

DERBYSHIRE COUNTY COUNCIL

CABINET MEETING

1 November 2011

Report of the Strategic Director – Environmental Services

**POLICY FOR THE MANAGEMENT OF MOTORISED VEHICLE
USE IN THE COUNTRYSIDE (HIGHWAYS AND TRANSPORT)**

(1) **Purpose of the Report** To seek approval for the publication of a revised policy for the Management of Motorised Vehicle Use in the Countryside for public and stakeholder consultation. A final version, incorporating relevant comments arising from the consultation, will be presented to a future Cabinet meeting for County Council adoption.

(2) **Information and Analysis** This revised policy offers guidance on how the County Council will deal with the management of motorised vehicles in the countryside. The County Council published its first policy in 2003. It has been of considerable assistance in determining how the Council should approach the management of these routes. Since then, there have been key legislative changes and, more significantly, increased public awareness of the use of vehicles in the countryside. This latest revision, which is appended to this report, takes on board lessons learned since the first publication. Advice offered by the Local Access Fora has reinforced the need for thorough consultation when considering requests to review public vehicular rights. In addition, there is a need to ensure that public rights are clearly explained to avoid any confusion, as there is evidence that suggests that the public rights associated with by Byway Open to All Traffic is not understood.

The policy deals only with those routes which the County Council recognises as having public motorised vehicular rights.

The policy recognises that recreational driving is a legitimate activity and, where appropriate, should be supported with highways maintained to a suitable standard to sustain this type of use. To this end, the sustainability of these routes is of key concern and the revision recommends engagement with local communities and user groups to ensure that routes are not allowed to decline in standard owing to blocked drains, inclement weather, etc. Furthermore, this policy commits the Council to inspecting routes on an annual basis where improvements have been made so that the Council's

investment is protected as long as possible into the future. It is also recommended that, over the next five years, the Council will invest in the improvement of a select list of routes to improve access to and the enjoyment of off-road vehicular routes.

It is clear that there are serious concerns from members of the public and landowners over the unlawful use of some routes. The Council has therefore identified a need to ensure that adequate control is in place to ensure that parts of the countryside remain safe and accessible for other users where public motorised vehicle use does not exist. The recommended control measures include the implementation of Traffic Regulation Orders in certain circumstances, as well as liaison with the Police. The introduction of Voluntary Restraints, which involves liaison with user groups to ensure that conditions stipulated within Voluntary Restraint Agreements are respected so that routes are protected at certain times, will be supported but not as an immediate solution where more urgent remedies are required.

Problematical routes may be selected for monitoring by using devices capable of recording the type of vehicle passing along a particular route. This will enable the Council to make informed decisions about the management of routes.

This policy also re-affirms the Council's commitment to supporting efficiently organised Motorised Vehicle Trials previously approved in 2009.

It will be necessary to allow stakeholders the opportunity to comment on this policy. A 12 week period of public consultation will take place following approval by this meeting after which the results will be submitted in a further report to Cabinet for final adoption. The Policy will be underpinned by an Annual Action Plan.

(3) **Financial Considerations** The Council has set aside £70,000 capital funding for this financial year to improve the condition of a number of routes carrying public vehicular rights. It is hoped that further funding may be secured to continue with this initiative and support this revised policy. The level of funding will be identified in the future when budgets are set for the forthcoming financial year.

(4) **Legal Considerations** The County Council has duty to maintain highways for which it is responsible. As the policy document indicates, many of these routes are likely to be Byways Open to All Traffic (BOAT) and, therefore, the legislation does not "oblige a highway authority to provide, on a way shown in a definitive map and statement as a BOAT, a metalled carriageway or a carriageway which is by any other means provided with a surface suitable for the passage of vehicles".

One of the key goals of the Rights of Way Improvement Plan is to improve access to the Countryside. This policy will underpin this Policy and assist with the implementation of Aim 3f which sets a specific goal to improve the management of recreational motor vehicles in the countryside.

(5) **Environmental and Health Considerations** The County Council is required to have regard for conserving biodiversity. This policy acknowledges that duty and will become a part of working practice.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Key Decision** Yes.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** None. Officer contact details – Peter White, extension 39673.

(9) **OFFICER'S RECOMMENDATIONS** That:

9.1 "Policy for the Management of Motorised Vehicle use in the Countryside" be publicised for consultation.

