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Peak District National Park Authority (Chapel Gate Prohibition of Mechanically Propelled Vehicles) Traffic Regulation Order 2014

**Regulation 14 Decision Notice
National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007
14 May 2014**

The Authority has made a traffic regulation order dated 8 May 2014 that will have the effect of prohibiting use by mechanically propelled vehicles at any time along the route known as Chapel Gate. Chapel Gate runs from Sheffield Road, Derbyshire (grid reference SK 093825) to Edale Road (grid reference SK 113842) a distance of approximately 2.7 km long. The route is a Byway Open to All Traffic.

Mechanically propelled vehicles on this route have an adverse impact on the significant ecological, archaeological and landscape interests, the natural beauty, amenity and recreational value of the area, and the special characteristics of the route. It was therefore considered expedient to make a permanent order prohibiting all mechanically propelled vehicles at all times to meet the Authority's statutory purposes and in the overall public interest.

The Authority considered that it was expedient to make the order for the purposes of:

- preserving or improving the amenities of the area through which the road runs
- 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.

In balancing the duty in s122(1) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the factors set out in S122(2) of the Road Traffic Regulation Act (RTRA) 1984, the Authority believes the need to preserve the amenity and conserve the natural beauty of the route outweighs the needs of mechanically propelled vehicular users of the route notwithstanding that such a restriction will affect the expeditious and convenient use of the route by mechanically propelled vehicles. For vehicles seeking to use the affected route as a through-road, there is an alternative route on metalled roads in the area.

Representations objecting to the making of the order were received under Regulation 4 and 7 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 ("the Regulations"). The Authority considered these at the meeting of the Audit Resource and Performance Committee on 24 January 2014 (www.peakdistrict.gov.uk/committees). In accordance with Regulation 14 of the Regulations, the Authority summarises below the objections raised and gives its reasons for not acceding to them.

This Regulation 14 decision notice accompanies the order made on 8 May 2014, the notice of making and the map showing the extent of the proposed restrictions. These may be viewed at www.peakdistrict.gov.uk/vehicles and at Aldern House, Baslow Road, Bakewell, Derbyshire, DE45 1AE from 8.45am to 5pm Monday to Friday (closed Bank and Public Holidays and closed at 3pm on Christmas Eve).

Objection	Response
<p><u>Amenity</u> Objections raised included the importance offered by Chapel Gate to enjoy and explore the countryside by a chosen recreational activity and that there was a lack of alternative routes in comparison to those available for other users. Its uniqueness was commented on as well as its value as a historic track and as a network link. Restrictions would impact on the amenity of a group of users, including those reliant on motorised transport for access, and would reduce the diversity and inclusiveness of recreational pursuits in this part of the National Park. The activity was also said to be beneficial to tourism and the local economy.</p>	<p>Chapel Gate is an important recreational asset for all users.</p> <p>The Authority is conscious of the limited number of routes available for recreational motor vehicles users as compared to that available for other users in the National Park. The characteristics of this route means that it is valued by many different users yet there is clear evidence of impacts occurring on this area of significant conservation and amenity interest.</p> <p>Whilst it is recognised that motorised vehicle users, in undertaking their chosen form of recreation, also appreciate the special qualities of the area, their continued use of this area by this mode of transport is adversely affecting those special qualities to a more significant extent than other users.</p> <p>In cases where there is a conflict between the NPA's two statutory purposes, greater weight shall be attached to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage.</p> <p>The route will still be available for non-motorised use and the proposed TRO will not prevent those with limited mobility using invalid carriages such as trampers. Reasonable access by other means will also be provided for disabled users in accordance with our ongoing duty.</p> <p>All recreational users are important to the local economy.</p>
<p><u>Natural Beauty</u> Objections considered that the natural beauty, habitats and species of the area were largely unaffected by vehicles as compared with other users on the route and walkers on the adjacent open access land. Comments referred to the fact that visual and aural impacts were contained in the hollow-way sections of the route and that this is not a quiet, natural, unspoilt place. It was also considered that the heritage of the route would be conserved by continuing vehicle use. The ecological benefit of the closure was said to be minimal and there were other sensitive areas impacted on by non-MPV users where no action was being taken.</p>	<p>National Parks were designated on grounds of their scenic value and recreational opportunities. The route is in an area of Natural Zone where it is particularly important to conserve that natural beauty. The landscape, habitat and wildlife in this area are of international importance. There are cultural heritage, habitat, and wildlife features of national importance. These and other undesignated assets all make a significant contribution to the character of the Natural Zone. Much of the route has panoramic views and there is an impression of wildness and remoteness created by the open character of the moorland.</p> <p>The route is not only a means to access special qualities but also a valued part of those special qualities. The historic 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.</p>

