
Chapel Gate Track Report to the Local Access Forum – 18 September 2010 Annex 1

Strategic Background

The National Park Management Plan 2006 – 2011 is a shared vision and set of actions for the sustainable management of the National Park. Of particular relevance to this Policy and Strategy is the section that refers to Recreation and Tourism (Part3, Chapter7):

‘By 2011, all people, visitors and residents alike, especially those from under represented groups including disadvantaged communities, children and young people and the elderly should:

- Feel welcome in the National Park; and
- Have the opportunity to participate in diverse recreational activities that enhance the quality of their lives.’

A specific action in the Management Plan is to:

‘develop ways to positively manage motorised recreation in ways that are legal and sustainable.’

The Peak District Recreation Strategy and Action Plan 2010 – 2020 entitled “Active in the Outdoors” in section 2.3.11 indicates on Recreational use of unsurfaced highways that:

The Peak District is a popular destination for trail-bike riding and 4 wheel-drive use of the unsurfaced highway network. Some activity causes concern for farmers, residents and other recreation users about the effects both on public rights of way and off-road. The National Park Authority works in partnership with the Highway Authorities and the police to seek ways to positively manage the situation that:

- Are sustainable
- Minimise possible future and inappropriate development
- Recognise existing legal rights

Vehicular access is managed proactively in the context of the special qualities of the National Park, aiming to ensure that the National Park is not damaged for future generations. Where the valued characteristics of the National Park are threatened, conservation will take priority. Where there is legitimate recreational vehicular access the National Park Authority works to manage those routes in a sustainable way and implement controls as appropriate.

Peak District National Park Authority Strategy to manage recreational vehicular use of unsurfaced highways and address off-road use

The Policy and Strategy to manage recreational vehicular use of unsurfaced highways and address off Road use in the Peak District National Park was approved by the Authority on 5th October 2007. It was produced in consultation with this Forum, Derbyshire County Council and other interests (Including user groups), to manage recreational vehicular use of unsurfaced highways and off-road use set out to identify the scale of the issue and to suggest a plan of action. The Recreation Strategy has a balanced approach to:

- Manage the vehicular rights of way network with a view to minimising the impacts on natural beauty, wildlife, tranquillity and cultural heritage
- Ensure that where vehicular rights exist, routes are pro-actively managed, signed and widely recognised by all interested parties
- Address safety issues
- Promote a spirit of co-operation with motor-vehicle user groups to try to minimise damage and disturbance, and develop and apply voluntary codes of conduct as appropriate
- Consider the use of temporary or permanent Traffic Regulation Orders as appropriate
- Gather information regarding illegal motor vehicle activity and pass this to the police.

Where there is an irreconcilable situation that cannot be resolved by proactive action and management the needs of conservation will take precedent over those of access, in line with the Sandford principle.

Walkers, horse riders and motor vehicles can all use some routes and there is concern from horse riders and walkers that the numbers of vehicles has significantly increased over the last few years. The noise intrusion affects other users' enjoyment of the National Park. Motor vehicles can also:

- Cause physical damage to the landscape
- Damage habitats
- Disturb wildlife
- Damage cultural heritage features
- Create safety problems

Motor vehicles however often have equal right of access and the challenge is to accommodate legal uses without spoiling the National Park or other people's enjoyment of it. The vision is as set out in the Recreation Strategy above.

In terms of new powers to make **Traffic Regulation Orders (TROs)** the Road Traffic Regulation Act 1984 will allow the Authority to process permanent Orders, temporary Orders for a period of 6-18 months, and experimental Orders for a period of up to 18 months. Objections may not be made to temporary Orders but may be made to a permanent Order, or the conversion of an experimental TRO to a permanent one, and these must be considered by the Authority as the Order Making Authority who may decide if a public inquiry is appropriate.

The Peak District Local Access Forum (LAF) is a statutory advisory body established by the National Park Authority and Derbyshire County Council. It has been consulted by these Authorities on the condition survey of routes, and issues which arise from that Survey.

Having considered the various management options available, the LAF may consider a pressing case for a TRO, and advise the Authorities to take action.

This approach has the merit of establishing the Local Access Forum as an integral part of the TRO process, and enables local people to have a say in the management of unsurfaced highways. A sub-group or working group may be established in order to develop a consistent and active approach.

In each case where the LAF believes a TRO may be a suitable management option, a report will be submitted to the National Park Authority's Director of Operations.

The powers to make TROs are identical to those currently available (and which will continue to be available) to the Highway Authority. The policy and strategy highlight issues such as surface maintenance where the Highway Authority has a statutory duty of care, and makes it clear that where TROs are requested on such routes where statutory duties are not being carried out, then the Highway Authority should continue to hold responsibility to make the Order.

