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15th September 2019

OXFORDSHIRE COUNTY COUNCIL
(ARDINGTON, LOCKINGE, EAST HENDRED AND
WEST HENDRED - ICKNIELD WAY BYWAY)
(PROHIBITION OF MOTOR VEHICLES AND CARRIAGES) ORDER
20**

Dear Sirs,

The Trail Riders Fellowship (“TRF”) writes in response to a Notice of Proposal to make the above-named traffic regulation order (“TRO”).

We appreciate Oxford County Council (“the Council”) Email of 16th August 2019, in which the TRF was afforded an extension to respond to the proposals.

With reluctance, TRF objects to the proposed TRO. We are disappointed to have not been afforded an exemption for responsible motorcycle access within the proposed TRO, that would have secured our support for such an intelligent TRO that can readily deliver a substantial improvement for equestrian and cycling interests as part of the Science Vale Cycle Network (“SVCN”) project.

We remain of the view that the SVCN can successfully be delivered and meet its aims of improving non-motorised access in circumstances where there is a degree of shared road use with responsible motorcycle traffic and horse drawn vehicle traffic.

We offer the Council the following grounds of objection and recommend alternative solutions, as a means to successfully deliver the SVCN aims without incurring avoidable, unnecessary, and absolute detriment to the interests of road-users restricted by the proposed TRO.

We object to the proposed TRO, insofar as it restricts the responsible use of motorcycles, horse drawn vehicles, and motor vehicles used for access and land management.

1



Grounds of Objection

Notice of Proposal inconsistent with draft TRO and Statement of Reasons

The Notice of Proposal and Statement of Reasons is substantially inconsistent with the draft TRO, to the extent that it is highly likely to mislead laypersons who make, or may have made, representations or objections in respect of the proposals or who would otherwise be potentially affected by the making of a TRO.

The draft TRO provides for the restriction of all motor vehicles and carriages but does not expressly provide an exemption for motor vehicles (and carriages) used for the purposes of accessing premises or for land management. Such use might only be possible with the consent of the Council or a Police Officer in Uniform, pursuant to clauses 3 or 4 of the draft TRO.

However, there is no guarantee or safeguard within the provisions of the draft TRO to ensure that such consent would be granted or that it would not be unreasonably withheld. Further, there is considerable scope for the Council to grant consent for unconditional and unlimited access for the purposes of land management and access to premises. Such a possibility is highly material to the issue of the Council proposing to inflict absolute detriment on the interests of responsible motorcyclists and of drivers of horse drawn vehicles.

2

The Notice of Proposal states:

“Use will continue to be permitted for pedestrians, cycles, horses, disabled persons wheelchairs and powered mobility conveyances, and for access by agricultural land users, highway maintenance vehicles and refuse collection.”

As we read that statement, there is a clear inference that prospective motor vehicle and horse drawn vehicle traffic for the purposes of access, refuse collection and land management will be facilitated on an identical basis as provision for non-motorised users. The presentation of the proposed TRO serves to confuse the layperson. Further, there is a lack of clarity as to the intended volumes of traffic that may be permitted in consequence of a consent being granted.

In the absence of certainty and clarity, it is reasonable to assume that volumes of motor vehicle traffic for the purposes of land management, access and refuse collection will vastly exceed the very low volumes of responsible motorcycle traffic and horse drawn vehicle traffic.



That likely circumstance is highly material to the Councils absolutist position of stating that shared use (with responsible motorcyclists and horse drawn vehicles) is “incompatible”, “not considered safe or appropriate”, and that intended construction is not “well-suited” for such use.

Restriction of “carriage of any description”

The draft TRO imposes a restriction on “carriage of any description” and then provides for some limited exemptions. The product is to prohibit all carriages that do not benefit from the limited exemptions.

The definition of carriage extends to pushchairs, scooters, bicycle trailers (whether or not drawn by a pedal-cycle), sledges, wheelbarrows, hand-carts, and wheelie bins. The proposed TRO would operate to restrict the use of such carriages. We say that this is as equally unfair as the prohibition of responsible motorcyclists and horse drawn carriages.

