

6. PROPOSED TRAFFIC REGULATION ORDER AT WETTON HILLS (A76228/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) at Wetton Hills.
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 47.**

Policies and legal obligations

4.
 - National Park Management 2018-23
 - 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 19 May 2017, Audit Resources and Performance (ARP) Committee approved actions in the key areas of work required to deliver the Strategy on managing recreational motorised vehicles (Minute 18/17). The Priority Routes Action Plan focused on those routes where the need for improved management had been identified. At Wetton, this included a proposed consultation on vehicle regulation.
6. In June 2017, statutory consultees were consulted under Regulation 4 of the 2007 Regulations. An ARP Members' site visit took place on 14 September 2017 (Appendix 1) prior to the ARP Committee meeting on 15 September 2017 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 the route at Wetton (Minute 41/17). The Regulation 4 representations are dealt with in the report (with appendices) to the ARP Committee meeting on 15 September 2017 and copies of these representations are at Appendix 2 to this report.

The Route

7. The route at Wetton runs from Manor House Farm, south westerly and then south to meet the Leek Road in the Manifold Valley. It is approximately 1.4 km long. Access to the northern end of the route is from the minor road to Back of Ecton. The southern end of the route can be accessed via Wetton to the east, Butterson to the west or from the north along the valley bottom. The relevant Highway Authority is Staffordshire County Council (SCC). A map showing the route is provided in Appendix 3.

8. The route is an unenclosed grass-surfaced route running along the valley bottom below Wetton Hill and within an extensive area of open country. The route is not passed by any roads throughout its length and does not pass any properties other than Manor House Farm to the north. The northern end of the route links to the minor road to Back of Ecton and the unclassified road cul-de-sac to Top of Ecton, the southern end of the route links to the road along the valley bottom and the Manifold Way part of which is subject to a traffic regulation order made by Staffordshire County Council restricting all mechanically propelled vehicles.
9. The whole route passes through a Site of Special Scientific Interest (SSSI) and Natural Zone and the southern end passes through a Special Area of Conservation (SAC). The route passes through historic landscapes with nearby features including a possible site of an early mill, caves and fissures, a stone slab footpath, and the former Leek and Manifold Railway. A scheduled monument lies at the summit of Wetton Hill. The Manor House at the northern end of the route is listed. The route lies within the White Peak Landscape Character Area.
10. Wetton Hills is an important recreational asset for all users providing access to Wetton Hill and the Sugar Loaf, a bridleway to/from Wetton Mill, and to link to the Manifold Trail. Vehicle logging and evidence on the ground shows a relatively low level of use by both 4-wheeled and 2-wheeled mechanically propelled vehicles (MPVs). Sections of the route are used for access for land management purposes.
11. The route appears on Staffordshire County Council's List of Streets as an unsurfaced Unclassified Road (UCR) and a Green Lane. The southern part is recorded as a publically maintainable highway with the upper section (the Green Lane) as having no maintenance. Officers are satisfied that Wetton Hills 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. Issues identified in the preparation of route management reports relate to 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

13. In September 2017, 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
14. In the draft order (Appendix 5) the Authority proposed a permanent restriction on all mechanically propelled vehicles (MPVs) 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
 - Use by a 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.

15. 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 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

16. In September 2017, 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).
17. 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 land management purposes 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 minor metalled roads. These offer an alternative for recreational vehicle users, albeit not of the same character as an unmetalled track. An unclassified UCR and Green Lane (as the route presently is) 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

18. The consultation on the proposed TRO under Regulations 5-7 of the 2007 Regulations ran from 15 February 2018 to 6 April 2018. 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 Leek Post and Times, on the Authority's website and on the route.
19. 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.
20. 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. There were 3 consultees 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 a permanent order to prohibit MPVs on the route at all times comprised:

- Green Lane Association
- Trail Riders Fellowship
- Peak and Derbyshire Vehicle User Group
- Association of Peak Trail Riders

Those in support of the proposal included:

- Wetton Parish Council
- Peak District Local Access Forum
- The Ramblers
- Friends of the Peak District
- British Horse Society
- Open Spaces Society
- Peak and Northern Footpaths Society
- Peak Horsepower
- Peak District Green Lanes Alliance

Natural England did not consider that there was an impact on the notifiable features of the SSSI and further commented on grounds, restraint, and monitoring for any approach adopted.

