

Peak District Local Access Forum

Date: 13 June 2013

Item: 8

Title: Traffic Regulation Order Consultations

Author: Sue Smith

Purpose of the Report

The National Park Authority is carrying out a consultation on its proposal to prohibit mechanically propelled vehicles on the Chapel Gate route. The report asks the Local Access Forum to consider any response they may wish to make.

Chapel Gate Consultation

The LAF's Green Lanes Sub-Group provided a response to the consultation on Chapel Gate under Regulation 4 of the National Parks Traffic Regulation Order (Procedures) (England) Regulations 2007, following the quashing of the Experimental Traffic Order in November 2012. The letter dated 22 February 2013 is attached in Appendix 1 and follows from a site inspection by the Sub-group. The response was reported to the open meeting of the Forum on 21 March 2013 (which included a copy of the consultation response as an annex).

At the May meeting of the Audit Resources and Performance (ARP) Committee (www.peakdistrict.gov.uk/committees), Members resolved to proceed to publicise its proposal to make a permanent Traffic Regulation Order (TRO) to prohibit mechanically propelled vehicles on this route. The LAF has been notified under Regulation 5 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007.

The consultation documents comprise a notice of proposal, a draft order, a statement of reasons and a map. The 6 week public consultation expires on 28 June 2013. Details are available at www.peakdistrict.gov.uk/consultations

Pursuant to Regulation 7, LAF members are asked for their views on the proposal and to consider whether they wish to make any changes to the response attached in Appendix 1. The outcome of this will constitute the Forum's formal response to the consultation.

Recommendations

- 1. That the LAF considers whether they wish to make a response to the current consultation on Chapel Gate.**

Annex 1



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Your Ref; A.76221/SAS
By email
22nd February, 2013

Dear Mike and Sue

Chapel Gate – Consultation Response

Thank you for your letter of 7 December, 2012 seeking views of consultees after the Experimental Traffic Regulation Order (ETRO) was overturned by the High Court. The six month consultation relating to whether the ETRO should be made permanent was void as a result of the High Court ruling. You were seeking views from consultees on the possibility of the Authority making some form of traffic regulation order to restrict use of the route by mechanically propelled vehicles.

This letter replaces the one I sent on behalf of the LAF dated 12 January so please would you remove that from your file? It has been amended and updated following a LAF Green Lanes Sub Group on 7 February, a site visit to Chapel Gate on that afternoon and consultation on the options with all LAF members. I shared them with Edwina and she agreed this response.

The Peak District LAF is the Authority's statutory advisor on access and recreation. It represents a wide range of different interests and user groups. Its Green Lanes Sub Group, with delegated authority to respond for the LAF, met on 9 January and again on 7 February, 2013 to consider its thoughts and recommendations on this route. After the site visit when two main options were considered there were equal views from Sub Group members in favour of each one, so we agreed to invite views of all LAF members. That resulted in 8 in favour of a Seasonal TRO and 6 in favour of a TRO at all times. There were no responses from 7 other members.

The Sub Group membership includes people representing a wide range of interests with first hand knowledge of the route over many years, as well as its durability and sustainability. In reaching its recommendations the Sub Group always seeks to balance the disparate needs of all legal users framed by consideration of wider environmental, cultural and landscape issues consistent with the twin statutory purposes of a National Park and the Authority's strategy.

This response covers the information we considered at the meetings, refers to our previous views and suggests various actions as a way forward.

Information made available and Considered

At the meetings we were updated on a number of issues:

- The High Court ruling by Mr Justice Ouseley quashing the ETRO on Chapel Gate on 30 November, after which the route was re-opened.
- Derbyshire County Council having subsequently made a TRO closing the road to enable repair works for up to 6 months.
- The Monitoring report on Chapel Gate which had been made available with 15 months of closure having shown improvements.
- Photographs of parts of the route taken whilst the ETRO was in force with clear evidence of recovery, and since it re-opened when it was very wet.
- User Groups having sought voluntary restraint with some success, albeit there was some increased use from figures provided.

Previous Responses in 2010 and 2011

We had supported the proposed ETRO both in writing in September, 2010 (I have included an extract of our thinking at that time as an Annex), and by Henry Folkard having spoken on behalf of the LAF at the meeting of the Audit Resources & Performance Committee on 3 June, 2011. Our support at that time followed a thorough consideration of options, and we recommended an 18 months TRO as a means of safeguarding the high landscape and conservation importance of the area, and improving opportunities for general enjoyment. We recommended an order of finite duration with appropriate monitoring and review, rather than a permanent one.