9.2 The results of the consultation be submitted to a future meeting of Cabinet for final approval.

Ian Stephenson
Strategic Director – Environmental Services

DERBYSHIRE COUNTY COUNCIL COUNTRYSIDE SERVICE

Policy for the Management of Motorised Vehicle use in
the Countryside

2011 - 2016

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1. Introduction

In 2003, Derbyshire County Council published its first policy dealing with the management of motorised vehicles in the countryside. Since that point in time, not only have there been key legislative changes but there has also been an increase in public awareness of the use of vehicles in the countryside.

In 2007, the County Council published the first Rights of Way Improvement Plan (ROWIP). Aim 3f identified steps required to improve the management of recreational motor vehicles in the countryside.

This revised Policy takes on board lessons learned over the past years, including the ongoing period of implementation of the ROWIP. It sets down the Council's strategy for managing motorised vehicular use of routes throughout the County.

This Policy supersedes the previous Policy for the Management of Motorised Vehicles in the Countryside.

This Policy does not impact upon private rights of way and therefore references to rights of way and motorised vehicular access in this document are intended to refer to public rights.

2. Terminology

This policy covers carriageway highways that are mainly un-sealed. These are generally routes that should be recorded in the definitive map and statement as Byway Open to All Traffic (BOAT). The policy may also be applied to any mainly unsealed ways that are not currently so recorded which Council may consider, at any time, to be carriageway highways.

The following words and acronyms [and phrases] are generally used in this Policy as abbreviations, as follows:

- **Byway/BOAT** – Byway Open to All Traffic as defined in the Wildlife and Countryside Act (W&CA) 1981.
- **Definitive Map** - The definitive maps & statements kept by the Council pursuant to Part III of the W&CA 1981.
- **Mechanically Propelled Vehicle (MPV)** - All motorised vehicles, excluding mobility scooters, as defined in The Use of Invalid Carriages on Highways Regulations 1988 (Statutory Instrument 1988 No. 2268).
- **Non-Classified Highway (NCH)** - A highway maintainable at the public expense which is not classified as an A, B or C class road or as any other type of road.
- **Recreational Driving** - Covers the driving or riding of mechanically propelled vehicles as a recreational pursuit on BOAT's and other unsealed NCH routes to which this Policy applies. It does not include the driving of horse drawn carriages.
- **Stakeholders** - Refers to anyone who has an interest in the management and maintenance of BOAT's and other unsealed NCH routes, and includes user groups, landowners and local authorities.
- **The Network** - Covers the highways to which this Policy applies and those carriageway highways not covered by the Policy which connect them.
- **TRO** - Covers any type of Traffic Regulation Order made pursuant to sections 1 or 14 of the Road Traffic Regulation Act 1984.

3. Our Aim

Throughout the process of developing this revised Policy, we have been acutely aware of the need to consider the legal rights of passage for all types of use. The Council listens to the many views expressed by local communities and all user groups, including those groups representing recreational drivers. A balance often has to be struck between enjoyment of vehicular use rights over a route and the impacts that continued enjoyment of those rights could have on amenity for the local community, the environment, and other types of use.

Our dialogue, with representatives of recreational driving groups, has highlighted their desire to pursue and promote only lawful and responsible activity. However, it has also served to underline the need at many levels for effective communication to users about precisely which rights can be assumed to exist over a particular route and which cannot be used.

Policy Statement 1

The Council aims to protect opportunities for recreational driving where conflict with other types of use is kept to a minimum and where this activity does not have an unacceptable detrimental impact on the environment or communities.

To pursue this aim, the County Council will continue to invite and take advice via the Local Access Forum's and to liaise with representatives of recreational driving vehicle groups.

4. Recording of Public Rights

The Definitive Map should show all public rights of way which existed at the Relevant Date¹. It is amended by order where the Council considers, from evidence available, that an additional way exists as a right of way or that a way should be shown as a different kind of highway. Consequently, some routes are upgraded to a "higher" status on the Definitive Map, and others are added to it as new routes. Less commonly, routes can be removed or down-graded.

This Policy applies to BOAT and unsealed NCH's other than any NCH over which the Council considers public vehicular rights do not exist ('off road vehicular routes'). For any NCH over which the Council considers public vehicular rights do not exist, it will generally seek to maintain

¹ The Relevant Date is a term used to state the date that the rights of way shown on the Definitive Map legally existed.

signs at the relevant junctions to that NCH to indicate to highway users that public vehicular rights do not exist over it.

The List of Streets is the record of highways maintainable at public expense, including NCH's, which the Highways Act 1980 requires the Council to keep. This data for Derbyshire is available from the Council's website, which includes depictions of the relevant streets in map form. The List does not record the level of public rights for any street.

