

**BUCKINGHAMSHIRE COUNTY
COUNCIL**

**POLICY FOR THE MANAGEMENT OF
MOTORISED VEHICLE USE IN THE
COUNTRYSIDE**



MARCH 2008

POLICY STATEMENT

IN THE EVENT OF PROBLEMS OCCURRING BY VIRTUE OF MOTORISED VEHICULAR USAGE ON PUBLIC RIGHTS OF WAY, THE COUNCIL WILL: -

- 1. Encourage all concerns of criminal activity to be reported to the Police**
- 2. Take action against those causing high levels of damage**
- 3. Adopt a partnership approach seeking practical measures to alleviate the problem**
- 4. If appropriate, seek voluntary restraint agreements**
- 5. Where appropriate, work with land managers to resolve problems**
- 6. If the above measures fail, or are considered inappropriate, consider the necessity for a Traffic Regulation Order in consultation with the Police, on the basis of evidence of sustained activity resulting in environmental damage, effects on public safety, biodiversity and public nuisance**
- 7. The use of TROs pre-emptively will be considered although only where exceptional circumstances dictate a significant potential for problems of public safety or damage to fragile environmental conditions or biodiversity**

POLICY FRAMEWORK

A. INTRODUCTION AND BACKGROUND

- 1 Buckinghamshire's Definitive Map and Statement (DMS) of public rights of way includes footpaths, bridleways, byways open to all traffic (BOATs) and restricted byways. Public rights for mechanically propelled vehicles only apply to the routes recorded as BOATs although private rights might exist on any route.
- 2 Restricted byway is a category of right of way introduced by the Countryside and Rights of Way (CROW) Act 2000. Routes that were previously included in the DMS as Roads Used as Public Paths (RUPPs) have now been redesignated as restricted byways, and can be used by pedestrians, horse riders, cyclists and by horse and carriage or cart drivers.
- 3 A number of the public rights of way included in the DMS are also included in the County Council's Unclassified County Road Register (UCRR), which was compiled under the provisions of the Local Government Act 1929 (LGA29) as Unclassified Unmetalled County Roads (UUCRs).
- 4 The LGA29 defined 'County Roads' as every road for which the County Council became the highway authority. Section 30 LGA29 made the County Council the highway authority for all highways in rural districts. Section 134 LGA29 defined 'road' as a highway repairable by the inhabitants at large. 'Unclassified' means a road not classified by the Ministry of Transport under the Ministry of Transport Act 1919.
- 5 In some counties the UUCRs were recorded on early Definitive Maps as RUPPs. In Buckinghamshire only a very few of the UUCRs were so recorded; instead many being recorded according to their usage at the time as either bridleways or footpaths. It appears from the County Council's records that the UUCRs were considered as public roads that did not fall into one of the categories of rights of way to be shown on the Definitive Map. In many instances footpaths and bridleways terminate on UUCRs, which is indicative that at the time of the preparation of the Definitive Map they were considered to be roads.
- 6 Where UUCRs are also shown on the Definitive Map as bridleways or footpaths this does not preclude the existence of higher rights. However, the UCRR, unlike the Definitive Map, is not conclusive as to the status of the routes it contains, merely that they are maintainable highways.
- 7 The term "County Road" no longer has any significance as it was abolished by the Local Government Act 1972.
- 8 Confusion therefore, has arisen over routes included in the DMS in any category of right of way, which were also included in the UCRR as unclassified unmetalled roads. The status of those routes included in the

UCRR but not shown on the Definitive Map is equally problematic. The recording of these routes did not permit any vehicular status to be clearly defined. This problem has been exacerbated over the years whereby there is general acceptance by the public and landowners that roads surfaced by the Council as highway authority have vehicular rights and those that the Council chose not to surface do not. That cannot be the basis for determining highway status but is a major source of misunderstanding.

- 9 The County Council now maintains a List of Streets as required by the Highways Act 1980 (HA 80) Section 36(6). In Section 329(1) HA 80 a street is defined as “any highway and any road, lane, footpath, square, court, alley or passage whether a thoroughfare or not and includes any part of a street.” This is the successor document to the UCRR which lists ‘streets’ that are maintainable at the public expense (but is still not a record of which rights exist over them).
- 10 Routes formerly defined as UUCRs were included in the UCRR as unclassified unmetalled county roads and are now recorded in the List of Streets. As stated above some of the UUCRs are also shown on the DMS as public rights of way, but some are not.