Derbyshire County Council closed the route and carried out repairs at, and after, the TRO was approved. LAF members welcomed the stone surface repairs which had been done to a bridleway standard. They were concerned that, as this had had a bearing on the High Court considerations and ruling, the current County Council closure and repairs may be difficult to the timing of any future TRO the Authority may wish to make. They were initially also concerned about the liaison over timing and an overall plan for works to improve and sustain the surface, given some failed attempts to do this in the past and a section still requiring repairs now. We welcomed information and details of works supplied by Peter White (DCC) after I contacted him, for our February meeting and site visit. This includes £35,000 of works to be carried out soon. We are keen to see additional sustainable works, required on the top section of the route, also put in hand as a continuation of currently planned works, and urge the County Council to do this as highlighted later in this letter.

The LAF acknowledged the view of the local community that action to prevent ongoing damage was long overdue. We were informed both of the importance of the way for MPV users and of potential adverse impact upon contiguous ways, but concluded that the factors I have mentioned outweighed all other considerations - i.e. safeguarding the high landscape and conservation importance of the area, and improving opportunities for general enjoyment.

A second major consideration in September, 2010 was collateral damage to adjoining areas of SSSI moorland by MPVs which was a significant landscape, environmental and social issue. We considered there was an over-riding duty to

protect the landscape of the National Park, and a fragile habitat, from damage which was seen to be progressive. Moreover the LAF was made aware of damage to adjoining farmland from washout which was part natural, but also exacerbated by use and poor maintenance. This remains an issue to be addressed and we wonder if the Highway Authority should do this having regard to its duty towards National Park purposes under section 62 of the Environment Act?

Review and Recommendations

We reviewed our position having had the updates and in the knowledge of the monitoring report, photos, our Sub Group Site visit and visits reported by some of our other members. We felt the National Park Authority had taken what we believed to be the least restrictive option to remedy a circumstance which plainly had to be addressed; the LAF would wish to re-state the obvious. We had said at the outset that the situation would need to be reviewed in 18 months, or sooner, with a fresh assessment of environmental implications and of how to balance potentially conflicting wishes of MPV users with those of other users and the local community.

The LAF members present at Sub Group meetings, discerned a major problem of communication which is exacerbating an intrinsically difficult issue. Aspects of the problems reported are:

- the need for increased liaison by Derbyshire CC to keep the PDNPA and the LAF more fully informed of its intentions regarding repair, maintenance and safety of key routes (we welcome Peter White's help on this since our January meeting);
- perception by representative user groups that they are being marginalised or ignored when they seek to represent the legitimate interests of their members;(we call later for their involvement)
- consequent adverse and unjustified impact upon the repute of the PDNPA and compromise of its ability to embed reasonable management solutions.(we raise this again later along with our willingness to talk further about it)

Our current thoughts are intended as a means of safeguarding the landscape and conservation importance of the area and improving the opportunities for enjoyment by legitimate users of this area in future. The overriding responsibility for the Authority (NPA) is to protect the special qualities of the National Park. Degradation of the fragile boggy habitat we visited is unacceptable. This seems primarily a matter initially for Derbyshire County Council to rectify through appropriate repairs.

Key Points are:

1. **Sustainable Repairs** - We asked Derbyshire County Council as a matter of urgency in January for clarification of ongoing repairs by them as Highway Authority in relation to what was sought in the original Management Plan, what is required to be sustainable and whether funding is available for that. We were advised the original Management Plan proposals were considered too expensive. We had found it difficult to put forward firm management proposals until we knew the extent of maintenance and repair work envisaged by the County Council, not just to the lower end, but on the top as well. There are examples of such boggy areas being repaired elsewhere in the Peak. In January, we suggested a decision might best be deferred until all the information was available. In practice, NPA officers decided to report to their Committee in March rather than January. The County Council supplied more information about planned works we considered in February and we urged additional work to follow on at the top where it is badly rutted. We

ask for details and costs of additional work proposals and the planned timing for implementation by the County Council as a follow up to planned works, and for reassurances that this will be appropriate to this landscape and sustainable in future. We now seek assurance from Derbyshire C.C. that they would undertake all agreed remedial work [with or without actual assistance from the Users] & that the Chapel Gate route be regularly monitored throughout the year, not only for illegal usage, but for any structural deterioration.

2. **Effective management of this route and users** is certainly needed. Motor vehicle user groups seem to recognise this and need to be involved in possible solutions and actions. Edwina and Henry attended a meeting with motor vehicle user interests in January and it was very clear that there is a willingness to be involved and be part of the solution, and for voluntary works on route repairs. Dialogue with MPV user groups about maintenance and possible restrictions of use is essential and we would like to see the Users engaged in a substantive contribution towards a long term remedy to the damage etc. Some LAF members feel that a seasonal TRO is easily communicable and may help get that engagement.