<p><u>Natural Beauty cont</u></p>	<p>The monitoring showed that the background noise level is low in this part of the National Park and the main source of noise generation in the locality is from Sheffield Road. Noise from motorbikes in particular can carry over large distances.</p> <p>Evidence is available to show that environmental damage is occurring as a result of motor vehicle recreation, both directly and indirectly. The impacts on the natural beauty of the National Park, and on its special qualities, are not just confined to the linear routes, but also affect the wider environment. This impact and the anticipation of the presence of motorised users can detract from the experience and enjoyment by other users. The reference in section 5 of the National Parks and Access to the Countryside Act 1949 to the purpose of understanding and enjoyment of the special qualities of National Parks suggests a focus on quiet outdoor countryside recreation associated with the wide open spaces, wildness and tranquility to be found within the National Park. (Defra 2007)</p> <p>Whilst it is recognised that all recreational users have an impact, the requirement to identify those arising from use by mechanically propelled vehicles at this location does not require that the impacts from non-mechanically propelled vehicle users be identified either here or elsewhere. The impacts from motorised vehicle use adversely affects the special qualities of the route and area to a more significant extent than other users irrespective of whether those on foot may choose to walk on the adjacent open access land.</p> <p>Natural beauty should not be confused with wilderness. The definition of natural beauty recognises that England has a landscape that is formed through the interaction of man-made and natural processes. It includes the wildlife and cultural heritage of an area as well as its natural features.</p> <p>Tranquillity is more than simply noise; it includes the landscape setting, natural sounds and visual intrusion. In the area of Natural Zone that the route runs through, recreational motor vehicles have a significant impact.</p>
<p><u>Damage</u> Objections identified that a lack of repair, drainage and maintenance were factors affecting the condition of the route. Damage was being caused predominantly by water run-off with agricultural vehicles, 4x4s, and horse riders being the main contributors to the erosion. Views varied over whether the current surfacing was sustainable with a number considering it unsuitable and requiring regular maintenance. Further works were identified.</p>	<p>The order is not being made on the grounds of preventing damage to the route but instead for reasons relating to amenity and conservation.</p> <p>The NPA is not the Highway Authority with its attendant responsibilities for maintenance and the NPA is not making the TRO to obviate the duty by the Highway Authority to maintain the route.</p> <p>Maintenance and condition of the route is a separate matter to the reasons for making the order although the state of disrepair of the route and prospective timing and extent of repair can be factors for the NPA to take into account when considering the impact on the route, the natural beauty and amenity of the area and other users.</p>

