

11. PROPOSED TRAFFIC REGULATION ORDER AT DERBY LANE (A76227/SAS)

Purpose of the report

1. This report presents the outcome of consultation with statutory consultees under Regulation 4 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 for the proposed future management of this route.
2. On the basis of the consultation, available evidence and the information in this report, it is recommended that the Authority should proceed to publication of its proposals for a permanent traffic regulation order (TRO) on this route. At such time, there will be an opportunity for consultees and members of the public to make comments on the proposals and which will be considered by this Committee before the decision is taken whether or not to make a TRO.

Recommendations

3.
 1. **That the Authority publishes notice of its proposals for a Permanent Traffic Regulation Order under Section 22 BB(2)(a) Road Traffic Regulation Act 1984 that will have the effect of prohibiting use by mechanically propelled vehicles at any time on Derby Lane.**

Policies and legal obligations

4.
 - National Park Management Plan – Partnership for Progress 2012-17 –W14
 - Strategy for the Management of Recreational Motorised Vehicles in their Use of Unsealed Highways and Off-road, and Procedure for Making Traffic Regulation Orders (TROs).
 - Sections 5(1) and 11A of the National Parks and Access to the Countryside Act (NPACA) 1949
 - Section 122 of the Road Traffic Regulation Act 1984.

Background

5. On 20 March 2015, Audit Resources and Performance (ARP) Committee approved actions in the key areas of work required to deliver the revised Strategy on managing recreational motorised vehicles (Minute 17/15). The Green Lanes Action Plan focused on the priority routes where the need for improved management had been identified. At Derby Lane, this included a proposed consultation on vehicle regulation.

The Route

6. Derby Lane runs south easterly from Summerhill Farm, Monyash to meet Long Rake Road at the access to Cales Farm. It is approximately 2.1 km long. The relevant Highway Authority is Derbyshire County Council (DCC). A map showing the route is provided in Appendix 1.
7. The route runs along the limestone plateau above Lathkill Dale and has far reaching views. Access to Summerhill Farm is via a classified section of road, thereafter the route is unsealed and in the latter sections is undefined on the ground. The stone walled track widens out before opening out into fields. The route is trackless for much of its length. The route is not passed by any roads throughout its length. Other than Summerhill Farm the route does not pass any properties along its length. The route is used for agricultural access to neighbouring fields and at the southern end meets with the access road to Cales Farm.

8. The route passes through a Site of Special Scientific Interest (SSSI) and an area of Natural Zone abuts the route at Cales Dale. The route passes through historic landscapes including medieval. It is considered to be the surviving section of the old road between Derby and Manchester and is marked by a post medieval guidepost. A high priority lead mining site and long barrow is located immediately adjacent to the route. The route lies within the White Peak Landscape Character Area. The conservation interest is summarised in Appendix 2.
9. Derby Lane is an important recreational asset for all users and provides a route from Monyash to Long Rake Road and the Arbor Low Scheduled Monument. The route is used for agricultural purposes and access for caving and provides an alternative to Lathkill Dale and the Limestone Way.
10. Determination of legal status is ongoing with an order for Byway Open to all Traffic (BOAT) status having been made by Derbyshire County Council. 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.
11. At the end of 2013, the landowner placed boulders (subsequently enhanced by Armco barriers) part way along the route preventing it being used as a through route by 4-wheeled vehicles. Vehicle logging and evidence on the ground shows that use by 2-wheeled mechanically propelled vehicles (MPVs) continues on both parts of the route and that 4-wheeled use, including agricultural use, is taking place on the Monyash side of the barrier.
12. The sustainability analysis undertaken in 2007 illustrates the management problems associated with this route. Issues identified in the preparation of route management reports relate to disturbance and user conflict, the nature and condition of the route, and its environmental sensitivity. Detailed route management information is available at www.peakdistrict.gov.uk/priorityroutes.