Lack of certainty that disabled motorcyclists exempted from restriction

Clause 6(4) of the draft TRO operates to disapply restrictions from and motor vehicle, horse drawn vehicle or carriage of any description which is:

“... a wheelchair, or similar conveyance powered by any means for use by a disabled person or persons.”

As we read the exemption, it is broad enough to facilitate the continued use of the road by TRF’s disabled members responsibly riding motorcycles. We would most certainly reserve the right to defend our disabled members in the event that they were prosecuted for an alleged contravention of the TRO.

But we would prefer the Council to better clarify that TRF’s disabled members are exempt from the restrictive provisions of the TRO insofar as they apply to motorcycles. Doing so would avoid unnecessary risk of confusion and the likelihood that our disabled members would be bullied out of the countryside in circumstances where they cannot enjoy accessing the road by non-motorised means.

Displacement of responsible motorcycle traffic and failure to have regard to logical alternative route / having regard to illogical alternative route.

We refer to the proposed TRO plans:

A - Icknield Way (BOAT) MPVs & Carriage Drivers Prohibition - CONSULTATION PLAN (“plan A”)

B - Icknield Way (BOAT & RB) MPVs Prohibition - CONSULTATION PLAN (“plan B”)



Both of the plans identify alternative routes, but the routes identified are not the logical choice for responsible trailriders enjoying the traditional and proper rural pastime of motorcycling on minor unsealed roads in the countryside.

The logical choice would be based on East – West travel, within the vicinity of a green road (i.e. a public motor road that has an unsealed surface and is recorded as a BOAT and/or Unclassified County Road).

For plan A this would be the BOAT leading to West Lockinge from Wantage. Travelling from the East end of that BOAT, the logical choice is to ride through Ardington and join the A 417 to West Hendred, where two BOAT's are located.

For plan B the choice would be to ride the cul-de-sac BOAT by “the mill” in West Hendred and then the short BOAT in East Hendred.

Both alternatives displace responsible motorcyclists, who are classed as vulnerable road users, onto a busy A road. The alternative route is less safe than the Icknield Way and has much less amenity for the purposes of trailriding.

It is not necessary to inflict an absolute restriction as per the proposed TRO, with the result that responsible trailriders are displaced onto more dangerous roads that aren't green roads and thus not suitable for trailriding.

Failure to properly address section 3 Road Traffic Regulation Act 1984

4

It is unclear from the TRO process as to whether vehicle access to premises will ultimately be denied for more than 8 hours in a 24-hour period. The draft TRO does impose such a restriction, but the matter is confused by content in the Statement of Reasons and Notice of Proposals.

There is a lack of certainty as to the Council's intentions. We have serious concerns that there is a lack of transparency as to the prospective management of the road for the purposes of access and how such matters were factored into the decision to approve the publication of proposals to make a TRO.

We express serious concerns as to the rationality and propriety of the Council deciding to propose a TRO that purports to restrict access traffic for more than 8 in 24-hours, for the purposes of section 3 Road Traffic Regulation Act 1984, in circumstances where it is unclear as to whether such traffic will benefit from the Council granting consents that result in no meaningful restriction at all.



Failure to comply with The Openness of Local Government Bodies Regulations 2014

We refer to our concerns raised in previous correspondence with the Council in respect of this issue, which concerns we repeat and should be regarded as incorporated in this present objection.

The Openness of Local Government Bodies Regulations 2014 (“the 2014 Regulations”) are intended to provide the public with a safeguard to promote transparency and openness in matters of the Council making decisions. Compliance with the 2014 Regulations performs an important function in the overall process of making a TRO, as it should result in the publication of decision records and background papers pertaining to the decision to publicise proposals to make a TRO before the proposals are published and the window for making statutory objections is open.

The availability to the public of such background documents and decision records can usefully inform their objections.

The Council has provided TRF with some background documents but has not provided a decision record, despite our formal request.