<p><u>Damage cont</u></p>	<p>The natural beauty and amenity of the area and of other users is affected by motorised vehicle use on this route. This vehicle use is contributing to the route deterioration and where there is disrepair this detracts from the amenity of the route and area. Since 2011 a scheme of repairs has been undertaken on this route by the Highway Authority and further works are planned. Works to make the route impervious to use on the scale evidenced may have a negative impact on the character and environment of the route and area.</p> <p>In the event of damage to a highway and which may or may not be caused by a lack of maintenance, TROs will be made if it is necessary to protect the natural beauty or amenities of the area from the impacts of motorised vehicles.</p>
<p><u>Discrimination</u> Objections considered that the enjoyment of other users was being unfairly promoted at the expense of vehicle users who were a minority group with only a small percentage of the rights of way network. Access should be provided for all and even though all recreation users have an impact only vehicle users were being discriminated against. It was considered that the behaviour of a few was affecting responsible motorised users. Disabled users rely on these routes to access the countryside and regard should be given to human rights and the equality act. Concerns were also expressed about prejudice and unaccountability in the decision-making process.</p>	<p>The National Park is for everyone and use of recreational motor vehicles on routes with proven rights is a legitimate activity. The Authority does not have a policy of banning use of these green lanes as a matter of principle, and there are opportunities for recreational motor vehicle users to enjoy the area on other routes by their chosen mode of transport.</p> <p>The Authority will promote opportunities for everyone to understand and enjoy the National Parks' special qualities in a responsible way but where there is a conflict with the conservation of these special qualities then action will be taken including the use of TROs where appropriate.</p> <p>It is the Authority's view that recreational motor vehicle use needs to be managed on some 'green lanes', and that this may include restrictions on use using the powers granted to NPAs. This is assessed on a case by case basis. In this case, the need to preserve the character and amenity and conserve the natural beauty outweighs the needs of mechanically propelled vehicular users of the route notwithstanding that such a restriction will affect the expeditious and convenient use of the route by mechanically propelled vehicles.</p> <p>The route will still be available for non-motorised use and the proposed TRO will not prevent those with limited mobility using invalid carriages such as trampers. Reasonable access by other means will also be provided for disabled users in accordance with our ongoing duty.</p> <p>There are also users with other protected characteristics such as hearing or visual impairment, or learning difficulties that might be affected by motorised users on the route. The damage and associated loss of amenity also affects these users of this route.</p> <p>The Authority operates a democratic process via the consultation and the consideration at committee. Decisions are made in an open and transparent way and Members consider all relevant arguments and evidence put before</p>

<p><u>Discrimination cont</u></p>	<p>them before making a final decision.</p> <p>The register of members interests are recorded at www.peakdistrict.gov.uk/register-of-members-interests. Members may have personal interests which may not be prejudicial to the decisions taken.</p>
<p><u>Displacement</u></p> <p>Objections considered that a closure would lead to pressure being placed on other routes and areas and an increase in illegal use which will be difficult to enforce. The displacement of non-vehicle users from the track was perceived to take place irrespective of the use by vehicles.</p>	<p>The Authority recognises that the closure to vehicles is likely to place additional pressure on other routes. However the matter has become urgent and requires a specific response within the context of the work on other routes. Monitoring to determine the amount of displacement onto other routes will be continued as will the extent of displacement onto land adjacent to the track.</p> <p>Illegal use will be monitored and addressed with the Highway Authority with regards to the appropriate selection of barriers and the police in relation to enforcement.</p>
<p><u>User Conflict</u></p> <p>Objections identified that the majority of users are reasonable and responsible and that vehicle use is not high. No safety incidents had occurred on this route. Conflict was likely to occur only at busy times and as a result of a lack of understanding over use. Comments also referred to the potential to avoid routes with vehicular access or to use adjacent access land. It was noted that horse riders only use part of the route</p>	<p>Chapel Gate is an important recreational asset for all users. All users need to act responsibly and courteously in order to reduce the potential for conflict.</p> <p>The nature of the route is such that mechanically propelled vehicles are visually and aurally intrusive over a wide area and there are difficulties in passing and avoiding other users. Government guidance suggests that ‘a level of recreational vehicular use that may be acceptable in other areas will be inappropriate in National Parks and incompatible with their purposes.’ (Ref: Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984, Defra, 2007). The NPA’s powers to make TROs only extend to unsurfaced routes.</p> <p>The Authority does not accept that it is reasonable to expect non-mechanically propelled users on a Byway Open to All Traffic to go elsewhere to avoid conflict. A BOAT is defined as 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. There are also alternatives for mechanically propelled users where they do not come into conflict with others to the same extent and, for those seeking to use the affected route as a through-road, there is an alternative route on metalled roads in the area.</p> <p>The Highway Authority has a statutory duty to signpost and waymark public rights of way. The route is signposted as a byway.</p>