Consultation

13. A consultation letter under Regulation 4 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 was sent to consultees on 26 November 2015. The list of those persons consulted is set out in Appendix 3.
14. The consultation letter set out the reasons for consulting on a TRO and the possible options available. Consultees were asked to comment on whether they thought a restriction was necessary and if so to state the nature, extent and duration of any restrictions. They were also asked to comment on any alternative management options. A summary of the responses are set out in Appendix 4.
15. A number of comments were also received from individuals/bodies who were not consultees. Those from organisations have been reported where they endorsed the comments made by statutory consultees.

Issues Arising from the Consultation

16. Various actions regarding the management of this route have been undertaken including waymaking the route and logging vehicle use, However, the need for improved management remains.
17. This consultation has identified that the majority of consultees that responded consider that management issues could best be resolved by some form of TRO but there are

differences as to the nature and extent of such an order. Suggested TRO options include:

- A restriction on all mechanically propelled vehicles at all times on the full extent of the route
 - A width/weight restriction
 - A seasonal TRO
18. Three of the consultation responses recommended voluntary restraint at this time. One response considered that voluntary restraint could not be managed effectively on this route.
19. One of the other consultation responses did not believe that there was any present need for any formal restrictions or a restriction on 2-wheeled motorised vehicles over and above that presently provided by the boulders and barriers. This consultation response referred to the status of the route and that there was no need for action until the legal status had been determined. A number of other responses considered that pre-emptive action was required on this route.
20. The determination of the legal status of the public's rights is primarily a matter for the relevant Highway Authorities. Where there is sufficient evidence available to the Authority establishing the existence of public vehicular rights of passage over the route, The Authority may exercise its powers under s22BB.
21. A number of the consultation responses also referred to the safety of the route for other users. Safety concerns may be relevant to consideration of the impact on amenity. There may also be other management options which can seek to address risks of danger or harm.

Grounds for Making a TRO

22. Where it is proposed to make a TRO the Authority must be satisfied that a TRO would fulfil at least one of the purposes set out in s1(1) or s22(2) of the Road Traffic Regulation Act 1984 (Appendix 5). In the case of the Derby Lane route, the following purposes are considered relevant:
- s1(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
 - s1(1)(f) – for preserving or improving the amenities of the area through which the road runs
 - s 22(2) - for 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
23. Factors which contribute to natural beauty include landscape quality, scenic quality, relative wildness, tranquillity, natural and cultural heritage features and associations. Conserving the flora, fauna, and geological and physiographical features will also conserve the natural beauty of the area. Amenity is viewed as the benefits afforded to people from what is seen and experienced and is dependent on the natural beauty of an area and the opportunities offered for recreation.
24. Natural Beauty - The route is in a National Park designated for its exceptional natural beauty and passes adjacent to an area of Natural Zone. As such it is particularly important to conserve that natural beauty. The landscape, ecological and geological interest in this area is of national importance and there are nearby cultural heritage features of national and local importance. These and other undesignated assets all make

a significant contribution to the character of the area. There are extensive views from the route and it is visible from Arbor Low, approximately 700 metres away.

25. The route is historic and for much of its length is grassy and trackless. The nature of the route and its setting in the landscape as well as the variety of natural and cultural heritage features adds to the experience of using the route. The route also gives the opportunity for quiet enjoyment and to experience tranquillity, one of the special qualities that people value most about the Peak District National Park. Tranquillity and the freedom from intrusion is encompassed by the Natural Zone designation.
26. Amenity - Although not all the features and interests are directly affected by mechanically propelled vehicles using the route, the presence, or anticipation of their presence, and/or evidence of their passing has an impact on the natural beauty in this area and can detract from the experience and enjoyment by others in this area. The potential for an increasing level of recreational motor vehicle use through the clarification of legal status is likely to lead to greater disturbance to the tranquillity of an area and an increased potential for conflict with the land management and other recreational users.