Further, it is apparent from the Council’s response to date that certain documents are not being made available to TRF and the wider public, for example the response from Thames Valley Police. We say that such a document is highly likely to be both a background document for the purposes of the 2014 Regulations and that it is likely to be material to the TRO process.

The effect of this is to unfairly deny TRF and the wider public the opportunity to make an adequately informed statutory objection that addresses the Thames Valley police response and the Council’s reliance upon that to pursue an absolutist approach in respect of imposing an unnecessary restriction on responsible motorcyclists and horse drawn vehicles.

We are of the view that the failure to comply with the 2014 Regulations has arisen through one of the following possibilities:

1. The Council failed to create a decision record/does not hold relevant documents and failed to inform TRF of its contravening the Regulations.
2. A decision record was created or can be created, and relevant documents are held but the Council has failed to provide TRF with copies and has a reasonable excuse.
3. A decision record was created or can be created, and relevant documents are held, but TRF is not being provided with copies as a result of a person intentionally obstructing access to those documents without reasonable excuse.



We express our serious concerns that the present circumstances are detrimental to public confidence in the Council and the propriety of the present TRO process.

Reliance on The Construction (Design and Management) Regulations 2015

It appears to TRF that the decision to pursue the proposal to impose the most extreme option of a total and permanent prohibition of responsible motorcycling and of carriage driving, is founded upon reliance on The Construction (Design and Management) Regulations 2015 (“CDM”) and the need for compliance with the same.

But the CDM are concerned with Health and Safety at Work legislation and safety on construction sites. There is no express provision in the CDM that prohibits the possibility of the shared use of the TRO roads or otherwise precludes or prejudices the shared use of the ford or bridge at Ginge Brook.

Bridlepath width bridges are not uncommon on byways and other green roads, with or without a ford. We would draw the Council’s attention to Sessingham Lane, along The Weald Way promoted route in East Sussex. Sessingham Lane includes a narrow bridge of approx. 1.5m width – too narrow for two horses to pass. There is no fording point where the bridge carrying the carriageway crosses the River Cuckmere, yet this promoted route has been successfully shared with responsible motorcyclists for many decades.

Barmouth bridge, at c.700m long and also of narrow width, has also been successfully shared with responsible motorcyclists for more than a century.

TRO’s are very flexible and can be used to ensure that motorcyclists do not use the bridge, or that they are only wheeled over with the engine switched off, and subject to giving way to all other traffic.

We would reinforce our concerns that a meaningful consideration of design and management of the bridge/ford cannot be properly performed in circumstances where there is a substantial lack of certainty as to the position in respect of motor vehicle traffic for the purposes of access. Notwithstanding those concerns, we would make the observation that any bridge or ford capable of sustaining and safely accommodating a mix of pedal cycle and equestrian traffic can also safely accommodate responsible motorcycle traffic. There is no evidence within the TRO process to the contrary, in circumstances where there is evidence of long established and successful sharing of the existing bridge and ford.



Flawed consideration of alternative options

We refer to the document entitled “TROissuesandoptionsappraisal_final15July2019” (“Options Document”).

The rationale for choosing option 1 is only sound in circumstances where there is a genuine effort on the Councils part to ensure that consultees are provided with sufficient information to allow for intelligent consideration and response. But, as we read the Statement of Reasons, draft Order, Notice of Proposals and TRO Plan, the exercise appears to be intended to defend a desired outcome of causing absolute detriment to the interests of responsible motor cyclists and carriage drivers, rather than as an open-minded approach to the prospective exercise of TRO powers. This is clear from the face of the Statement of Reasons and Notice of Proposals, which are rendered moribund by the infection of absolutist terms (used to convey *opinion* rather than fact), such as “not compatible to share”, “not well-suited”, “not considered safe or appropriate”, directed at motor cyclists and carriage drivers. The TRO process is absent of evidence to support such opinion – certainly insofar as it is public facing for the purposes of consultation and allowing for statutory objections to be made.