Some routes, which are recorded on the List of Streets as NCH, are also shown in the Definitive Map and Statement, e.g. as a Public Bridleway. These routes are sometimes called "Dual Status". Although some of them have been the subject of claims for BOAT rights, it appears that the Natural and Rural Communities Act 2006 (the NERC Act) has extinguished rights for driving MPV's over many others. This means that the route cannot be a BOAT, even where it could previously have been recognised as one. In other cases, the route may be exempt from extinguishment of rights by the NERC Act, e.g. because when it was on the List of Streets and not in the definitive map and statement.

Numerous claims for BOATs to be recorded on the Definitive Map and Statement were received by the County Council following the introduction of the Countryside and Rights of Way Act (C&RoWA) 2000. A substantial number of these are currently (2,011) being processed. The County Council's website will provide updated information about these claims.

5. Sustainability

The County Council's duty to keep in repair highways which are publicly maintainable includes most public rights of way and the great majority of the routes which are of interest to vehicle users².

The County Council, acting in the public interest, strives to maintain highways in a condition in keeping with their designations and importance. However, resources are limited. In practice, maintenance varies widely according to the differing characteristics of the highways concerned. In contrast to other carriageways, BOATs which are publicly maintainable, are not generally maintained so as to promote ease of use by vehicles. This is reflected in the W&CA 1981 (as amended by C&RoWA 2000). Under Section 55(7) of this Act, certain ways previously shown as roads used as public paths, and subject to certain types of modification orders, also become highways maintainable at the

² Some highways are privately maintainable. That is, there is a public right to pass and re-pass over the highway but the landowner has the duty to maintain the highway.

public expense. However, Section 55(8) states that Section 55(7) “does not oblige a highway authority to provide, on a way shown in a definitive map and statement as a BOAT, a metalled carriageway or a carriageway which is by any other means provided with a surface suitable for the passage of vehicles”. Where a sealed carriageway is unsuitable for general MPV use, this can be marked by ‘Unsuitable for Motors’ warning signs. The unsuitability of unsealed BOAT’s for general MPV driving (as opposed to use by recreational drivers with MPV’s with some ‘off-road’ capability) is generally self-evident from their appearance.

Failure to keep a route in repair is neither a ground for seeking to extinguish a route nor for making a TRO. Nevertheless, for some BOAT routes, no realistic maintenance specification can be found to secure its establishment as a suitable facility for bridleway and/or footpath uses, as well for as vehicular types of use. This may be due to a combination of factors, such as climate, topography, deterioration over many years exacerbated by inclement weather, and, in some instances, erosion from use by vehicles. In some cases, more robust standards of repair may provide a solution. For instance, sustainability surveys by the Peak District National Park Authority have recommended investment in the infrastructure of several routes.

Nevertheless, in the County Council’s experience, challenging situations can arise where the only physically sustainable maintenance solution compatible with unrestricted vehicular access would be to introduce a sealed surface, e.g. tarmac as a preventative measure against continued erosion. This change to the character of a route may be considered to be unacceptable on amenity or environmental grounds.

The County Council will therefore take a pragmatic approach to the management of these routes, which strives to ensure that the use of the route by vehicles is preserved without having a damaging impact, and distinguishes those cases where this is not practicable.

A combination of positive and well publicised management is a key to the preservation of these routes for the enjoyment of all. This encompasses restricting, as and when necessary, those routes that are enjoyed for recreational driving. This may be by TRO, which may entirely prohibit MPV traffic on routes, or impose particular limitations e.g. to particular times.

The following measures that could be introduced to ensure that BOATs which are identified as being acceptable for recreational driving remain suitable for continued BOAT use:

- Encouraging local groups to watch-over routes and report problems to the County Council.
- Encouraging user-groups to “adopt” a route and maintain it on behalf of the County Council, the Council providing expert advice and materials.
- Ensuring that routes are included in formal County Council inspection regimes. Ensuring that any reported localised damage is repaired immediately to reduce higher levels of expenditure in the future.

Some BOATs will have to be brought up to a reasonable standard before any long-term management will bear dividend. To this end, the County Council will need to commit to long-term progressive investment in the network to ensure that the basic requirements of users are met. Regular inspection and clearance of drainage channels, combined with a scheduled programme of maintenance, is the key to preserving these routes in a serviceable condition. The days when a “lengthsman” was employed with the specific task of inspecting these routes have passed. However, the Council will commit itself to a yearly inspection of those routes which have been improved, as well as an inspection following adverse weather conditions, in order to avoid failure of the route. Immediate repairs should be brought forward to avoid more costly intervention in the future, e.g. to avoid catastrophic failure of the surface of the route due to the cumulative effects of failed drains, scoured surfaces, etc.