Section 122 of the Road Traffic Regulation Act 1984

27. Before reaching a decision, the Authority must consider its duty under section 122 of the Road Traffic Regulation Act (RTRA) 1984. The duty under s122(1) is to secure twin objectives, namely 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 duty takes effect in 'so far as practicable' having regard to the matters specified in s122(2).
28. This is an important route as a means to link in with other rights of way. It is also an important route for recreational mechanically propelled vehicle (MPV) users, including those passing through the area on part of a longer journey or circuit. For these MPV users, there is an alternative available in the form of metalled roads.
29. No safety incidents have been reported to the Police. However, concerns over conflict with vehicle users have been raised and this may have deterred/inconvenienced some users. The safe and convenient use of the route by pedestrians and other possible users such as horse-riders, cyclists and carriage drivers could, therefore, be improved by the regulation of motor vehicle users. There are no opportunities for parking at either end and along the route but parking may take place at the lane end in Monyash. Any proposed restriction would not affect these facilities.
30. In considering the factors set out in relation to s122(2):
- Access to premises - any proposed restriction would only be for vehicles using the route as a through-road or for recreational use. Vehicular access to land adjacent to the route (for agricultural or land management purposes) would be unaffected.
 - Amenities of locality – to access this route it is necessary to use metalled roads. These offer an alternative for recreational vehicle users, albeit not of the same character as an unmetalled track. An unclassified UCR (as the route presently is) or a BOAT (as the route is proposed) is not part of the road transport network. Heavy commercial vehicles do not use this route.
 - Air quality –recreational motorised vehicle use has a negligible impact.
 - Public Service Vehicles – as this is an unsealed route it is not used by such vehicles.
 - Disabled access – Recognised invalid carriages will not be affected by the TRO. Any TRO would not prevent the use by wheel chairs and trampers and would enhance the safety and enjoyment of such access. Access by other means by

-
- disabled users could also be obtained on application to the Authority.
 - Natural beauty/amenity – the restriction of MPVs would have a beneficial impact on the natural beauty of the area and amenity of other users.
31. To ensure expeditious and convenient use any TRO if made would contain exceptions in order to permit the following mechanically propelled vehicle usage:
- Use by emergency services or by any local authority or water authority in pursuance of their statutory powers and duties.
 - Use to enable work to be carried out in or adjacent to the road
 - Use for the purposes of agriculture or land management on any land or premises adjacent to that road
 - Recognised invalid carriage
 - Use upon the direction of or with the permission of a Police Constable in uniform
 - Use with the prior written permission of the Authority
32. In balancing the duty in s122(1) and the factors set out in S122(2), the Authority believes preservation of the character of the route and enjoyment of the amenity and conservation of the natural beauty of the area outweighs unrestricted recreational motor vehicular use of the route notwithstanding that such a restriction will affect the expeditious and convenient use of the route by mechanically propelled vehicles.
33. Where a TRO is to be pursued, s122 would not require the Authority to proceed in stages starting with a least restrictive option. However, if a less restrictive option may achieve the desired outcome then it is a factor for consideration. Paragraph 17 and 18 highlight the principal alternatives which have been identified from the consultation process. The main alternatives are considered more fully in the paragraphs below.
34. Width/weight restriction - boulders have prevent 4-wheeled vehicles using the route as a through route. A restriction which limits the use by four-wheeled motorised vehicles would reduce the overall numbers of MPVs. However as shown by the on-site restriction from the use of the boulders, the conflict with other users and visual, physical and auditory impacts from 2-wheeled motorised vehicles remains.
35. Seasonal restriction - The trackless nature of the route means that it is susceptible to damage. The designated areas adjacent to and through which the route passes are of value primarily for their earth heritage and cave interest. Leaving aside the legal status of the public rights over the route and that there are on site width obstructions, the passage of vehicles on this route has resulted in rutting over an increasingly wider area. Whilst a seasonal restriction may help in reducing the impact on the route's condition to times when ground conditions are anticipated to be more suitable, there could still be impacts on the landscape and amenity of the area and during wet/soft ground conditions occasioned by periods of high rainfall.
36. Other Options - In view of the sensitivity of the area, it is not considered that the impacts could be both identified and adequately managed by a more selective TRO or other measure such as a scheme of voluntary restraint to a level which is acceptable and any recovery periods may not allow for the necessary protection of interests of acknowledged importance. Magnitude of impacts is greater in designated areas and there is no guarantee that the type, level and timing of use would not result in an adverse irreversible or cumulative impact on the integrity of these areas. The level of confidence in a less restrictive option achieving the outcome of protecting the character of the route, natural beauty and amenity of the area is therefore not sufficient to be able to justify this course of action.
37. The enforcement of any TRO, including the use of barriers, would be undertaken in consultation with the Highway Authority and the police and having regard to the character

of the route. Routine monitoring will identify if there are any problems.