3. **We all agree that unrestricted use cannot be supported**, and there is a case for some form of TRO to address the needs to safeguard the landscape and conservation interest and enjoyment by users. However, this will affect current users' rights.

4. **Various options were mentioned in January** including: a seasonal "winter only" TRO; a timed TRO restricting use during certain hours and on certain days; a permit system; a gated arrangement (e.g. in wet conditions), perhaps supervised by Rangers (mentioned again by one LAF member); a one way system for vehicles west to east when the route is not closed. These were not worked up and are now superseded by the options below.

5. **We looked at options in more detail on 7 February** when we went on site and had better understanding of what measures would be appropriate. We concluded that there needs to be a clearly understood and well signed solution, and Sub Group members noted a range of possibilities, including a one way system (which was thought by most to be impractical and would not address all the issues), and Seasonal or permanent TRO with closure at all times. Both would be in respect of all motor vehicles. There were equal views in favour of the two options below at the site visit, hence a request for views from all LAF members before finalising this letter:

Option 1 - Seasonal Closure suggested as from 1 November to 30 April to all motor vehicles with monitoring and review of the effect of usage in the other 6 months. A Seasonal closure is thought by some to be a good solution to put to users and may enable recovery and maintenance. There were concerns from some members that this would not adequately address the problems of the weather trends we have seen in recent years and some felt more than 6 months would be needed, which it is understood is possible. One member wondered about having a part-time TRO, perhaps seasonal and weekends. The thinking being that was that the potential for damage to the route during the wet season is considerable, and there isn't a huge budget available for repairs, so closing it to vehicles during that time makes sense.

With a Seasonal TRO, the Authority should consider an outright TRO, should there be natural deterioration beyond reasonable maintenance repair, or similar damage caused by motor vehicles, particularly if the Seasonal TRO was being disregarded.

Option 2 - closure at all times to all motor vehicles. Several members commented that they cannot see this route ever being sustainable for all users. They felt that weather was a key issue and a Seasonal TRO could not address the timescale likely to be involved. Some members felt this would be more than was needed as it is a major reduction in current statutory rights for motor vehicle users who have shown a willingness to have a Seasonal TRO.

The responses to these options from LAF members are pretty even: 8 in favour of Option 1, and 6 in favour of Option 2, and 7 who did not respond. Whichever alternative is preferred it should be clearly signed in accordance with Road Traffic Act Regulations and communicated through websites and other media. It should also be subject to annual review.

6. There is a need to safeguard the adjoining farming and land management interests seeking to maintain land in favourable condition. The route crosses land managed under a Higher Level Environmental Stewardship agreement (HLS) and allowing damage to the land adjacent to the permitted route will put the farmer in breach of this agreement and risk substantial financial penalties for the farmer under Cross Compliance legislation.

7. As we have said previously, there should be a debate at national level with regard to all MPV use in all National Parks. Historically the routes used by them were never constructed to withstand current usage. This leads to a fundamental general problem of sustainability and adverse impact on landscape, conservation and general enjoyment. If some level of such use was deemed or made to be sustainable (through proper attention to structure, surfacing, drainage and repair), or controlled in such a way as to become sustainable, and issues of unacceptable rogue behaviour addressed with the co-operation of representative user groups, it might be open to question whether all embracing restrictions were justifiable.

8. We are concerned and would value the opportunity to talk to members about communication issues as (see page 3), there is a lot of misunderstanding amongst User Groups and Communities about responsibilities and plans. We recognise and welcome the good work being done by officers, but other authorities and interests seem to act in isolation on occasions which is unhelpful for the Peak. This could become more of a problem as routes outside the Derbyshire area of the National Park are looked at in detail and calls for a look at the Strategy and scope for a Memorandum of Understanding with the Highway authorities on who does what, as suggested in my earlier letter to Jim Dixon about resources.

We hope you will find this LAF advice and suggestions about works and options helpful, appropriate and practical to pursue in the National Park interest and in line with your Strategy. We look forward to hearing the outcome of the Committee on 22 March, and to future consultation.

Yours sincerely,

John Thompson
Vice Chair
Peak District Local Access Forum
and Chair of its Green Lanes Sub Group

Copies to Edwina Edwards (Chair) and all LAF members
Jim Dixon (Chief Executive), Sean Prendergast (Head of Field Services) Peak District
NPA,
Richard Taylor (Head of Countryside Services, Derbyshire CC),
Peter White and Gill Millward (Derbyshire CC)

Annex Attached

Annex - Views of the LAF in September 2010 - extract from a report sent to the National Park Authority

Chapel Gate is a Byway Open to All Traffic (BOAT). It commences on Sheffield Road, Chapel-en-le-Frith (Rushup Edge road) and ascends towards Rushup Edge in a generally north easterly direction before descending to the Edale Road near Barber Booth, Edale. It is 2,700 metres long within the parishes of Chapel en le Frith and Edale in Derbyshire. Nobody is challenging the status of the route.

