

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

Purpose of the report

1. This report presents the outcome of the publication of proposals under Regulation 5 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 for a permanent traffic regulation order (TRO) on Derby Lane.
2. Having regard to the representations made pursuant to Regulations 4 and 7 of the 2007 Regulations, available evidence and the information in this report, it is proposed that the Authority considers a TRO on this route in the form and manner agreed at this meeting.

Recommendations

3. **1. That Members decide the appropriate option having regard to the option analysis in the report and make a resolution from those set out in the report at paragraph 44.**

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.
6. In November 2015, statutory consultees were consulted under Regulation 4 of the 2007 Regulations. An ARP Members' site visit took place on 3 March 2016 (Appendix 1) prior to the ARP Committee meeting on 4 March 2016 at which it was resolved to proceed to publish notice of proposals for a TRO to prohibit use at all times by mechanically propelled vehicles on Derby Lane (Minute 17/16). The Regulation 4 representations are dealt with in the report (with appendices) to the ARP Committee meeting on 4 March 2016 and copies of these representations are at Appendix 2 to this report.

The Route

7. 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 3.
8. 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.

9. 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.
10. 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.
11. The legal status of the route is being considered by way of an inquiry into a definitive map modification order made by Derbyshire County Council. If confirmed, the modification order will mean that there is a Byway Open to all Traffic (BOAT) along Derby Lane.. 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. A decision is expected shortly. At present officers are satisfied that Derby Lane is a route over which a traffic regulation order may be made under section 22BB(1) of the Road Traffic Regulation Act 1984 (RTRA 1984).
12. 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.
13. 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.

The Proposed Traffic Regulation Order

14. In March 2016, ARP resolved that a TRO should be considered on the following grounds of the Road Traffic Regulation Act 1984 (Appendix 4):
 - 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
15. In the draft order (Appendix 5) the Authority proposed a permanent restriction on all mechanically propelled vehicles at all times save for the following exceptions:
 - Use by emergency services or by any local authority or statutory undertaker in pursuance of their statutory powers and duties
 - Use to enable work to be carried out in, on, under 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.

16. The statement of reasons (Appendix 6) identified the factors which contribute to natural beauty and the benefits afforded to people from that seen and experienced and the opportunities offered for recreation. Vehicle use and the effects of vehicular use on the special qualities of the area are also identified.

Section 122 of the Road Traffic Regulation Act 1984

17. In March 2016, Members considered the duty under section 122 of the RTRA 1984 (Appendix 7) 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 'so far as practicable' having regard to the matters specified in s122(2).
18. In considering the factors set out in relation to s122(2):
- Access to premises – any proposed restriction would only be for mechanically propelled 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 and for residential access would be unaffected.
 - Amenities of locality – the removal of MPVs from the route is likely to improve the amenities of the 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) are 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. There are few parking and limited turning opportunities along the route. Any TRO would not prevent the use by wheel chairs and trampers and would enhance the safety and enjoyment of such access, subject to the physical limitations of the route, in accordance with the exemption set out in paragraph 14 above. 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.

Consultation

19. The consultation on the proposed TRO under Regulations 5-7 of the 2007 Regulations ran from 28 April 2016 to 10 June 2016. This followed the consultation under Regulation 4 referred to in paragraph 6 above. Statutory consultees and landowners were notified and it was advertised in the Derbyshire Times, on the Authority's website and on the route.
20. The consultation documents included: a draft order (Appendix 5), a statement of reasons and appendices covering use, interests and impacts (Appendix 6), a notice of proposal (Appendix 8) and a map.
21. The organisations listed in Appendix 9 (the statutory consultees) were consulted at the first and second stage of the process, as required by the Regulations. Historic England were included at the second stage of the process as a discretionary consultee. There

were 5 consultees – the Ramblers Association, Natural England, Peak and Derbyshire Vehicles User Group, the Green Lanes Association, Association of Peak Trail Riders - that responded to the first consultation but not this second specific consultation. The responses were split between those supporting a permanent order to prohibit MPVs on the route at all times as per the proposal, those believing a less restrictive option would be sufficient and those that considered restrictions were unnecessary at this time with voluntary restraint being identified as an alternative. Those objecting to the proposal comprised:

- Trail Riders Fellowship
- Green Lanes Association

Those in support of the proposal for a permanent order to prohibit MPVs on the route at all times included:

- Monyash Parish Council
- British Horse Society
- Peak and Northern Footpaths Society
- Peak Horsepower
- Peak District Green Lanes Alliance
- Historic England

One consultee - Derbyshire CC – stated that they did not object to the proposal. The Peak District Local Access Forum did not reach a consensus and proposed alternatives to the proposal.