By way of a summary in relation to the implication for resources, officers believe that:

- Road safety issues are the responsibility for the Highway Authority and Police to resolve
- That TROs should normally be made by the Highway Authority
- That the Authority would employ its powers to make a TRO in exceptional circumstances and commensurate with the Sandford Principle

In March 2006, a Derbyshire County Council Improvement and Scrutiny Committee examined the issue of the use of unsurfaced highways. The key recommendation of the Committee was that each Non-classified Highway in Derbyshire would be surveyed to define whether it is sustainable or unsustainable. National Park staff acted behalf of Derbyshire County Council to conduct a baseline survey of routes within the National Park. A full condition survey of all 180 'other routes with public access' has been completed and prioritised.

At its meeting on 7th March 2008, the National Park Authority requested that the routes showing highest priority from the survey should be subject to management plans, in order to determine the most appropriate courses of action.

This plan is therefore intended to inform the Highway Authority (Derbyshire County Council) and the National Park Authority to enable the development and review of measures to improve the management of the route.

Traffic Regulation Orders (TROs) – Policy and Procedure

(from Peak District National Park Authority report 5 October 2007)

Background

New powers have recently been introduced giving National Park Authorities powers to make Traffic Regulation Orders (TROs) under sections 22BB and 22BC of the Road Traffic Regulation Act (RTRA) 1984. These powers were introduced by Section 72 of the Natural Environment and Rural Communities Act 2006 and came into force on the 1 October 2007.

Whilst government research has indicated that the existing unsurfaced highway network can, in general, support current levels of motor vehicle use and types of user, it recognised that there can be difficulties on particular byways or parts of byways. The use of TROs is one of the tools that can be used to manage such problems.

Section 72 of the NERC Act gives National Park Authorities similar powers to those possessed by Highway Authorities to make TROs on public rights of way recorded on the Definitive Map and Statement and on predominantly unsealed carriageways. The power does not cover the normal, tarmacked road network and there are no new grounds for making a TRO introduced by this section of the Act.

Any TRO that may be made by a National Park Authority exercising the new power could previously have been made by the Highway Authority under the Road Traffic Regulation Act 1984. Since these powers were made available, a total of 4 TROs have been made across the National Park by the 6 constituent Highway Authorities.

The Peak District National Park Authority recognises that in certain situations, TROs may help to alleviate damage and trespass issues in relation to countryside access, and to protect areas of conservation value suffering from damage.

The Highway Authority has a number of statutory duties in connection with these unsurfaced highways, notably maintenance and enforcement. **The National Park Authority will not consider making a TRO solely as a result of such duties not having been carried out.**

Furthermore, the Authority regards road safety issues as the responsibility for the Highway Authority and Police to resolve. The Peak District National Park Authority considers that in such cases, any TRO should be made by the Highway Authority (without renouncing our legal ability to do so).

This policy statement should be read in conjunction with Defra's Statutory 'Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984', published September 2007.

Traffic Regulation Orders

There are three types of Traffic Regulation Order:

- Temporary
- Experimental
- Permanent

In summary:

- The requirements for consultation on temporary and experimental Orders are somewhat different from permanent ones, and they can only be made for a maximum period of 18 months.
- The criteria for which Traffic Regulation Orders may be made are very broad – taking in considerations such as enhancing the natural beauty of an area, affording better recreational opportunities or study of nature, to preserve the character of a route, to avoid danger, prevent damage, to facilitate passage, for preventing unsuitable use owing to the character of the road or adjoining property, for preserving and improving amenities, and considerations under the Environment Act 1995 (air quality)

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- TROs can be used on any status of route including footpaths, bridleways and byways open to all traffic, as well as other highways
 - Temporary Orders may last up to 18 months and are generally used to allow for works, protect the public from danger, to conserve, or allow the public to better enjoy a route
 - Experimental Orders may also last up to 18 months, and may be made for any purpose to which permanent Orders can be made
 - The scope of a TRO includes powers covering restrictions on the type of user, extent of road affected, and the period during which the TRO is effective. The National Park Authority would be able to put restrictions on routes such as a total ban, seasonal ban, introduce one way systems, modify furniture or place whatever restrictions we feel reasonable
 - There may be formal objections to Permanent Orders which must be addressed and may be resolved at a Public Inquiry
 - Any barriers erected as part of the TRO need to be maintained by the Order-making authority and must bear in mind other users of the trails such as horse-riders and, where appropriate, the physically less-able

Prioritisation of routes

There are approximately 354 unsurfaced highways in the National Park, and motor vehicles may be legally used on many of these. The National Park Authority is developing a strategy for improving the management of these routes and dealing with the effects of motor-vehicles in the National Park.

