to the surface, and much of it has re-vegetated. The ground is however largely unsurfaced and some of the drainage issues have persisted. The route is not formally constructed as a road and is largely a route across rough pasture. It is not designed, nor is it able to withstand significant motor vehicle usage. The route would be subject to significant future damage if use is not managed.

Section 1(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians)

As described the deterioration of the surface of Hexham Lane which is considered to be inevitable should motor vehicles continue to use it will make passage along the road more difficult for all users. The permanent prohibition proposed will give the route a much greater chance to sustain its current condition so facilitating passage along it.

Section 1(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

The environment of the byway is remote, climbing from just above Wolsingham to Salters Gate which lies at a height of 345 metres above sea level. The route passes directly across agricultural land, with a legal width for the majority of its length of 18m and a varying physical width of up to 10m being rough pasture or moorland and is not separated from the agricultural land uses. The physical character of the route is more likely to change should motor vehicular use continue as the ground would become unsuitable for users.

Section 1(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

It would be considered that this byway is a route which is specially suitable for use by persons on horseback or on foot. The route is unsurfaced and has not been specifically constructed for use by vehicular traffic. Continued usage of the byway by motor vehicles and associated damage to the surface would change the character of the road, making it less suitable for pedestrians and equestrians..

Section 1(f) for preserving or improving the amenities of the area through which the road runs

The amenity of the area around the byway, in terms of the public, is its pleasant, remote and rural location within the North Pennines Area of Outstanding Natural Beauty. Although the byway is an amenity for all public users the degradation of its surface has an overall negative impact. The route becomes more difficult to use, those public paths connecting to it become less attractive to users and the landscape through which the byway runs becomes degraded and less pleasant.

4.4 Section 122 of the 1984 Act

- 4.5 Further to being satisfied that one or more of the above is relevant it is then necessary to consider the duty imposed by section 122. Section 122(1) makes a requirement, that so far as practicable having regard to the matters specified in subsection (2) below, to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians). It is to be noted this would also include cyclists and equestrians. However it is also important to consider the provisions of section 122(2) as follows

(a) *The desirability of securing and maintaining reasonable access to premises*

The proposed prohibition only covers recreational vehicles, and will not prohibit access to adjoining land by the owners, tenants and their lawful invitees because they will be exempt because they will be covered by a permit scheme. This permit scheme will enable effective enforcement of unauthorised usage. Although it would be preferable for all motor vehicles to be prohibited from using the byway this particular duty specifically requires the authority to consider the needs of those adjacent landowners to access their land. In the circumstances a complete prohibition is not possible.

(b) *The effect on the amenities of any 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 through which the roads run;*

It is not considered that the proposal will have any impact on heavy commercial vehicles as the route is not appropriate for such use. As described earlier the amenity of the area around the byway is pleasant, remote and rural. Although the byway is an amenity for all public users the degradation of its surface has an overall

negative impact. The route becomes more difficult to use, those public paths connecting to it become less easy or attractive to use

(bb) ***the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy)***

The limited numbers of motor vehicles using the route would have a minimal effect on air quality.

(c) ***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***

There are no anticipated effects on public service vehicles (eg buses, taxis and coaches). As this is an unsealed route it is not used by such vehicles and drivers of such vehicles are unlikely to desire to use the route. In reality it is not a route that a reasonable person would drive such a motor vehicle over.

(d) ***Any other matters appearing to the local authority to be relevant***

Officers have given consideration to how the Traffic Regulation Order would be implemented and its effects on different user groups. The prohibition of horse drawn vehicles is a pragmatic decision which has been taken having considered the type and numbers of users of the route. No objection has been received from any group or individual wishing to use the Byway with horse drawn vehicles. This would support the view taken by officers that such vehicles are not used on this route because of its topography and condition. Officers have taken the view that the dimensions required to permit a gated access for a horse drawn vehicle would also allow access for 4 wheeled motorised vehicles. Given that, in the officers' view, horse drawn vehicles would not use the route, it is therefore considered reasonable and fair to prohibit horse drawn vehicle users thus enabling a physical width restriction to be applied.

Officers have considered appropriate guidance for the management of byways. In particular DEFRA's 'Making the Best of Byways' has been consulted and the advice therein considered together with LARA's* 'Traffic Management Hierarchy. Good Practice in Traffic Management on Unsealed Public Roads'. * LARA is the Motoring Organisation's Land Access and Recreation Association which seeks to protect the interests of responsible motor vehicle users in the countryside.