22. A summary of the representations received within the above consultation period from the statutory consultees is set out in Appendix 10. Consultee responses at the Regulation 4 stage are dealt with in the report and appendices at Appendix 2. In addition to the statutory consultees, there were objections to the proposal from 83 individuals and organisations, support for the proposal from 55 individuals and organisations and 1 other neither objecting nor supporting.
23. Objections – Other than the statutory consultees, 2 organisations objected to the proposal. Their representations are set out in Appendix 10. There were also 81 individual representations and 5 objections with no grounds provided. The representations are summarised in Appendix 11.
24. The objections to the proposed order are summarised in Appendix 11 with comments provided relating to consideration of these objections. The main issues raised by objectors are:
 - It is premature to consider removal of rights before clarification of the legal status and before trialling other methods
 - The impacts of motorised vehicle use have not been ascertained because of the obstruction by barriers
 - The route can accommodate motorcycle use
 - The condition of the route is as a result of agricultural use
 - There will be an impact on local businesses
 - The proposal is discriminatory
25. Many of those objecting acknowledged that motor vehicular use of Derby Lane needed to be managed in some way but considered that there were alternative management options to that proposed, including with the involvement of vehicle users. Motorcycle users pointed to the fact that their disturbance is less than four-wheeled vehicles due to weight/width issues. The most commonly mentioned alternatives included:
 - A restriction on all mechanically propelled vehicles at all times on the trackless section between the barrier and Long Rake Road
 - A width/weight restriction relating to four-wheeled motorised vehicles
 - A restriction on 4-wheeled vehicles at all times with a seasonal restriction on 2-wheeled vehicles

- A restriction on all mechanically propelled vehicles at all times with exemptions for motorcycle events
 - An exemption or permit system for cavers
26. A number of the consultation responses referred to the status of the route and that action should be deferred until such time as the legal status had been determined, the barriers removed and the impacts from use ascertained. Voluntary restraint was also offered as an alternative.
27. The importance of access for disabled users was also raised by many respondents. An exemption for invalid carriages and access on application is provided within the draft order (Appendix 5) and the NPA will investigate other means to ensure reasonable access for registered disabled users.
28. Support - Other than the statutory consultees, 1 organisation supported the proposal. Their representations are set out in Appendix 10. There were also 54 individual representations. The comments are summarised in Appendix 11.
29. The reasons for supporting the proposal are summarised in Appendix 11. The main issues raised by supporters of the proposal are:
- The use by motorised vehicles is unsuitable and unsustainable
 - It is important to prevent deterioration of the route and to protect the natural beauty of the landscape
 - The route forms an important means of access to the wider area
 - Motor vehicle use impacts on the agricultural use of the land

Partial TRO Options

30. In deciding to pursue a consultation on a permanent restriction on Derby Lane, Members had regard to the extent to which it is necessary to restrict mechanically propelled vehicles. S122 of the RTRA does not require the Authority to proceed in stages starting with a least restrictive option. However, if a less restrictive option might achieve the desired outcome then it is a factor for consideration. Paragraph 24 highlights the principal alternatives which have been identified from the representations received. These are considered below:

31. **Restriction on part of the route**

| <u>Pros</u> | <u>Cons</u> |
|---|---|
| Reduces conflict and impacts on the more sensitive sections Limited parking is available at the start of the restriction | Some user and land management conflict remains Some visual, physical and auditory impacts remain |

Width/weight restriction

| <u>Pros</u> | <u>Cons</u> |
|---|---|
| Removes impacts and conflict from 4x4s Reduction in overall numbers of vehicles Lessens conflict with other user types and deviations Weight-bearing impacts removed | 2-wheeled use impacts remain Some user conflict remains Some visual, physical and auditory impacts remain |

Seasonal restriction

| <u>Pros</u> | <u>Cons</u> |
|--------------------------------------|---------------------------------------|
| Reduction in damage to the route and | Impacts from unanticipated periods of |