A guiding principle is that the Authority will work in partnership to involve recreational users, landowners, community groups, highways authorities and the police. Each route will be treated individually on a case-by-case basis. The National Park Authority is currently surveying condition and use of the routes, and will be prioritising actions based on these surveys. Once the priorities are established, the Authority will be working closely with the Highway Authorities to determine appropriate management actions. Management options that will be explored may include physical improvements, voluntary restraint by vehicular users, permit systems or, a prohibition through the TRO powers.

The Policy

As outlined above, in certain cases the use of the TRO powers may be appropriate. In these circumstances, we propose that the following tests and limitations are applied:

- In the case of a sub-standard route surface, the Highway Authority shall be responsible for considering the need for a TRO

Highway Authorities are responsible for the maintenance of all adopted highways, in a condition commensurate with their presumed use. The test as to whether sufficient maintenance is being applied is one that only the Highway Authority can carry out. It is therefore logical that they exercise their discretion as to whether or not an Order is implemented .

- Where problem routes cross Highway Authority boundaries, and it seems sensible to each of the parties concerned that the National Park Authority should promote the Order, then it may do so

Users will not necessarily know when they are leaving one Highway Authority and entering another. In such circumstances, it makes sense for the National Park Authority in partnership with both Highway Authorities involved, to apply a uniformity of approach along the whole length of the route, regardless of the particular county or borough it lies within.

- Where issues of safety exist, these should be dealt with by the Highway Authority acting in co-operation with the local police. If a TRO is considered appropriate then the Highway Authority will be responsible for it

Road safety is a responsibility shared between the police and the local Highways Authority. The National Park Authority has little, if any, expertise or input into these issues, other than in cases where practical works have planning implications. It is logical therefore that the responsibility for making Orders relating to safety criteria lies with the Highway Authority.

- Where issues of noise, disturbance or other anti-social behaviour arise these will be referred to the police or relevant authority for attention and enforcement.

Noise and disturbance are issues dealt with by the Environmental Health Department of the relevant Local Authority. In addition, there is separate legislation relating to excessive noise from motor vehicles. Currently these issues are dealt with by the police, and we propose no change.

- Where conservation or heritage issues are affected, the National Park Authority may consider the making of a TRO as one of the management tools available to address those issues

The National Park Authority has a duty under the Environment Act 1995 to conserve and enhance the special qualities of the National Park. It is equally charged with promoting opportunities for enjoyment of those special qualities, however where there is a proven conflict between the two, the NPA will apply the 'Sandford Principle' by which the needs of conservation will have precedence. In such cases TROs may form part of a range of tools that the Authority can adopt to mitigate the negative effects of inappropriate vehicular use.

- The Peak District National Park Authority reserves the right to make TROs where we feel appropriate and notwithstanding the conditions set out above

There may well be unforeseen circumstances and it would be irresponsible not to allow discretion to be exercised at some point in the future, according to the circumstances that arise at that time and within the relevant powers.

- When TROs are made, the Authority will involve all relevant parties in explaining exactly why it is making such an Order

We recognise that to be successful, the actual making of the Order is only part of the process. We hope to engender a spirit of co-operation, openness and engagement in discharging these new powers.

Mechanisms for making an Order

The Authority may adopt either of two approaches to the making of a Traffic Regulation Order (TRO).

Method 1

The Authority may act unilaterally within the policy outlined above, taking into account;

- a) the overall strategic approach to managing the network of routes
- b) consultations with the Highway Authority, police and other agencies as appropriate
- c) the prioritised list of routes established in a transparent way by the condition and monitoring surveys
- d) resources available to the Authority
- e) an examination of the particular case on its own merits

In which case, a report will be made for the National Park Authority's Director of Operations to make an Order.

Method 2

The Peak District Local Access Forum (LAF) is a statutory advisory body established by the National Park Authority and Derbyshire County Council. It has been consulted by these Authorities on the condition survey of routes, and issues which arise from that survey.

Having considered the various management options available, the LAF may consider a pressing case for a TRO, and advise the Authorities to take action.

This approach has the merit of establishing the Local Access Forum as an integral part of the TRO process, and enables local people to have a say in the management of unsurfaced highways. A sub-group or working group may be established in order to develop a consistent and active approach.

In each case where the LAF believes a TRO may be a suitable management option, a report will be submitted to the National Park Authority's Director of Operations.