21. 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 161 individuals and organisations, support for the proposal from 279 individuals and organisations and 3 individuals neither objecting nor supporting. A petition in support was also provided.
22. Objections – Other than the statutory consultees, 2 organisations objected to the proposal. Their representations are set out in Appendix 10. There were also 153 individual representations and 6 objections with no grounds provided. The representations are summarised in Appendix 11.
23. 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:
 - The route can accommodate the existing levels of vehicle use
 - The proposal is unnecessarily restrictive for the level of use
 - Repairs should be undertaken using the assistance offered
 - The proposal prevents enjoyment by a section of the public and is discriminatory
 - Trail riding forms part of the culture heritage of the area
 - It would result in an impact on motorcycle tourism and local businesses
24. Many of those objecting acknowledged that motor vehicular use of the route 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 differences. The most commonly mentioned alternatives included:
 - A width/weight restriction relating to four-wheeled motorised vehicles
 - A seasonal or wet weather restriction
 - A permit/authorisation system for motorcycle users organised by the Trail Riders Fellowship
 - A one-way system

The continuation of voluntary restraint was also offered as an alternative. An exemption for electrically powered motorcycles and mopeds was also sought.

25. A number of the consultation responses referred to the status of the route and whether there were public rights for mechanically propelled vehicles. Consideration of whether a National Park Authority would have the power to make traffic regulation orders on routes where the status was uncertain was also raised. The powers granted to NPAs allow the making of TROs on routes recorded as public rights of way on the Definitive Map and Statement or which are unsurfaced carriageways (ways over which the public have the right of passage in vehicles). The determination of the legal status of the public's rights over the route is a matter for the relevant Highway Authorities. The route appears in Staffordshire County Council's list of highways where part is recorded to be maintainable at public expense. Vehicle logging data shows use of the route by vehicles from 2014. On the balance of probabilities, the evidence available to the PDNPA at this time leads to the conclusion that there are public vehicular rights over the route and, as the route is unsurfaced, the view of officers is that the Authority has power to make a traffic regulation order over the whole route.
26. A number of the consultation responses referred to the condition of the route. Whilst the Authority has similar powers to the Highway Authorities (HA) in relation to TROs, only the HA have the duty to maintain routes. Maintenance and condition of the route will only be relevant to a TRO proposed by a NPA in so far as changes to the condition of the route influence the effect that vehicles are having on other users and the environment of the area and the NPA's assessment of the impact on natural beauty and amenity.
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. In relation to the suggested exemption for electrically powered motorcycles and mopeds, there is scant evidence at present of these being used on unmetalled roads within the Peak District National Park. In any event, although electrically powered MPVs are likely to be much quieter than petrol/diesel MPVs, the physical and visual impacts and potential for user conflict are likely to be the same. If a TRO were to be made in the same terms as that proposed, it would be open to an individual to seek the Authority's written permission to use an electric motorcycle or moped on the route, and the Authority could then consider the acceptability of this on a case by case basis, having regard to conditions that might be imposed to limit impacts arising from frequency, levels and nature of use including the speed of vehicles and ground conditions.
29. Support - Other than the statutory consultees, 9 organisations supported the proposal. Their representations are set out in Appendix 10. There were also 270 individual representations and a petition with 85 signatories. The comments are summarised in Appendix 11.
30. The reasons for supporting the proposal are summarised in Appendix 11. The main issues raised by supporters of the proposal are:
 - Motor vehicle use impacts on this particularly tranquil part of the National Park
 - It is important to protect the naturalness and beauty of the landscape
 - Further deterioration of the route should not take place
 - This area is important for access and recreation
 - There are safety concerns

Partial TRO Options

31. In deciding to pursue a consultation on a permanent restriction at Wetton Hills, 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 summarises the principal alternatives which have been identified from the representations received. These are considered below:

32. **Width/weight restriction**

<u>Pros</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	<u>Cons</u> 2-wheeled use impacts remain Some user conflict remains Some visual, physical and auditory impacts remain
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A seasonal or wet weather restriction