Our concern in respect of option 1 is further reinforced by the Council failing to comply with the 2014 Regulations.

Option 2 (“Abandon TRO 1 completely”) is rejected on the basis that “...it would place the whole scheme at risk...”. The reasoning demonstrates that the Council is not impartial in this matter, clearly adopting a position where it elevates the interests of the purported beneficiaries of the scheme to a special position, to the absolute detriment of the interests of other legitimate road users.

Further, the assertion re need for planning permission and a s.247 stopping up is plain wrong. The present bridge is not necessarily an unlawful obstruction. Indeed, it could be properly regarded as a reasonable adjustment to facilitate disabled access. We would draw the Councils’ attention to provisions of the Highways Act 1980 that provide powers to improve highways and that “diminishment” does not preclude the construction of a bridge from being an “improvement”.

Option 3 (“Abandon TRO 2 completely”) the reasoning is flawed as the powers available via a Public Space Protection Order (PSPO) allow for the use of bollards and other barriers to enforce restrictions on traffic. It is possible to use a PSPO to restrict traffic as a means to address issues of fly-tipping and hare-coursing.



Options 4 and 5 (width restriction TRO/motorcycle exemption). The assertion that “OCC’s primary role is to ensure user safety on a newly constructed and promoted facility” is plain wrong as a matter of fact and law.

The Council is subject of the duty set out in section 130 of the Highways Act 1980. That duty applies to all highways that the Council is responsible for as the highway authority. Further, as a traffic authority, the council owes a statutory duty (the Network Management Duty) in respect of the entire highway network. In exercising TRO powers, at the point of making a TRO, the council is required to satisfy duties owed under section 122 of the Road Traffic Regulation Act 1984. All the statutory duties apply *equally* to all road users. The legislation does not say that some users are more equal than others, nor does it say that there is an acceptable increase in mortality rate for motorcyclists displaced to more dangerous A roads by ill-conceived TRO’s.

The TRO as proposed does not eliminate risk as the intention appears to be to allow motor vehicles to continue to use the road for access. It is apparent that the Council contemplates exposing non-motorised users to risk and, sensibly, recognises that its role is to manage risk rather than eliminate it. That approach can accommodate a degree of responsible use of the road by motorcycles. Indeed, it is foreseeable that those accessing premises may do so by motorcycle.

Speed and noise are a factor and the TRO process contain no evidence to demonstrate that responsible motorcycle access by TRF members is a problem. Further, the Council has evidence to demonstrate that use of the routes by motorcycles is very low and that the route has successfully shared with responsible motorcyclists.

The TRO can be modified to facilitate a degree of responsible motorcycle access subject to conditions. It is not a binary choice between no motorcycle access and unregulated motorcycle access.

Option 6. The turning area of a motorcycle is less than that for a horse or bicycle and trailer. There is no need to construct turning areas for motorcycles. However, the suggestion of a dead – end route for motorcycles is absurd in the present and prospective circumstances where it is safe, appropriate and proper to use either the ford or bridge.



Statement of Reasons

The Statement of Reasons does not expressly identify the statutory purpose for which the TRO is being proposed. As we read the Statement of Reasons, the identified purpose appears to be for section 1(1)(a) of the Road Traffic Regulation Act 1984:

“for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or”

The Statement of Reasons sets out the aim of the TRO as thus:

“...the proposed measure is aimed at ensuring that danger is minimised....”

The Statement of Reasons refers to other matters and a footnote of statutory purposes that have been *considered* but does not assert that any of those are aims of the TRO or otherwise purposes for which the TRO is proposed to be made.

“Minimising” danger is far removed from eliminating danger. It is possible to minimise danger, or the likelihood of danger, from motorcycle traffic without imposing a complete ban on the use of the road with motorcycles.

Given that minimising danger is possible without a complete ban, it is not necessary to completely ban motorcycle traffic in order to meet the Councils stated purpose for proposing the TRO.

