

**A SUGGESTED APPROACH TO THE MANAGEMENT OF DAMAGE OF WEST
BERKSHIRE'S RIGHTS OF WAY BY VEHICULAR USE
September 2009**

CONTEXT

Vehicles on public rights of way, most notably four wheel drive vehicles, have caused damage to many byways and former roads used as public paths (now Restricted Byways) in West Berkshire. The effect ranges from parallel ruts, which make use difficult for cyclists, equestrians and carriage drivers in particular, to major or deliberate damage, rendering use by any other types of user difficult or impossible. Such surface defects may deter increased participation by other users of rights of way, and there may be other detrimental effects, such as deviation of users onto adjacent private land.

Mechanically-propelled vehicles may use Byways Open to all Traffic, and prior to May 2006 were also permitted to use the then 'Roads Used as Public Paths' (RUPPs, now 'Restricted Byways'). There is some damage present on Restricted Byways as a legacy of their use by vehicles, and there may in places be continued illegal use of these routes by vehicles.

In 2008/09, West Berkshire spent approximately 50% of its works budget repairing damage caused by four wheel drive vehicles.

LEGAL BACKGROUND

West Berkshire Council has a duty to 'assert and protect the rights of the public to the use and enjoyment of any highway for which it is the highway authority, including any roadside waste which forms part of it' (Section 130 Highways Act 1980).

This duty extends to all legitimate public users of public rights of way, including vehicular users of byways.

Although the District Council has the responsibility to protect the rights of users, the following are offences:

Offences

Driving without lawful authority

Under S34(1) of the Road Traffic Act 1988, any one who, without lawful authority, drives a motor vehicle on any footpath, bridleway or restricted byway commits an offence.

Careless and inconsiderate driving / driving without license, tax and insurance

Under S3 Road Traffic Act 1988, if a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence. 'Road' is defined as meaning 'any highway and any other road to which the public has access' and therefore includes public rights of way. It is therefore also an offence to drive without tax, license and insurance on any public right of way.

Driving mechanically propelled vehicles elsewhere than on roads

Subject to the provisions of S34(1) Road Traffic Act 1988, if without lawful authority a person drives a mechanically propelled vehicle–

- (a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or
he is guilty of an offence.

Note that action on road traffic offences can only be taken by the police.

Damaging the surface of the highway

S1(1) Criminal Damage Act 1971

A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

[The property being damaged in this case is the surface of the highway belonging to the highway authority.]

S131A Highways Act 1980

- (1) A person who without lawful authority or excuse, so disturbs the surface of–
- (a) a footpath,
 - (b) a bridleway, or
 - (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,
- as to render it inconvenient for the exercise of the public right of way is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
[Level 3 is currently a fine not exceeding £1,000.]
- (2) Proceedings under this section shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed; and, without prejudice to section 130 (protection of public rights), it is the duty of the highway authority to ensure that, where desirable in the public interest, such proceedings are brought.

POLICY BACKGROUND

'Making the Best of Byways' (December 2005) is the government's practical guide for local authorities with the responsibility for managing and maintaining byways. It is an account of all legal and practical measures which might be taken to manage byways of the benefit of all users. The measures in this WBC policy broadly follow this government guidance.

REMEDIES

The District Council has powers to restrict the use of any public right of way, via 'traffic regulation orders' (TROs). In view of the duty of the District Council to protect the rights of all users of rights of way, is not appropriate from the outset to impose blanket restrictions, and other measures should in general be tried first.

Exceptions to the principle would be that a traffic regulation order to restrict the use of vehicles should be used from the outset where there is evidence of either a serious

threat of dangerous deterioration in the surface of the right of way, or a serious threat to the local biodiversity.

The District Council has the power to repair the damage, but care has to be taken that acting in such a reactive way does not simply move the problem in to other areas. There are measures which are in the power of the District Council to take, many of which try to prevent problems occurring in the first place, and these are suggested below.

First priority measures:

- Maintain the existing information boards on all restricted byways and also the cul-de-sac byway signs. This also serves to assist the police in understanding when action can be taken on site.
- Erect a 'Land Access and Recreation Association' (LARA) code of conduct board, or similar, on each byway. A more informative board may be a good idea, explaining the situation, e.g. 'if you damage this byway, this is an offence under (named legislation) and it may result in closure of the byway in the future'. Northamptonshire County Council has a policy in this respect.
- Erect signs requesting that particular classes of traffic refrain from use at times when the surface is sensitive to such use, e.g. after rain or over winter. Publicize the request amongst local user groups and the Land Access and Recreation Association (LARA). This could be extended to the system of 'Voluntary Restraint', whereby LARA will publicize the request amongst motoring groups. LARA is likely to require a commitment to future repairs from the Council, as a condition of Voluntary Restraint.
- Take steps to identify illegal users, via local knowledge, police data already in existence (e.g. from the Ridgeway policing), path wardens, liaison with responsible user groups and stakeholders, and research on web sites, e.g. vehicle club sites, where some companies organize off-roading holidays for vehicles. For example, four wheel drive groups from Germany and Holland have been seen on West Berkshire's byways.
- Consider the feasibility of employing wardens to observe use at known 'hot spots' on peak days, often Sundays.
- Consider the selective use of CCTV, e.g. to monitor use by a suspected particular offender.
- Liaise directly with motor clubs, to explain the problems and encourage supportive behaviour.
- Assess the extent of damage caused by private landowner access. Encourage landowners to use alternative non-rights of way accesses if possible, and to repair damage caused and maintain the surface. Consider any incentives which could be offered under agri-environment schemes in this respect.
- Make maximum use of neighbourhood policing, and formally approach the police with a request for increased support. Create partnerships with the police and provide help and information to assist them, as they cannot allocate resources to a 'nebulous' problem. Encourage the police to compile a specific database, so that repeat offenders can be identified. Note that a Neighbourhood Action Group is unlikely to consider a problem on a remote byway to be a priority.
- Repair and maintain byways which constitute priorities in the Rights of Way Improvement Plan. Follow repairs with temporary traffic regulation orders, if these are

needed to protect new works. Accompany each TRO with a press release and signs on site, to explaining why it has been necessary.

- In the case of all restricted byways, renovate the surfaces following a survey of works required, and immediately follow this work by the installation of 'Kent Carriage Gaps', which allow access for all users, except cars and larger, and allow private access by landowners.
- Erect accessible barriers to prevent vehicular use of non-vehicular rights of way where there is a reported problem.

Second priority measures if the first priorities do not meet with any success:

Seasonal or permanent traffic regulation orders (TROs) on byways may be imposed if vehicular use is damaging the environment, destroying local character or conflicting with non-vehicular users. Each TRO ought to be accompanied with signs on site, to explain why it has been necessary.

The guiding principle should be that the least restrictive option should be tried first. For instance, first of all, any restriction would be for as short a period as is necessary and should only apply to the most damaging types of users and at the most vulnerable times of year. An experimental TRO could also be used, but this would only be for a maximum of 18 months. A TRO would normally be accompanied by physical barriers.

Note: consideration would always be given to whether motorcycles are required to be a part of any traffic regulation order, as the damage caused by motorcycles is arguably less than that caused by four wheeled vehicles. Motorcycles tend to use the 'middle lane' between the tracks of four wheeled vehicles, and it takes many traverses to produce the same depth of rut as that produced by the four wheeled vehicles. Motorcycles often cannot use the outer ruts, as the depth interferes with the peddles. They also cannot use tracks which have been badly damaged by vehicles. Kent has used a system of 'gated access' which allows motorcycles but not four wheeled vehicles.

Longer-term or ongoing high priorities:

- Constantly review the approach once the efficacy of the measures, plus any policing operations, have been assessed.
- Continue to encourage people to report number plates, times and locations of vehicles causing damage.
- Produce a widely-distributed information leaflet on rights and responsibilities of vehicle users. Distribute to garages, off-roading magazines, off-roading web sites, etc.
- Continue to seek alternative sites for off-road vehicular use, which do not involve the use of public rights of way. Attention is initially drawn to the Auto Cycle Union's initiatives, see www.acu.org.uk / local authority support). Seek such a site via the draft Local Development Framework, planning applications, Stewardship, LEADER etc. Consider a pilot scheme in an area where the parish council is supportive. See the initiative by Berkhamstead Motor Club, which has negotiated the use of a Council 'land bank' for use as a motorcycle scrambling area, combined with other leisure use.

An organization called 'Enduroland' also operates sites, at £30 per day, which can attract 100+ motorcyclists on a Sunday. Provision of such sites definitely results in a decrease of 'fun riding' on public rights of way.

Formally adopt the existing draft approach to the maintenance of rights of way used as private access to properties or land.

Note: In this context of this document, there are three case studies, summarized below, showing how policing has helped to combat illegal vehicular use: Operation Freedown, Bucklebury Common and Sussex Pathwatch.

SELECTED CASE STUDIES

Case studies showing how policing has helped to combat illegal vehicular use

'Operation Freedown' – Kent Police

Operation Freedown began when, in 2002, the police responded to many complaints about off-road motorcycling. There had been no co-ordinated approach and the police called a meeting of all stakeholders. There were finite resources and it was decided to concentrate on 'hotspots' of known activity. The operation started at Freedown, and neighbourhood watch schemes, stakeholders etc. were used to identify popular times of the week. Officers with video cameras were waiting and there were prosecutions. Stakeholders were used to build up intelligence of patterns of use. There were also volunteers on the ground who reported number plates, and the police sent written notices to the owners. It transpired that many were company vehicles.

The police introduced a new code of 'nuisance motor vehicles' on the database and this also allowed for searches of patterns of use to be made.