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| surroundings Lessens conflict with other user types and deviations | heavy rainfall Displacement to unrestricted times User conflict over busy summer period Some visual, physical and auditory impacts remain |
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Restriction with exemption or permit system for cavers/motorcycle events

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| <u>Pros</u> Manage type of use Manage conduct of users Flexibility | <u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain Administration Practicalities of enforcement |
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Summary

32. The route is in a National Park designated for its exceptional natural beauty and is adjacent to an area of Natural Zone with features of national significance and where it is particularly important to conserve that natural beauty.
33. Derby Lane is a historic route which is used as a means of access to the wider area. It is an important route for all recreational users and is used by mechanically propelled vehicle users for caving access and as a through route for short journeys and to pass through the area on part of a longer journey.
34. The route for much of its length is grassy and trackless and is susceptible to damage as shown by the passage of vehicles which has resulted in rutting over an increasingly wider area. As a result of the physical restrictions in place, motorised vehicle use over the last 2 years has been predominantly 2-wheeled only and for agricultural and caving access along part of the route.
35. It is considered that unrestricted motorised vehicle use on this route has an adverse impact on the ecological/geological, archaeological and landscape interests, the natural beauty, amenity and recreational value of the area and the special characteristics of the route. It is therefore considered that some form of order is required to manage mechanically propelled vehicle use on this route. The extent of that restriction revolves around whether it may reduce to an acceptable level the impacts on the interests and amenity of the route and area and other users and conserve the natural beauty of the area in accordance with the Authority's obligations in respect of its statutory purposes.
36. The proposed order imposes a permanent restriction on all mechanically propelled vehicles (MPVs) at all times (subject to specified exceptions) and seeks to address impacts on the landscape, ecology/geology and cultural heritage of the area and the nature of the route through reducing the use by MPVs. This would meet the desired outcome of conservation and enhancement in accordance with National Park purposes and the preservation of the amenity of the route and area and of other users. Any partial TRO or other scheme of restraint should also address these matters and requires consideration of the type, the timing and the level of use.
37. In their consideration of the extent to which the desired outcome could be met by means other than the proposed order, Members may consider a partial TRO containing, for example, the following elements: a prohibition on 4-wheeled motorised vehicles at all times and for 2-wheeled motorised vehicles to be permitted at such times when impacts on the interest of the area, ground conditions and other users may be lessened. It is

important that the level of confidence in a less restrictive option to identify and manage impacts is such to allow the protection of interests to an acceptable+ level. In relation to any specific written requests received to allow access along part of the route for caving, these could be dealt with under the exceptions within the order.

38. In relation to enforcement of any TRO, this would be undertaken in consultation with the Highway Authority and the police having regard to signage, the selection or retention of barriers and the character of the route. Routine monitoring should identify if there are any problems.

Option Analysis

39. The following main courses of action are available:
- To proceed to make a permanent order to prohibit MPVs at all times as proposed
 - To make an order incorporating one or more measures for management of the route as suggested in paragraph 31 above (a partial TRO)
 - To hold a public inquiry and appoint an inspector
 - To delay the making of the order
 - To resolve not to make a TRO

40. **Permanent TRO (permanent prohibition of all MPVs at all times)**

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| <u>For</u> Impacts on natural beauty and amenity reduced Increased use and enjoyment of the route | <u>Against</u> Enjoyment of recreational motorised vehicle users removed Enforcement issues including selection and replacement of barriers Displacement issues Legal challenge |
|---|---|

Partial TRO (partial restriction)

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| <u>For</u> Impacts on natural beauty and amenity reduced Increased use and enjoyment of the route at times when no vehicle users present Vehicle user groups part of the solution | <u>Against</u> Some impacts on natural beauty and amenity remain Enforceability/non-compliance/selection of barriers Displacement issues Management of level of use Delay if re-consultation/notification required Potential for legal challenge from disaffected parties |
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Public Inquiry

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|---|---|
| <u>For</u> Independent analysis of options having regard to evidence | <u>Against</u> Cost and time Order delayed Impacts on natural beauty and amenity remain during the inquiry process |
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Deferment

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| <u>For</u> Potential for clarification of legal use and/or trialling, monitoring and surveys to determine action | <u>Against</u> Impacts on natural beauty and amenity remain |
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Abandonment