B. THE CURRENT SITUATION

- 11 **The Natural Environment and Rural Communities (NERC) Act 2006** has the effect of extinguishing all *unrecorded* public rights of way for motor vehicles, subject to certain exceptions, and to prevent use by motor vehicles giving rise to any kind of public right of way. Therefore, any existing public rights of way for mechanically propelled vehicles not shown on a DMS or shown on a DMS only as a footpath, bridleway or restricted byway immediately before the commencement of the Act are extinguished. There are some exceptions to this: -
 - Where an existing public right of way is over a way whose main lawful use during the 5 years ending with the commencement was use by mechanically propelled vehicles;
 - Where a way was not shown on a DMS, but was shown in a list of highways maintainable at public expense;
 - When an application for a Definitive Map Modification Order was made before 20 January 2005. These are to be dealt with under the old law.
- 12 Therefore, ways where vehicular rights have been acquired by non-motorised vehicles, such as horse-drawn vehicles may only be recorded as Restricted Byways, consistent with their historical use.
- 13 **The Countryside and Rights of Way (CROW) Act 2000** prescribes a cut-off date of 1 January 2026 for the extinguishment of all historic rights of way created before 1 January 1949 that have not been recorded on the DMS. DEFRA guidance is that any routes that are shown on the List of Streets but not on the DMS are not exempt from extinguishment. Consequently, there is a need to investigate the status of those routes to

ensure that any which carry footpath, bridleway or restricted byway rights may be recorded on the DMS before the cut-off date. The County Council is under a duty to do this.

- 14 **The “Discovering Lost Ways” Project** arose from CROW and was set up by the former Countryside Agency, now Natural England. A team of researchers - the Archive Research Unit - has been established to take a systematic approach to researching the principal historic sources of evidence of potential lost ways across the country. To date the research method has been piloted in a small number of authority areas. Research in the remaining areas will follow, with full coverage of England expected to be complete in 2012. It is anticipated that this will result in applications for routes to be recorded on the DMS, with the need for consideration by the Rights of Way Committee.

C. MANAGEMENT

- 15 Buckinghamshire County Council has to ensure, by virtue of the Highways Act 1980 section 130, that where the public has a proven right to drive motor vehicles on public rights of way the right to the use and enjoyment of such highways is in accord with those statutory requirements.
- 16 The Council will be mindful of DEFRA’s “Making the Best of Byways: a Practical Guide on Managing the Use of Vehicles on Public Rights of Way” in support of the management of BOATS where problems exist, such as conflicts between users, poor surface conditions and increase in BOAT use.
- 17 Section 41 HA80 imposes a duty on the Council to maintain highways maintainable at public expense to the standard necessary to accommodate the ordinary traffic that passes, or may reasonably be expected to pass, along the highway. Therefore, the possibility of additional maintenance due to usage by vehicles in poor weather will be considered.
- 18 Practical works or maintenance can be a more straightforward solution to some problems of vehicle use as well as a means to discourage unlawful use. From this perspective, the Council will: -
 - Ensure that routes are correctly signposted and waymarked.
 - Use appropriate management techniques to deal with any physical deterioration being mindful of advice contained in DEFRA’s ‘Making the Best of Byways’ to ensure that the standard of maintenance is consistent with the purposes for which routes are used by the general public.
 - Carry out maintenance, on a priority basis with attention being paid to those routes where public safety is deemed to be at risk, but also taking into consideration such factors as: -

- An objective assessment of the surface condition of the route.
 - The importance of the route to the whole network.
 - The recorded level of complaints from members of the public.
 - The level of use by the general public.
 - Whether it is part of a County Council promoted route.
- 19 Legal and administrative management measures are also available to deal with management problems such as conflict between users and environmental problems such as surface degradation, habitat loss and disturbance and these will be used where appropriate. These management measures include the use of voluntary restraint agreements and Traffic Regulation Orders (TROs).