Summary

38. A key issue is the extent to which it is necessary to restrict current and potentially the future increase in mechanically propelled vehicles to address the impacts arising from the hearing, meeting and seeing of recreational motor vehicles, or their passage, or the works required to manage that use.
39. Mechanically propelled vehicle use of the route impacts on the natural beauty and amenity of the National Park in the following ways:
 - Damage to grassland
 - Definition of a vehicular route through use and any subsequent repairs to make sustainable
 - Impact on the SSSI
 - Impact on the setting and the significance of nationally designated and undesignated cultural heritage assets
 - Visual impact of vehicle movement in the landscape
 - Noise impact on wildlife and people
 - Deterrence of use by non-MPV users from presence or anticipation of vehicles
40. 4 wheel drive vehicles are not at present able to use the route as a through route. Confirmation of the status of the route as a BOAT would open up the route to 4-wheeled as well as 2-wheeled vehicles.
41. On balance, it is considered that continued use and any increase in use by mechanically propelled vehicles on this route would have an adverse impact on the ecological/geological, archaeological and landscape interests, the amenity and recreational value of the area and the special characteristics of the route. To address this, a form of traffic regulation order which prohibits MPV use is considered appropriate.

Proposal

42. On the basis of the evidence, consultation responses and duty under s122, it is proposed that the Authority publishes notice of its proposals under Regulation 5 of the 2007 Regulations for a permanent TRO over the full length of the route restricting all mechanically propelled vehicles at all times, save for those excepted, for the purposes of
 - s1(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
 - preserving or improving the amenities of the area through which the road runs (s1(1)(f) RTRA 1984)
 - 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 (s 22(2) RTRA 1984)
43. In their consideration of whether a permanent full time TRO for all MPVs is the most appropriate course of action, it is necessary for Members to have regard to whether alternative options could have the same effect in relation to the character of the road, and the natural beauty and amenity of the area.
44. If Members wish to pursue the TRO option then a statement of reasons and a draft notice of proposals, draft order and map will be prepared and publicised in accordance with the 2007 Regulations.

Are there any corporate implications members should be concerned about?

45. **Financial:**

The Authority budget planning (for 2015-16) included increased resources for this area of work in addition to delivering other action relating to the management of recreational motor vehicles and provision has been made to extend this until March 2017. Supplementary costs relate to:

- advertising and site works for any order that is made
- public inquiry, where the decision is taken to hold one
- defending potential High Court challenges, including Counsel's fees and an award of costs if unsuccessful.

46. The Authority's Resource Management Team have a standing item on their agenda to monitor external legal costs in relation to TROs.

47. **Risk Management:**

There is an element of reputational risk to the Authority for deployment of a TRO or for not using this power. This issue is likely to be of considerable public interest. The Authority must be confident that the grounds for action are clear, objective and defensible.

48. There is a risk that enforcement and prevention of illegal use will not be wholly effective. There will be a need to monitor and review over the longer-term. Physical measures and signage may be the target of vandalism and may need regular replacement.

49. **Sustainability:**

This report addresses sustainability issues in the context of both the National Park Management Plan and the Authority's statutory purposes, duty and legal powers.

50. **Equality**

The requirements of the Equality Act 2010 have been met in the consideration of proposals on this route and the ongoing requirements to have regard to the duty.

51. **Background papers:**

None

52. **Appendices**

The following documents are appended to this report:

1. Map of the route
2. Summary of the conservation interest
3. List of consultees
4. Consultation responses
5. Grounds for making a TRO

53. **Report Author, Job Title and Publication Date**

Sue Smith, Rights of Way Officer, 25 February 2016