5.0 Alternative Options

- 5.1 It is possible for a permanent TRO to include provisions that are less restrictive eg to only restrict use by 4 wheel drive vehicles, to make the prohibition seasonal or to specify certain vehicle weights, number of wheels, width of vehicles or a one way system. These options could allow for certain motor vehicle users to drive along the byway in certain circumstances and have been given careful consideration to establish if it is fair and reasonable to prohibit use by any one group of users.
- 5.2 One of the main issues for the byway is its surface and durability. Large stretches of it are unsurfaced with a soft top soil overlying impervious materials which are very susceptible to changes in moisture. This is most evident in the area around Ninety Acre Allotment. With the impervious nature of the underlying material, the

top soil is vulnerable to becoming saturated due to poor drainage. The load bearing capacity of such soils is low and any significant vehicular load will cause damage and deterioration. Rutting will be caused when proceeding through wet surfaces using high engine revolutions. The impact of such damage can vary with many differing factors such as the number of axles, number of wheels, weight, tyres and amount of usage which are all options to look at. However, on balance it is considered that although different motor vehicles will impact the byway surface to varying degrees they will all affect the route's surface in a negative way to such a degree that it will be unreasonably muddy and uneven for users of the byway. It is accepted that there is some uncertainty as to how much damage may be caused but it is a reasonable assumption that there will be damage to the highway to such an extent that it places an unacceptable risk for the Council, as the custodian of the highway.

- 5.3 It is considered that a less restrictive option would be at odds with the reason given at paragraph 4.3 in particular (a) and (b) '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' and 'for preventing damage to the road or to any building on or near the road'.

6.0 Objections

- 6.1 There were 203 representations made to the proposed TRO as summarised at Appendix C. The following are the main reasons given by objectors, in order of popularity:

- 1 Other types of management are more appropriate eg restricting weight of vehicles, seasonal prohibition, width restriction, number of wheels of vehicles. Motor bikes do not cause the damage of 4WDs.
- 2 Hexham Lane is a valued part of the local byway network
- 3 Test the improvements carried out to the byway before prohibiting motor vehicles
- 4 Loss of a limited legal historic resource
- 5 Motor cyclists have a lighter impact or no greater impact than horses. Being discriminated against
- 6 The Council has a duty to maintain the byway
- 7 Negative impact on local economy and tourism
- 8 The condition of the route is safe
- 9 Use volunteers for maintenance
- 10 More engagement with users/user groups
- 11 Discriminates against disabled 4WD users

Each of the reasons is considered below.

6.2 **Objection Reason 1**

Other types of management are more appropriate eg seasonal prohibition, restricting weight of vehicles, width restriction, number of wheels of vehicles. Motor bikes do not cause the damage of 4WDs.

Response

It is accepted that there are examples of prohibitions in other parts of England and Wales which include vehicles weights, seasonality, widths etc. Although this could be an attractive more conciliatory option it is not considered to achieve the objective of protecting or preserving the route for users. It would not allow the County Council to meet the objectives as set out in the Statement of Reasons and is considered that any of these suggested options would result in a significant risk that the byway surface will become substantially damaged, given that it is mainly top soil and there are some significant gradients on this route.

Officers have taken what is believed to be a fair and reasonable assessment of the different management options available but consider none of the following would fully protect the route.

A seasonal closure has been considered and discounted on the basis that the route deteriorates significantly during wet conditions with any level of use by vehicular traffic. Restricting use to summer months only could result in concentration in demand during those times when significant wet periods can occur and have been experienced in recent years.

In considering what, if any effect, a vehicle weight restriction could have, the surface and subsurface materials are the most relevant issues to consider. These are predominantly top soil overlying impervious materials in parts which can be susceptible to changes in moisture. The top soils become fluid with ingress of water and the impervious sub soil retains water at its interface where poor drainage can be a factor. Loading such materials with regular vehicular use will inevitably lead to rutting. The load bearing capacity of such soils is low and therefore any significant vehicular load would cause damage and deterioration. Spreading loads with increased number of axles, wheels or tracks can reduce impacts but it is not considered that damage can be avoided.

It is not accepted that motorcycles or motorised trails bikes should be exempt from restriction. It is claimed that they would not cause any damage to such a surface. Such vehicles, although lighter than other motorised vehicles can create significant rutting when attempting to proceed through wet surfaces using high engine revolutions. Consideration has been afforded to the effect and impacts of permitting powered two wheel vehicles to continue to use the route. However, it is the officers' view that a complete prohibition of all motorised vehicles including powered two wheel vehicles is necessary to give the confidence and certainty of the byway's surface being preserved and protected.

6.3 **Objection Reason 2**

Hexham Lane is a valued part of the byway network

It is accepted that the route is an important link in the local network of byways and unclassified roads. However, when considering the grounds for making a TRO (section 1(1) of the 1984 Act) and the issues to take into account in section 122 of the same Act this issue can only be given limited weight. The value of the byway is not contested.

6.4 Objection Reason 3

Test the improvements carried out to the byway before prohibiting motor vehicles

The byway surface is clearly susceptible to damage by vehicular traffic. This situation will not change as a result of continued reinstatement and drainage improvements. Loading the byway surface with vehicular traffic would result in further deterioration. This option would carry too significant a risk to the byway surface (as for the response to Reason 1).

6.5 Objection Reason 4

Loss of a limited legal historic resource

The resource is not lost but rather preserved and secured for use by pedestrians, cyclists and equestrians. It is accepted that Hexham Lane is of historic significance however it is not unique considering the antiquity of the highways network, therefore this point is of limited significance. The prohibition of driving does not remove its status as a byway, it places restrictions on the type of usage.