Alternatives

Suggested alternatives included partial restrictions, charging for permits, other management measures, repairs and maintenance, education, and use of volunteers. A permanent ban should be a last resort and be subject to review. Working in partnership and a willingness for vehicle users to be part of the solution was emphasised as was a need for effective enforcement on illegal use. Provision of signage, parallel tracks for motorised and non-motorised users, and alternative sites and routes were also raised as were electric bikes.

The management of recreational motorised vehicles within the National Park is a high priority work area for the Authority. Members of vehicle user groups are on the Peak District Local Access Forum and on the Green Lanes Forum and inform and advise the NPA.

Members are aware that a variety of measures can be used to resolve issues around recreational vehicular use. Measures have included repairs by the Highway Authority and a detailed monitoring regime for the route and area. The consultations undertaken offer the opportunity to suggest alternatives and for them to be considered by Members. All consultation responses have been given due regard. The decision to pursue a different course of action after having regard to all relevant considerations doesn't negate this.

In view of the nature of the route, the sensitivity of the area and the use by non-MPV users, it is not considered that the impacts could be adequately managed by a more selective TRO or other measures such as a scheme of voluntary restraint. A less restrictive option would therefore not achieve the outcome of protecting the natural beauty and amenity of the area in accordance with the Authority's obligations in respect of its statutory purposes.

The route will remain a priority and the monitoring, management and review of measures adopted will continue to take place.

Condition monitoring has shown that there has been deterioration. 4-wheeled vehicles have an impact on the route surface and adjacent land by virtue of their width and weight. At certain times on certain sections of the route there may be less impact by motorcycles on the route surface although other impacts remain. The same applies to electric motorcycles although there is scant evidence of these being used within the Peak District National Park on unmetalled roads.

The NPA is not the Highway Authority and does not have responsibility for maintenance. The range of measures adopted by the NPA to reduce the impact of motorised use can include the use of volunteers where the works are of a nature suitable for volunteering. The NPA recognises that working in partnership with all those involved is conducive to effective management in the long-term.

Fees for use cannot be made as this would constitute a toll on a public highway.

Information

Comments were made relating to the lack of evidence over vehicular impacts and whether the grounds for the TRO would be met. The experimental order was said to be unlawful and the survey flawed. Details of impacts by other users, the open access designation and the economic dis-benefit of a ban had not been provided. The legality of the proposal was raised in terms of the grounds set out in the RTRA, the adherence to duties under the Equality Act and the apparent disregard to the Local Access Forum's recommendation. Issues were also raised about the consultation including whether it should cover an overall package of proposals.

The statement of reasons and the route management and monitoring reports are there to provide relevant factual information; they do not seek to make a judgement on the final decision to be made.

The appendices to the statement of reason set out the different components of natural beauty; the whole is greater than the sum of its parts.

The legislation allows for TROs to be made on grounds of natural beauty and amenity and the NPA is the appropriate authority to make the decision on whether this outcome would be met by a restriction.

The decision to quash the experimental order on Chapel Gate related to the description of the experiment in the statement of reasons not on any evidence obtained during that period.

The consultations undertaken offer the opportunity for additional matters to be raised and for them to be considered by Members. There is no requirement to identify comparative use and impacts when identifying impacts from mechanically propelled vehicles.

The Local Access Forum's recommendation was split between the proposal for a prohibition of mechanically propelled vehicles at all times and a seasonal restriction and was reported to Members.

TROs will be considered where appropriate having regard to all relevant considerations at the time including comments provided in response to the consultation undertaken and by undertaking the balancing exercise provided by s122 of the RTRA 1984. If a TRO is made on a route it does not change the status of the route.

TROs are considered on a case by case basis. The Authority's strategic context and actions for the year ahead are available at www.peakdistrict.gov.uk/vehicles