C1. Traffic Regulation Orders

- 20 The use of TROs is derived from The Road Traffic Regulation (RTRA) Act 1984 and can be used to regulate the type of traffic that uses a public right of way. Part of this legislation refers to the prevention of use to preserve the character of a way in a case where it is specifically suitable for use by persons on foot or on horseback; for preserving or improving the amenities of the area through which the road runs; or for conserving natural beauty including flora, fauna and geological and physiological features.
- 21 DEFRA's advice on the use of Traffic Regulation Orders (TROs) is included in its Circular "Regulating the use of Motor Vehicles on Public Rights of Way and Off Road" (the Circular). The Circular highlights that permanent TROs need to be supported by evidence that the Order will achieve one or more of the following outcomes: -
- Avoid danger to persons or other traffic using the road
 - Prevent damage to the road or any building on or near the road
 - Facilitate the passage of any kind of traffic (including pedestrians)
 - Prevent unsuitable use by vehicular traffic
 - Preserve the character of the road in cases where it is particularly suitable for horseback or on foot, or preserve or improve the amenities of the area through which the road runs
 - Conserve or enhance the natural beauty of the area. This includes conserving flora and fauna and geological or physiological features
- 22 The Circular also considers the potential use of pre-emptive and experimental TROs. Pre-emptive TROs may be made restricting or banning vehicles or other traffic even where such rights are not recorded on the DMS.
- 23 Experimental TROs may be made quickly for up to 18 months to test a scheme of traffic control before deciding whether to make it permanent. They may also be withdrawn or modified quickly if they are unsuccessful or need to be adapted. Before making an Order, the County Council must show that there is good reason to make it and that the TRO is a genuine experiment.

- 24 The Circular lists a number of key actions to discourage illegal use of public rights of way, including developing a local strategy, targeting local hotspots and investigating what action might discourage illegal activity from taking place.
- 25 The Council will consider of the use of TROs only on the basis of sound and sustained evidence and not as a means to solve what might be 'one-off' or short-term problems. The use of pre-emptive TROs may be useful but will only be considered where exceptional circumstances dictate a significant potential for problems of public safety or damage to fragile environmental conditions or biodiversity.
- 26 The Council will seek to impose a TRO after appropriate consultation and in accordance with the advice in The DEFRA circular and Circular 2/93, only where practical measures to alleviate problems and voluntary restraint agreements are considered inappropriate or have failed.
- 27 Decisions to make Traffic Regulation Orders rests with the Council's Rights of Way Committee.

C2. Voluntary Restraint Agreements and Codes of Conduct

- 28 Voluntary Restraint Agreements have no legal status but they can be effective. The Circular indicates that voluntary restraint can be effective in reducing but not eliminating unsustainable use, although irresponsible drivers will ignore voluntary restraint notices. This can be a useful tool where a reduction in mechanically propelled vehicle traffic is desirable but not where it is agreed that prohibition of such use is needed.
- 29 Voluntary restraint agreements linked to a programme of maintenance may be used to restrict access during, for example, particularly wet weather conditions.
- 30 Where there is a need to prevent further surface damage resulting from continuous use with motor vehicles and remedial maintenance measures have failed or are considered not to be suitable, the Council will seek to involve vehicle users in voluntary restraint agreements (in line with the guidelines and procedures advocated by LARA and contained within 'Making the Best of Byways').

C3. Use of Routes by Landowners and Farmers

- 31 It needs to be acknowledged that many of these routes are also agricultural access routes to surrounding land and, frequently, damage may be caused as a result of such access during times of adverse weather. Routes may also be used for other forms of husbandry such as woodland and forestry management. Where such damage is caused the responsibility for restoring surfaces should fall to those that cause the damage. It is also possible that an offence has been committed if routes

are rendered inconvenient for use by the public or if the usage is excessive or 'extraordinary'.

C4. Other forms of Illegal Use of Routes

- 32 The most common form of complaint made to the Council in respect of unlawful use by motor vehicles, tends to be urban fringe activity and relates to use by (typically) youngsters on untaxed, uninsured motorcycles. In the first instance, complainants will be encouraged to report these matters to the Police who have their own powers to deal with the problem and in a more direct way – such as the use of Anti-Social Behaviour Orders or the seizure of vehicles / motorcycles. Such complaints can arise whether or not the routes in question carry rights for vehicle users and management measures are, as a consequence, not so straightforward. For example, the use of a Traffic Regulation Order may be an over-reaction to what might be a short-term problem. Any illegal activity referred to the Police would be dealt with as a criminal investigation.