6.6 Objection Reason 5

Motor cyclists have a lighter impact or no greater impact than horses and are being discriminated against

This point is not one with an objective evidence base. It is accepted that the weight of a horse and rider may be similar or heavier than a ridden motorcycle or trails bike. Damage to a surface can be caused by different factors which do not only relate to weight. There are numerous variables that differ between each user such as loadings (linear/point), turning, speed, the ground contact area and the total number of users. The continuous contact area of a wheel compared to a horse hoof is significantly different. Motorcycles will create a continuous linear trail along the line of a route along which water can be retained and channelled to cause damage. Although horses can damage soft surfaces their more concentrated 'hoofmarks' mean that water damage is less likely to spread.

6.7 Objection Reason 6

The Council has a duty to maintain the byway

As described earlier the Council has carried out maintenance works to the byway. The Council's duty to maintain highways does not prevent it from making decisions on how to discharge its functions such as using TRO legislation to manage its assets.

6.8 Objection Reason 7

Negative impact on local economy and tourism

This assertion is not quantifiable. It is considered that walking and cycling are more significant contributors to the local economy and indeed the Visit County Durham

website's (the official visitor website) Outdoors page focusses on walking and cycling.

6.9 **Objection Reason 8**

The condition of the route is safe

The view of 'safe' is subjective and the definition of 'safe' depends on the level of risk to all users. Whilst vehicle users may consider the route to be safe, pedestrians, cyclist and equestrians may require an unrutted firm surface before considering it to be safe. Notwithstanding this point, this is a subjective statement and whether the byway is safe or not is not a pre-requisite for making a TRO. As described earlier at 4.1, section 1(1) of the 1984 Act states a number of reasons for making a TRO, one of which is to prevent the likelihood of danger arising to users. It is considered the condition of the route is likely to deteriorate such as to present a danger to some users and should be managed accordingly.

6.10 **Objection Reason 9**

Use volunteers for maintenance

The Council is active in the area of countryside volunteering, managing the Durham Voluntary Countryside Ranger Service which has existed since 1968 and the Parish Paths Partnership, which is a Public Rights of Way specific grant/volunteer project, since 1992. Both these projects are well managed but it is accepted that they may not suit all possible volunteers or projects. It is also relevant that to bring Hexham Lane up to a standard that is properly sustainable for vehicular use would require the import of large quantities of stone which is not within the realms of a volunteer task.

6.11 **Objection Reason 10**

More engagement with users/user groups

In the summer 2012-2013 the main motorised vehicular user groups were contacted in an attempt to encourage voluntary restraint to not use the byway when ground conditions were poor. Representatives of the groups accepted the need for voluntary restraint and acknowledged that the condition of the surface had deteriorated. Motorised vehicular use of the route continued, highlighting the problem that the recognised user groups do not represent many of those who use the route in motorised vehicles. Identifying and engaging with these individual users is very difficult.

6.12 **Objection Reason 11**

Discriminates against disabled users

The proposals would prohibit all motor vehicle and horse drawn vehicular users. They do not specifically target or disproportionately affect disabled motorised vehicle users.

7.0 **Local Member consultation**

7.1 Local members Weardale Councillors John Shuttleworth and Anita Savory have been consulted but have not made any comment.

8.0 Recommendation

- 8.1 It is considered that all alternatives to making a permanent TRO to prohibit motor and horse drawn vehicles have been properly assessed and on balance would not be considered to achieve the purposes for making the TRO as set out in section 1(1) of the Road Traffic Regulation Act 1984. Nor is the Council obliged to make an Order which is less restrictive.
- 8.2 In determining the reasons for making the proposed prohibition it is considered that the criteria set out for the making of the proposed TRO have been properly assessed. It is therefore RECOMMENDED that the Committee endorses the Director of Regeneration and Economic Development's proposal to proceed with a permanent prohibition of motor vehicles and horse drawn vehicles.

Background Papers

Relevant documentation held in members' library

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Appendix 1: Implications

Finance – Costs of the implementation of the scheme will be funded through the Council's Rights of Way revenue budget.

Staffing – The proposal and its implementation will be managed by the Access and Rights of Way Team

Risk – There are minimal risks associated with this proposal

Equality and Diversity / Public Sector Equality Duty - It is considered that there are no Equality and Diversity issues to be addressed.

Accommodation – No impact

Crime and Disorder – It is not considered that the TRO would have any notable impact on crime and disorder although it would create an offence to drive along the byway with a motor vehicle or horse drawn vehicle. The introduction of a permit scheme to identify exempt drivers will enable more effective enforcement. The Police are the enforcement agency for driving offences and they have not objected to the proposals.

Human Rights – Although the right to drive a motor vehicle or horse drawn vehicle along the byway will be prohibited this is a proposal that can be introduced by the Highway Authority using primary UK legislation. It is considered that the proposal would not be a breach of human rights.

Consultation – in accordance with SI:2489

Procurement – Work to be carried out by Highways Operations

Disability Issues – The proposals will prohibit the drivers of all motor vehicles and horse drawn vehicles from proceeding along the byway and does not specifically target or disproportionately affect disabled drivers.

Legal Implications – The proposals have been considered in accordance with the legislation described in the report.