In both cases, the following questions will be considered:

- What is our intention in promoting a TRO?
- Can those intentions be achieved in any other way?
- Can it be enforced?
- What are private access needs and how can they be protected?
- Can appropriate public rights be maintained?
- What conservation or heritage issues are there?
- Will the character of the route be adversely affected by continued use?
- Will the character of the route be adversely affected by the TRO and associated furniture?
- Have other management options been explored?
- Is the amenity or conservation value of the route so great that urgent action is required?
- Are there concerns as to the displacement or knock-on effects of the closure of a route?
- Are the necessary resources available?

Next Steps

This Policy will be applied as agreed by the National Park Authority, October 2007.

The implementation of the actions proposed, and those in the concurrent 'Strategy to Manage Recreational Vehicular Use of Unsurfaced Highways and Off-road' will be evaluated and finalised in consultation with Chair of Services Committee and Director of Operations and this will be combined with a report to members on the scrutiny review of recreation management.

Following the application of the relevant provisions of the Natural Environment and Rural Communities Act 2006 to the National Park Authority, the Director of Operations has been delegated authority to make experimental, temporary or permanent Traffic Regulation Orders (TRO's) under the Road Traffic Regulation Act 1984 together with the Head of Law. In the case of unresolved objections to a proposed Order, a report would be made to the Services Committee.

¹ Consultation on the power for National Park Authorities to make Traffic Regulation Orders. Section 72 of the Natural Environment and Rural Communities Act 2006. Defra, January 2007

Resources required re Implementation of Traffic Regulation Orders

(extract from Peak District National Park Authority Report of 5 October 2007)

Across the Peak District National Park as a whole it is therefore possible to estimate that around 53 routes may have sustainability issues, and a further 53 may have issues if use of them is increased. A variety of options to address these issues are available, including use of the new TRO powers. Each option will however have significant resource implications.

Traffic Regulation Orders

Estimates of resource requirements for TROs varies greatly according to length and duration of TRO and the number of objections received. Below is a summary of some estimates:

Leicestershire County Council have identified 100 hours as an approximate average for making a permanent TRO, and states that *it is the County Council's aim to introduce 75% of TROs within 18 months of starting consultations.*

Hampshire County Council 'a minimum of six months and probably nine to twelve months in total. Administrative costs are likely to be in the region of £2,000 (excluding staff time).' These two authorities generally concern themselves with urban TROs.

Lake District National Park Authority Up to 18 months to process an experimental TRO.

Yorkshire Dales National Park Authority A minimum 6 month process has been identified to make TROs.

Defra estimates that for Permanent TROs are based on the following broad assumptions:

- *Each TRO takes 75 hours of NPA staff time once the decision has been taken to pursue the TRO management option.*
- *NPA staff time is costed at £35/hour.*
- *Public Inquiries are not held into proposed TROs.*
- *Signage, barriers and other physical works average £2000 per TRO.*
- ***Therefore the total cost per Permanent TRO is estimated to be £5,265***

Temporary TRO costs are estimated at about £800 by DEFRA

It is important to note that once routes are closed, the resource to maintain such gates and signs is in perpetuity. Again accurate figures will only be able to be given to members after TROs are made, and it is possible that some routes may require no maintenance. There is also some concern from National Park Authorities about signage of routes, and DEFRA are currently considering appropriate signage for TROs made within National Parks.

The Yorkshire Dales National Park Authority has the equivalent of 2 ½ full time posts working on the 100 or so routes they have, and the Lake District National Park Authority has had a full time officer working on their 76 routes for nearly a decade. Both these authorities also have the Highway Authority function for the Definitive Map.

In the Peak District NPA, the Rights of Way Officer has traditionally played no significant role in the issue of unsurfaced highway use and off-roading. This is due to the National Park lacking the necessary Highway Authority legal powers and duties.

The policy and strategy set out a number of opportunities for the Ranger Service to assist both in identifying issues and in particular the scale of the issue across the park. Ranger staff will play a crucial role in disseminating information and this will inevitably lead to an increase in workload.

Potentially the resource issue could be considerable as a legal process, open to objection and potentially leading to a public inquiry, must be followed for each TRO. It is highly likely that a large number of objections will be received in each case of Permanent TRO that the Authority makes, and the Authority must be prepared for a considerable resource implications if such powers are widely utilised.

Targets

Using the figures highlighted above based on experiences at other authorities, and assuming Defra's information is correct, it is estimated that with current resources the Authority would be able to make between 1.5 and 2 Permanent TROs per year if no other work is carried out other than monitoring and statutory duties.

With present resources the Authority would not be able to take a lead in the promotion of TROs (if necessary) and would have to rely on local authorities (initially Derbyshire County Council) to take a significant lead in the provision of TROs.