The sustainability analysis of the Chapel Gate route resulted in a top score of 15 out of 15 explained and detailed in the Management Plan which is a background paper to this report. This is based upon:

- signs of physical damage
- protective designation (over half the route passes through the South Pennines Area of Conservation, the Dark Peak Site of Special Scientific Interest and the Peak District Special Protection area. A further stretch is Section 3 Moorland)
- complaints about vehicular use conflicting with other users
- damage to the character of the route, and
- the free passage of non-motorised users being prejudiced.

Management Plan proposals agreed in December 2009 were to:

- Identify the significant resources necessary to carry out repairs. (Action: Derbyshire County Council Countryside Service. Priority: Urgent. Timescale: 2010/11)
- Seek voluntary assistance to manage use of the route (possible one-way system) and minor repairs. (Action: Derbyshire County Council Countryside Service / Peak District NPA
Priority: Medium. Timescale: 2010/11)

Historically planings laid by the County Council around 1990 on a badly damaged section cost around £25,000 but not enough drainage was carried out and within 6 months all the work had been washed away. Derbyshire County Council engineers had estimated for the Management Plan that filling voids and surfacing with stone would cost around £200,000 and metal/tarmac surface (if approved) around £285,000. Annual maintenance thereafter was estimated at £20,000.

The Group considered that during a period when there has been no maintenance, there has been increased use by recreation vehicles. Damage to the surface of the way initiated by such use has become exacerbated by natural forces to the extent that this has become a landscape issue. Current use is self evidently not sustainable. There is increasing collateral damage both to the surrounding SSSI and to contiguous farm land. The way has become so seriously eroded that it is all but impossible to keep to it or navigate it except with winches. In addition to the conservation issues, rights of non vehicular users have become seriously compromised. A period of no official action has resulted only in escalating damage and the prospect of greater cost of repair, and greater negative environmental impact.

The Sub Group on 5 August looked at options for Chapel Gate in the knowledge of major funds not being available from Derbyshire County Council for surfacing and

drainage works in the foreseeable future, the effects on users related to motor use (with the route being unusable for cycles and horse riding, passable but difficult for mountain bikers and walkers) and the special landscape and conservation interest which needs protecting and conserving in line with National Park purposes.

Options considered by the LAF were:

- Doing nothing which was considered unacceptable given the profile of this route, outcome of the sustainability survey, existing usage and conflicts in an area of great importance from conservation and landscape points of view.
- Voluntary restraint is intended normally to reduce the use of a route whilst maintenance works are carried out and is normally valid for 3 months so would not be a useful or realistic tool in this case.
- Closing the route as being unsustainable (a comparison was made with the Mam Tor road years ago) was not thought possible or appropriate as it is capable of repair.
- Implementing a Traffic Regulation Order by the County Council as Highway Authority is not considered legitimate unless accompanied by resources to carry out appropriate surface improvements for the route to be improved. This is clearly not possible at present. There are other routes (Bradley Lane and Washgate) where the County Council have pursued consultation currently with a view to TRO's being imposed.
- Asking the Peak District NPA to impose a Temporary TRO for motor vehicles for 18 months. This would be the first time the of the Authority using those powers, but it is considered justifiable given the situation with Chapel Gate and the overriding need to protect landscape and conservation interests. This would not create any thin end of the wedge precedent: of all the ways surveyed this is the only one to have merited such recommendation, and then only after the initial solution was no longer realistically attainable. It is recognised that in line with its policy the Authority would first of all need to carry out an Environmental Impact Assessment to determine the case for using its powers introduced by Section 72 of the Natural Environment and Rural Communities Act 2006. Members of the Sub Group had regard to the requirements of s122 of the Road Traffic Regulations (1984). We were given a written note on them before our last lot of site visits, and the full LAF has in the past been briefed also as a follow up to the legal ruling regarding Yorkshire Dales NPA TRO proposals.

The Sub Group proposed that, in light of vehicles leaving the Highway and damaging the protected land nearby, that the National Park Authority be asked to consider implementing a temporary TRO for 18 months on the following grounds:

- Damage to protected landscape due to the condition of the highway
- The safety of all users

In essence the process we followed at the meeting was to consider a range of options from the least restrictive to the most restrictive. Consensus was reached about an option which was not the most restrictive, but which responded to the imperative of a crisis in the landscape and to a 'vulnerable track' which experience had shown to have got worse during a period of no action. In the meantime we agreed to continue to seek other practicable solutions.