<u>Pros</u> Reduction in damage to the route and surroundings Lessens conflict with other user types and deviations	<u>Cons</u> Impacts arising from rainfall during unrestricted periods Displacement to unrestricted times User conflict over busy summer period Some visual, physical and auditory impacts remain
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Permit System

<u>Pros</u> Manage type of use to appropriate times and levels Manage conduct of users Flexibility	<u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain Administration Element of enforceability
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One-way restriction

<u>Pros</u> Removes conflict between 4x4s Lessens conflict with other user types and deviations	<u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain
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TRO with Combined Elements

<u>Pros</u> Manage type of use to appropriate times and levels Flexibility	<u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain Element of enforceability
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Summary

33. The route is in a National Park designated for its exceptional natural beauty and within areas of Natural Zone where it is particularly important to conserve that natural beauty.

The route passes through habitat and features of national and international importance and there are cultural heritage features of national, regional and local importance nearby.

34. Wetton Hills is an important route for all recreational users and is used as a means of access to the wider area and to pass through the area on part of a longer journey. The route also gives the opportunity for quiet enjoyment and to experience tranquillity and there is a an impression of seclusion created by the valley and absence of development.
35. The route is for much of its length grassy and trackless and is susceptible to damage as shown by the passage of vehicles which has resulted in rutting over an increasing length.
36. It is considered that unrestricted motorised vehicle use on this route has an adverse impact on the ecological, archaeological and landscape interests, the natural beauty, amenity and recreational value of the area and the special characteristics of the route. Although it is said by objectors that trail-riding by motorcycles is an important component of the cultural heritage of the National Park, having taken place since before the First World War, it is not a feature of the physical fabric of the National Park, nor does it contribute towards the natural beauty or wildlife of the Park or this particular route. In the view of officers, trail-riding is more appropriately seen as one of the opportunities for the understanding and enjoyment of the special qualities of the National Park, to which lesser weight is given in the event of conflict with the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Park.
37. 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.
38. The proposed order imposes a permanent restriction on all MPVs at all times (subject to specified exceptions) and seeks to address impacts on the landscape, ecology 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.
39. 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 a level, by such a means and/or at such times when impacts on the interests and tranquillity of the area, the route and other users may be lessened. It is important that there is a reasonable level of confidence that a less restrictive option will be such as to achieve the protection of the character of the route and the natural beauty and amenity of the route and area.
40. In relation to an exemption for electric motorcycles and mopeds, as indicated above, any specific written requests received could be dealt with under an exception (f) within the order. As it is currently drafted however this exemption makes no mention of compliance with conditions and to avoid uncertainty about whether a breach of condition brought to an end a permit granted under exemption (f) it would be prudent to modify the wording to make sure that the exemption applies only for so long as the conditions imposed on any grant of permission are complied with. Exemption (f) could therefore be modified to say "and subject to compliance with any conditions imposed on such permission".

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

Option Analysis

42. 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 32 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

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

<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
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Partial TRO (partial restriction)

<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
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Public Inquiry

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

<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

<u>For</u> Potential for clarification of legal use and repairs by the Highway Authority and	<u>Against</u> Impacts on natural beauty and amenity remain
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further monitoring and surveys to determine action	
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44. 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 – It has been suggested by an objector that a public inquiry would improve public confidence in the Authority. In the view of officers, however, a public inquiry should not be held purely for reputational reasons, and there is nothing unusual about the circumstances of this case that calls for a public inquiry. Nonetheless, it is entirely within Members’ discretion to decide to hold a 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 February 2020.
 - Abandonment – this would be appropriate if, forexample, Members considered that the evidence did not show an unacceptable impact on the route and area by MPVs.

Proposal

45. 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)
46. 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.
47. 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 at Wetton Hills

(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 at Wetton Hills 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 at Wetton Hills, such deferment being subject to review .

(v) Abandonment

Resolution: the Authority abandons pursuing a TRO at Wetton Hills at this present time.

48. 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.
49. 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?

50. **Financial:**
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.
51. **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.
52. **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.

53. **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 people with disabilities.

54. **Background papers:**
None

55. **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

55. **Report Author, Job Title and Publication Date**
Sue Smith, Rights of Way Officer, 30 August 2018