The County Council is also under a duty as stipulated in Section 40 of the NERC Act which requires every public authority to have regard to conserving biodiversity.

Policy Statement 2

2a) In recognition of the necessity to improve some routes, the County Council will invest over the next five years to improve the off-road vehicular routes.

2b) The County Council will encourage and support voluntary management schemes to assist with the management of off-road vehicular routes.

2c) The County Council will commit to a yearly inspection of routes where improvements have been made.

6. Management of Vehicular Use

The County Council recognises the importance of ensuring that BOAT's are understood for what they are. To this end, the County Council will ensure that routes are signed appropriately and, where practical, include a destination. Furthermore, we will reduce any misunderstanding that may exist over what public rights exist by making information widely available.

Policy Statement 3

3a) The County Council will publish and maintain a list of vehicular routes that contains sufficient information to allow all users to exercise their judgement whether a route is useable.

3b) Whenever possible, this shall include information about suitability throughout the year.

6.1. Control Measures

It is regrettable that, in some instances, it may be necessary to introduce a TRO. This may be to preserve the character of the route or to ensure that the route is not damaged when at its most vulnerable. Any request to consider traffic control will be judged against those criteria that allow regulation. The current relevant criteria are under the Road Traffic Regulation Act 1984.

6.2. Voluntary Restraint

“Voluntary Restraint” is another potential method for seeking to reduce impact on particular routes. The practice involves liaison with user-groups to ensure that conditions stipulated within Voluntary Restraint Agreements are respected. These agreements are not legally binding, however, their adoption may cause sensitive routes to be used in a way so as to minimise impact on the surface; for example, during periods of adverse weather, a voluntary one-way system may counteract damage caused by up-hill acceleration. Where a Voluntary Restraint Agreement is reached but does not succeed in changing the use of the way, it may be necessary to introduce more robust management measures (e.g. by TRO).

Policy Statement 4

4a) Derbyshire County Council will support Voluntary Restraint wherever it considers this to be appropriate and workable temporary solution.

4b) Voluntary Restraint will not necessarily over-ride or preclude any form of management the Council may wish to implement.

6.3. Traffic Regulation Orders

The Road Traffic Regulation Act 1984 empowers the Council to restrict, prohibit or regulate the use of roads open to the public, including rights of way. The Council has used these TRO powers effectively to manage routes.

A TRO can provide an immediate solution to a traffic problem or combination of traffic problems arising on any type of road. However, there are a number of symptoms that often stimulate requests for a TRO. These include:

- The persistent misuse of a route by ignoring the status.
- The deterioration of the surface.
- Conflict between different types of use.
- Damaged surface causing users to veer off the route.
- Imminent danger to users.

This is a non-exhaustive list but serves to demonstrate the range of issues often presented to the County Council. The County Council will consider every case on its merits. It will consider whether a TRO is appropriate for a specific situation. It will have regard to official advice currently in the guidance set out in the revised version of 'Making the Best of Byways' and guidance document entitled 'Regulating the Use of Motor Vehicles on Public Rights of Way and Off-Road'. The County Council will take account of local concerns and, therefore, it cannot be expected to follow Government advice in every case.

The County Council will not unreasonably impose a TRO. Where a problem cannot be resolved by any other reasonable means, the County Council may be expected to impose one expeditiously. In other situations, consultation will be carried out and the responses analysed to ensure that a TRO is appropriate. This may result in:

- A TRO restricting all MPV traffic.
- A TRO restricting use to certain class or classes of MPV traffic.
- A seasonal TRO to protect the environment and character of the route, for example.
- A TRO restricting access at certain times of the day and/or year.
- Identification of another method to resolve the problem.

Policy Statement 5

Traffic Regulation Orders shall be considered where

5a) No other reasonable solution exists to resolve conflict between types of use and there is a clear danger, to vehicle users, the safety of other users is compromised through continued use by vehicles;
or

5b) any other relevant legal criterion is satisfied.

7. Monitoring

It is important that the County Council is able to make informed decisions in respect of the management of routes, subject to recreational vehicular use. To this end, the County Council will carry out monitoring of traffic (e.g. by placing vehicle loggers (devices that monitor the volume and type of vehicular traffic)) on routes.