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| <u>For</u> Potential for clarification of legal use and repairs by the Highway Authority and further monitoring and surveys to determine action | <u>Against</u> Impacts on natural beauty and amenity remain |
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41. In further consideration of the options:
- Partial TRO - if an order is made in substantially different terms to the proposed order, the 2007 Regulations require the Authority to take such steps as appear to it to be appropriate for informing people likely to be affected by the modification. This includes providing the opportunity to make written representations and to consider those representations before making the order. A re-consultation period of 21 days would be adopted. A partial TRO could be perceived to be a substantive change from the published proposed order and consequently require further consultation.
 - Public inquiry – The cost of a public inquiry would be borne by the Authority and the Inspector would provide a report and recommendations which the Authority would not be bound to follow but would have to provide good reasons for not doing so.
 - Deferment – an order cannot be made more than 2 years after the proposal has been publicised in accordance with Regulation 5. This period expires in March 2018.

Proposal

42. In their consideration of the most appropriate course of action, it is necessary for Members to have regard to the following:
- the representations received in accordance with Regulations 4 and 7 (Appendices 2, 10 & 11)
 - whether it is expedient to make a traffic regulation order on this route on the grounds specified in the draft order (Appendix 5)
 - alternative courses of action as set out in the option analysis
 - the statutory purposes of the National Park, in accordance with ss 5 and 11A of the NPACA 1949
 - the balancing exercise set out in s122 of the RTRA (Appendix 7)
43. In relation to s122, if some form of restriction is to be adopted Members will need to be satisfied that the preservation and enjoyment of the amenity and conservation of the natural beauty of the area justifies cutting down the unrestricted vehicular use of the route notwithstanding that such a restriction will affect the expeditious and convenient use of the route by mechanically propelled vehicles.
44. Depending on which of the options Members wish to adopt for this route, the following possible resolutions are relevant:

(i) Permanent TRO (permanent prohibition of all mpvs at all times)

Resolution: the Authority proceeds to make 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 all times on Derby Lane (subject to specified exceptions).

(ii) Partial TRO (partial restriction)

Resolution: (i) the Authority proceeds to make 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 on Derby Lane in the manner identified by Members (ii) that if a substantive change is made to the TRO as previously proposed, an opportunity for further comments to be made is given in accordance with Regulation 12 of the 2007 Regulations and representations arising from this consultation reported thereafter to this Committee.

(iii) Public Inquiry

Resolution: the Authority appoints an inspector to hold a public inquiry and publishes notice of the public inquiry in accordance with Regulation 9 of the 2007 Regulations.

(iv) Deferment

Resolution: the Authority defers a decision on making a TRO on Derby Lane, such deferment being subject to review .

(v) Abandonment

Resolution: the Authority abandons pursuing a TRO on Derby Lane at this present time.

45. If the order is made as proposed, subject to any minor modifications as may be required (to be finalised by officers), a notice of proposals, order and map will be prepared and publicised. A decision notice giving reasons for not acceding to the grounds for objecting will also be provided within 14 days of making the order. To this end, Members are asked to consider the comments on representations at Appendix 11, which will form the basis of reasons for not accepting objections.
46. If Members decide to make an order in substantially different terms to those in the proposed order, affected persons will be notified of this and an opportunity of 21 days will be provided for further comments to be made and considered.

Are there any corporate implications members should be concerned about?

47. **Financial:**
Resources have been allocated to this area of work until March 2017. In May 2016, Members supported an investment proposal framework which included adding £26k to the baseline budget to deliver the green lanes action plan.
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.
48. **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.
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 and in particular the public sector equality

duty have been met in the consideration of proposals on this route and the ongoing requirements to have regard to the duty. The protected characteristics of most relevance to the proposed TRO are those of age and disability. By restricting use of the route by mechanically propelled vehicles (but not recognised invalid carriages) a TRO would help to promote equality in the opportunity to enjoy the natural beauty and amenity of the area through which the route passes by the young, the elderly and the disabled.

51. **Background papers:**
None

52. **Appendices**
The following documents are appended to this report:
1. Site Inspection notes
 2. Regulation 4 responses – statutory consultees
 3. Map of the route
 4. Grounds for making a TRO
 5. Draft order
 6. Statement of reasons
 7. S122
 8. Notice of proposal
 9. List of consultees
 10. Regulation 7 responses - organisations
 11. Representations and comment
 12. TRO checklist

53. **Report Author, Job Title and Publication Date**
Sue Smith, Rights of Way Officer, 27 October 2016