Partnerships were also built up with local shops and newspapers. Information was given to buyers of certain types of vehicles, to inform them of responsible behaviour.

The problem, when tackled at Freedown, moved to other areas, and it became clear that more education was needed. Many vehicles came from social housing areas and clauses were inserted into tenancy agreements to prevent antisocial behaviour.

Trail riders were found, on the whole, to be responsible users: it was 'boy racers' who caused the problems.

Kent has 100 rural wardens (Kent County Council staff) – and will soon have police community wardens. Rights of way, environmental health and planning officers are also used.

Bucklebury Common, West Berkshire

Newbury police have served notices and confiscated vehicles, after observing problems with vehicular abuse of the common, first-hand. The police allocated resources to the problems following a high level of complaint from the public. Many motorbikes came from the local estates. 4 Wheel drive vehicles came from much further afield.

Sussex Pathwatch (taken from a report by West Sussex County Council to the County Surveyors' Society, July 2008)

'Sussex Pathwatch' was formed to combat motorized vehicles using public rights of way illegally in the Sussex countryside. A discussion group has been formed which comprises Sussex Police, South Downs Joint Committee, West Sussex County Council, Parish Councils, Landowners, recreation user groups and countryside organizations.

The initiative is essentially a scheme to encourage reporting of incidents, via a website or a police telephone number. Credit-card sized cards were distributed via libraries, TICs, parish councils and other local outlets.

Once incidents are reported a serial number is generated and allocated to a police officer. The officer then verifies the recorded information with the informant wherever possible. If the registration number is recorded this will be checked on the Police National Computer (PNC). The registered owner is sent a letter informing them of the complaint, along with a T51/1 form requesting the vehicle's owner to identify the driver at the time of the incident.

The identified driver is subject to either a verbal or written warning, or a Section 59 warning (anti-social behaviour with a motor vehicle, under the Police Reform Act 2002). Notification of any action is then placed on the PNC, which alerts other officers to it. The S.59 warning lasts for 12 months and if further incidents of anti-social behaviour with a motor vehicle involving the driver occur, the vehicle will be seized. If this happens, the owner has to pay to recover the vehicle (currently £105, plus £12 for every day the vehicle remains seized). If the owner has not recovered the vehicle after 28 days, it may be crushed. The vehicle can be seized each time anti-social behaviour is reported and a new 12-month period will extend from that subsequent date.

Where there are a series of reports being generated from an area, wherever possible, Special Police Officers visit the area in an attempt to catch drivers committing a crime.

Some farmers and land managers (including Estates such as Goodwood, West Dean) have subscribed to Countrywatch, where they purchase a radio (around £200) enabling them to communicate directly with the Police and each other. These are particularly useful for warning neighbours that vehicles are travelling in their direction and to notify the Police when a crime is being committed.

The TRF has reservations about the scheme, as the public does not often understand what constitute an offence, and will report merely the presence of a vehicle. There is a value in reporting schemes, however, to help better understand patterns of use.

Meetings

Sussex Pathwatch meetings are held every four months and are open to anyone who wishes to attend. Currently they are attended by SDJC (Chair and secretariat), WSCC, Sussex Police, representatives from local parish councils, user groups (e.g. British Driving Society, British Horse Society) and other land managers (e.g. National Trust, Estates, farmers). Motoried user groups, including the TRF, the Land Access and Recreation Association (LARA) and the Green Lane Association (GLASS), initially attended meetings, but withdrew their interest. They are all still invited and sent notes of the meetings, as it is considered that they would be a valuable asset to the group.

A different venue is chosen for each meeting, hosted by a different parish council or organisation, due to the large geographical area of Chichester District. The meetings give feedback on reported incidents (which is important to make people feel that their reporting is worthwhile) and provides everyone with an opportunity to discuss problems in their areas, with the relevant organisations present to address them. The importance of continued reporting to ensure the future success of the project is also emphasised and additional publicity carried out at appropriate times.

Now the reporting system is in place the group feels that signage needs to be improved to make people aware that motor vehicles are not allowed on Restricted Byways, as all too frequently when a vehicle is approached by a member of the public or land owner the driver claims not to know he is not allowed to ride/drive there. Wooden 'no motor vehicles allowed' signs, similar in size to residential road signs, are being considered in about 10 of the worst locations. Smaller signs are being considered for wider signage, bearing in mind many of the

Restricted Byways are within an Area of Outstanding Natural Beauty where signage 'clutter' needs to be kept to a minimum. Funding is currently being sought for the signs.

Successes/problems

The scheme is already recording successes. Illegal motorised activity is estimated to have reduced by between 50% and 75% in Graffham Parish, one of the worst affected areas since the launch of Sussex Pathwatch. Over 150 warning letters have been sent to offenders, 30 Section 59 warnings have been issued and two prosecutions are pending. In addition to this, through the reports received, hot spots have been identified and Police Community Support Officers have subsequently been patrolling these areas, leading to a reduction in activity.