8. Misuse of Non-Vehicular Highways

Many routes that are recorded as being other than BOATs or other public carriageways are still in use by motorised vehicles. These include restricted byways and bridleways. This misuse is regrettable and may be perceived to discredit legitimate recreational driving. The Council will work in an advisory capacity with the Police and, where possible, vehicle user-groups, to discourage this activity. Consideration may also be given to the imposition of TROs on such routes.

Policy Statement 6

6a) Use of non-vehicular routes by motorised vehicles will be referred to the Police.

6b) The County Council will erect appropriate notices on such routes with the aim of reducing use by motorised vehicles.

9. Motorised Vehicle Trials

On 7 May 2009, the County Council approved a guideline for Motor Vehicle trials. The guidelines are appended to this Policy for ease of reference. Event organisers will be requested to avoid busy weekends, notably Bank holidays, to reduce potential conflict.

Policy Statement 7

The County Council will support efficiently organised Motor Vehicle Trial events where organisers can demonstrate that liaison with the Police, local communities, landowners and conservation bodies has been carried out.

10. Consultation

Throughout the production of this document, the Council has listened to many issues relating to motorised vehicular access in the countryside. The County Council will review this Policy every five years and, where necessary, make amendments based on experience and comment from the public, stakeholders and partners.

11. Policy Summary

For convenience, a summary of the policy statements is provided below.

Policy Statement 1

The Council aims to protect opportunities for recreational driving where conflict with other types of use is kept to a minimum and where this activity does not have an unacceptable detrimental impact on the environment or communities.

Policy Statement 2

- 2a) In recognition of the necessity to improve some routes the County Council will invest, over the next five years, to improve the off-road vehicular routes.
- 2b) The County Council will encourage and support voluntary management schemes to assist with the management of off-road vehicular routes.
- 2c) The County Council will commit to a yearly inspection of routes where improvements have been made.

Policy Statement 3

- 3a) The County Council will publish and maintain a list of vehicular routes that contains sufficient information to allow all users to exercise their judgement whether a route is useable.
- 3b) Whenever possible, this shall include information about suitability throughout the year.

Policy Statement 4

- 4a) The County Council will support voluntary restraint wherever it considers this to be appropriate and workable temporary solution.
- 4b) Voluntary Restraint will not necessarily over-ride or preclude any form of management the Council may wish to implement.

Policy Statement 5

Traffic Regulation Orders shall be considered where:

- 5a) No other reasonable solution exists to resolve conflict between types of use and there is a clear danger to vehicle users the safety of other users is compromised through continued use by vehicles; or
- 5b) Any other relevant legal criterion is satisfied.

Policy Statement 6

- 6a) Use of non-vehicular routes by motorised vehicles will be referred to the Police.

- 6b) The County Council will erect appropriate notices on such routes with the aim of reducing use by motorised vehicles.

Policy Statement 7

The County Council will support efficiently organised Motor Vehicle Trial events where organisers can demonstrate that liaison with the Police, local communities, landowners and conservation bodies has been carried out.

12 Appendix One - Guidelines for Motor Vehicle Trials

1. No event shall take place on any Public Right of Way that does not carry vehicular rights. This precludes Public Footpaths, Public Bridleways and Restricted Byways from use for Motorised Trials. A Public Footpath, Public Bridleway or Restricted Byway may be crossed by the Trial providing the crossing is marshalled.
2. Byways Open to All Traffic and Non-Classified Highways may be used provided they are sustainable and are not affected by a Traffic Regulation Order prohibiting use by the classes of vehicle involved in the Trial.
3. Organisers will be required to demonstrate that they have notified parish/town councils of their activities to ensure that the local community is kept informed. Notification shall also be provided in writing.
4. Organisers will be required to demonstrate that they have the written consent of the owner and occupier of the land prior to the Trial taking place.
5. Organisers will be required to indemnify the County Council in the event of any accident occurring which involves members of the public and participants during the Trial.
6. Organisers must restore sections, repair any damage to the route or infrastructure caused by the event, within two weeks of the event taking place. The County Council reserves the right to repair any damage to a route which occurs as a consequence of the Trial and recharge the organisers for the cost of these works.
7. Organisers should avoid Trials at night where the route is close to a settlement without having notified the local residents.
8. Any Trial should be run in accordance with the requirements of the Road Traffic Regulation Act 1988.
9. A risk assessment shall be carried out on each route to assess the likely impact on other users and to mitigate against accidents. Consideration shall be given to requesting a Temporary Traffic Regulation Order in the event that public safety may be compromised whilst the event is underway. Normal charges will apply and will be charged to the applicant when incurred.

10. If an organisation fails to conform to these requirements, the County Council will not authorise any future events until such time as the organisation can demonstrate compliance.