

Highways Committee

20 November 2017



Wolsingham Byway 157 (Hexham Lane)

Objection to Experimental Traffic Regulation Order to prohibit 4WD vehicles

Report of Ian Thompson, Corporate Director of Regeneration and Local Services

Councillor Carl Marshall, Portfolio Holder Economic Regeneration

1.0 Purpose

- 1.1 To consider objections to the Experimental Traffic Regulation Order (ETRO) and make a recommendation to the Corporate Director (when exercising his power to make a delegated decision) as to whether to make the ETRO permanent.

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.
- 2.2 The Byway is 4km (2½ miles) long in an upland location, starting from just north of Wolsingham heading northwards and uphill to Salters Gate. It is largely unsurfaced, passes across remote country through rough pasture and moorland and lies within the North Pennines Area of Outstanding Natural Beauty. The Byway's location is shown on the plan at **Document A**.
- 2.3 Large stretches of the Byway are unsurfaced with an impervious high clay content overlaid with a shallow soft top soil which creates issues about the route's durability particularly when used by motor vehicles. Previously, the Council has addressed the poor condition of the surface by undertaking drainage works to the most problematic areas. To test the durability of the route by certain motor vehicles an experimental traffic regulation order has been in place since 3rd October 2016 prohibiting motor vehicles with 4 wheels or more from driving over the Byway. Usage by motorcycles is not therefore prohibited and use by 4WD vehicles associated with the owners or occupiers of the land is excluded from the ETRO via permits. The condition has been monitored with 4-6 weekly inspections including photos taken at 29 locations to assess the changes in condition.

- 2.4 An ETRO order cannot exceed a period of 18 months and any objections must be made within the first 6 months (or if the order is subsequently varied within 6 months of that change). With a year's monitoring in place the Council can now assess the ETRO and determine its outcome and therefore the route's future management. Within the first 6 months an objection was received by one of the landowners requesting that the prohibition should be extended to cover motor cycles in order to maintain it in a proper state of repair. There were also reports during this time from another landowner of anti-social motor bike and quad bike use in the vicinity of cows and sheep, although not on the Byway itself.
- 2.6 There were a number of reasons for making the ETRO and which were detailed in the Delegated Decision made on behalf of the Corporate Director on 5 August 2016 which is attached as **Document B**. The reasons are consistent with those specified in Section 1(1) of the Road Traffic Regulation Act 1984 and include preventing damage to the route, avoiding danger for users, ensuring passage along the route is facilitated, safeguarding the character of the road and adjoining land and safeguarding as much as possible the local amenities. Only those reasons compatible with the legislation can be cited when making a traffic regulation order which are largely concerned with the condition of the highway and ensuring its usage is sustained conveniently and safely.

3.0 Summary of monitoring inspections

- 3.1 The Byway has been monitored over a period of 13 months, starting 3 weeks prior to the commencement of the ETRO until October 2017. Detailed inspection notes were taken and a timeline of photos at 29 locations between 9 September 2016 and 5 October 2017. A summary is shown in **Document C**.
- 3.2 Although the condition of the Byway varied depending on the weather conditions and any recent obvious usage there are some key observations.
- 3.3 There were some changes to the Byway's surface at different times, however, it has overall remained in an acceptable condition for its status as a Byway Open to All Traffic and location.
- 3.4 The Byway's surface was wettest at the end of the winter, in March 2017, and when vegetation cover is at its sparsest. There was vegetation recovery during the summer.
- 3.5 The 'weak' points are at 'pinch points' where culverts are crossed and at gateways. The greatest loss of vegetation and most notably tractor damage is seen at the North Moor culvert, the 90 Acre culvert crossing and its approaches, and the southern end of 90 Acre. At these locations the tractor damage has persisted with the winter wet mushy ruts becoming dry and like concrete in the summer. However these are localised issues and not of such concern at this time to render the Byway unacceptable for users.
- 3.6 The most visible wheel markings are along some of the northern sections with tractor and other 4W vehicles rather than 2W. There are stretches where narrow, shallower 2W markings are visible up the grass middle area between the 4W ruts.