Given that the TRO does not appear to contemplate a total ban on motorised vehicles used for the purposes of access/land management and provides an exemption for disabled riders of motorcycles, we say that a TRO that totally prohibited able – bodied riders from using the road with motorcycles would not be in any way expedient for the statutory purpose mentioned in the Statement of Reasons.

Bias

The Council appears to be in a position where it’s ability to be impartial is at risk of being compromised. The evidence available thus far suggests that sign off for the SVCN project is subject of securing a TRO that satisfies criteria set out by SVCN partner organisations, and that the interests of cyclists and organisations representing their interests are enjoying a special position in the TRO process.

Regardless of the motivation for promoting cycling interests to the absolute detriment of certain road users, the maintenance and recovery of public confidence in the Council is not aided by such events.

TRF is of the view that the Council would more likely maintain and improve public confidence were it to refer any total prohibition of responsible motorcycle access and carriage driver access to public inquiry.



Alternatives to proposed TRO

We strongly recommend that the Council does not proceed with making the TRO as proposed.

Many of our members are keen cyclists and horse riders and we wish that the SVCN project is successfully delivered – TRF members and their families and friends will be cycling and horse riding on the route, as they do now.

We see that the project is at significant risk from the present TRO proposals, which are ill-founded and misconceived.

We would welcome opportunity to work collaboratively with the Council and its SVCN partners, with a view to securing a TRO and/or PSPO that commands broader support.

We see no evidence within the TRO process that responsible motorcycling by TRF members is a real-world problem or otherwise presents a prospective safety risk that is incompatible with SVCN aims.

Further, we say that occasional use of the road by TRF members has potential to reduce risk and deliver benefits to other road users. As a minimum, experience of sharing the road with responsible motorcyclists delivers the benefit of learning that sharing the road is not inherently dangerous or something to be feared. This has the knock-on effect of building non-motorised users' confidence to use busier roads.

We acknowledge that there is a perception amongst some that shared use may be dangerous and that such perceptions are important to address. An over-restrictive TRO is not the only option to address that issue, but it is the most extreme option and it causes unnecessary, absolute and avoidable detriment to our members interests. We say that the Council should reject such an absolutist approach where a more measured alternative will deliver a better outcome for all concerned.

It is possible to modify the draft Order to allow for additional exemptions. The TRO could also be accompanied by a PSPO, aimed at addressing issues of illegal behaviour. We respectfully request to be consulted on any modifications to the TRO.

We recommend the following be considered:

1. **Exemption which allows for the road to be used by motorcyclists (and carriage drivers) who have been issued with a permit.**

Government guidance (Making the Best of Byways, p 85) promotes the consideration of permit TRO's. The exemption can allow for TRF and similar reputable motorcycle organisations (i.e. Auto Cycle Union and Vintage Motor



Cycle Club) to issue permits to its members, as well as any other organisation that successfully applies to the Council.

Such an arrangement would allow for the SVCN to be promoted and enjoyed as a safe route where motor traffic is robustly regulated.

Additionally, or alternatively, the following options:

2. Exemption for TRF, ACU and VMCC to hold road safety rallies for motorcycle access, pursuant to regulation 5 of the Motor Vehicles (Competition and Trials) Regulations 1969

Road safety rallies are events where participants are awarded merit for good road manners and observance of the Highway Code. Such activity is entirely compatible with the safe sharing of roads with others. The exemption can provide for limits on group sizes and ensure that access only occurs on a minority of days – most days being left motorcycle free, as they are now.

3. Exemption to allow for TRF members to have organised access the road for the purposes of performing litter pick events.

Our members use of the road appears to be low-volume at present and we do not envisage that there will be a substantial increase in use. A reasonable and fair degree of access can be facilitated in circumstances where our members undertake the green road conservation task of litter clearing. We see this as a win-win scenario that all concerned benefit from. Litter is easy to spot from a motorcycle and we regularly collect it in the normal course of a trailride.

TRF is insured to provide for such activity.

Such an arrangement would address perceptions as to safety as the activity would be organised and regulated.

Yours sincerely

John Vannuffel

Technical Director