- 3.7 The southern end of the Byway (Sand Edge southwards) has not undergone any notable changes. Although there are some localised persistent wet areas at the Peaty north end of Sand Edge these haven't extended.
- 3.8 The visible width of usage has largely remained confined to the 'track' width apart from the 2 fields with a shorter grass swaythe (at Salters Gate and just south of 90 Acre but these are well within the specified width of the byway (60' at southern end and 40' at northern).

4.0 Objections

- 4.1 Landowner 1 requests that all motor vehicles are prohibited from using the Byway to ensure it remains in a useable condition for pedestrians, cyclists and horse riders. He provides photos in Feb 2017 which he states show significant damage caused by 2W vehicles. He also describes 2Ws accessing other areas and causing distress to his livestock and that 4WDs are ignoring the ban and accessing the Byway from other estate tracks. Additionally he considers that the damage to the Byway creates safety issues for his employees and impacts those using the Byway on foot or horseback.

4.2 Response

The monitoring carried out by officers has continued over a 13 month period and the photo catalogue built up provides a broader picture than those provided by the objector from one date. As described above it is considered that the Council's monitoring does not conclude that 2W vehicles have caused damage to an extent which is of concern at this time and it is 4W use that has. Indeed it is considered that the objector's photos also support this conclusion.

The objector describes how 4WD vehicles have accessed the Byway via other estate tracks. Although this is noted it is considered that securing other entrances to the land is not within the Council's role. The locked gates at the start and finish points next to public highways have not been unlawfully breached during the period of the ETRO.

The description of the Byway's condition put forward is not consistent with Officers' view that it is in an acceptable condition.

Disturbance to livestock due to accessing other land is regrettable and it is noted that during spring 2017 both the owner and the Trail Riders Fellowship erected notices at the Salters Gate end of the track alerting riders to the presence of stock and encouraging considerate use of the Byway.

- 4.3 Landowner 2 made 3 separate reports between Nov 2016 and March 2017 about motor bikes riding off the route of the Byway and causing upset to pregnant cows and sheep, leaving gates open and driving too fast.

4.4 Response

More recent discussions with this objector indicate that a majority of motor bikes do ride responsibly, to put some perspective to this complaint. Further signage, as described above can be arranged to promote responsible use of the Byway and if issues persist of driving off the Byway then the Police can be informed as driving off the Byway onto adjoining land is a criminal offence. The issues are more of management rather than something that the ETRO can deal with as to exclude users to prevent unlawful/illegal activity/anti-social behaviour does not fall within the statutory grounds for making the ETRO.

5.0 Local Member consultation

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

6.0 Recommendation

6.1 It is considered that the monitoring of the condition of the Byway throughout the period of the ETRO indicates that the surface has been able to withstand use by 2WD vehicles. Although there have been some changes in the Byway's condition and the weather/seasonal conditions do impact the robustness of the surface, it has withstood that usage.

6.2 Usage by 4WD vehicles is still evident, however owner/occupiers of the land are not excluded by the prohibition and banning of these users would not be considered lawful. However, the impact of 4WDs during the ETRO period has further compounded the view that (apart from the excepted 4WDs described) these vehicles should continue to be prohibited due to the poor structure of the sub soil.

6.4 The Constitution of the Council specifies in Part 3A that the final decision must be made by the Corporate Director for Regeneration and Local Services, under delegated powers, having regard to guidance from the Committee.

6.5 It is recommended that the Committee:

- Note the objections and recommend to the Corporate Director of Regeneration and Economic Development that the ETRO is made permanent.

Document A Location plan showing route of Byway

Document B Delegated Decision made on behalf of the Corporate Director on 5 August 2016

Document C Photos and inspection reports (full documentation in background papers)

Document D Objections

Background Papers

	Contents
0 A pdf	<i>Plan showing the photo locations, links, features etc</i>
0 B pdf	<i>Written description of the links, where photos taken from and dates</i>
0 C pdf	<i>Summary of inspection comments 9 Sep 2016 to 5 Oct 2017</i>
Photos folder	<i>Labelled 0 – 29 x a, b, c, d/ Each number denotes the location and a, b, c, d, etc when the photo taken. (note that 0 photos only start at c). To be used with the previous documents which provide info on locations etc</i>

Contact: Audrey Christie Tel: 03000 265332

Appendix 1: Implications

Finance – Costs of the implementation of the scheme will be funded through the Council's Rights of Way revenue budget. Minimal as most of the costs already incurred at start of experiment

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.