

**Assessment of The Kent County Council  
(Byways Open to All Traffic (BOATs) MR45A, Snodland, NS245 & NS221,  
Luddesdown )(Prohibition Of Driving) Experimental Order 2012**

**The Medway Council  
(Byway Open to All Traffic (BOAT) RS221& Chapel Lane (part) Halling)  
(Prohibition of Driving) Experimental Order 2012**

**Summary**

- 1.0 On 10 July 2012 Kent County Council and Medway Council made orders the effect of which were to introduce an experimental scheme of traffic regulation for Byways Open to All Traffic\_(Byways Open to All Traffic (BOATs) MR45A, Snodland, NS245 & NS221, Luddesdown ) and Byway Open to All Traffic (BOAT) RS221& Chapel Lane (part) Halling)  
This assessment considers whether the Experimental Traffic Regulation Orders have proved effective in achieving their objectives.

Background

- 2.0 Byways Open to All Traffic (BOATs) MR45A, NS245, NS221 and RS221 form a small network of BOATs located on the border of Tonbridge and Malling Borough, Gravesham Borough and Medway Council areas. MR45A forms part of the North Downs Way National Trail. The BOATs provide access to a Site of Special Scientific Interest (SSSI). The site is entirely situated within the Kent Downs Area of Outstanding Natural Beauty.
- 2.1 A report was produced for the Byways Working Group and Kent Countryside Access Forum following consultation with the local community, vehicle users, public rights of way user groups and other interested parties. The report was produced as a result of concerns being expressed about vehicle use of the BOAT's and specifically damage to their surfaces, deliberate and damaging use of the margins and areas of land immediately beside them, wide spread vehicle trespass that was damaging to the SSSI and areas of agricultural land. Additionally fly tipping and other criminal activity had been identified as occurring.
- 2.2 Substantial evidence was provided by consultees of the following issues impacting upon the amenity of the area:
- The damaging use of motor powered vehicles on land other than the highway including to the SSSI.
  - Damage to the surface of the highway caused by the deliberate driving of vehicles on soft margins and in ditches beside the highway.

- Criminal damage to barriers designed and installed to prevent egress by vehicles from the highway
- Degradation of the surface of the BOAT through vehicle use.
- Fly tipping

This evidence was referred to in detail in the report to the Byways Working Group (Appendix 1) .

- 2.3 The approach taken by the County Council to the management of BOATs has been to preserve access for motor vehicle users recognising that many users act responsibly. Management interventions are limited to what is necessary to address the issues affecting a BOAT. Unfortunately, in this instance the level of trespass, damage, anti- social and criminal behaviour was so great that it was considered necessary, appropriate and proportionate to exclude all motor vehicles other than those issued with a permit.
- 2.4 The County Council and Medway Council introduced an experimental order the effect of which was to prohibit all motor vehicles other than those issued with a permit. It has consistently been the County Council's approach to limit the extent of Traffic Regulation Orders to that which is necessary and proportionate rather than to impose blanket prohibitions. In proposing to introduce an experimental scheme of traffic regulation it was clear that to be effective BOAT NS221 and a length of Chapel Lane in the Medway Council area would have to be included in the scheme. Medway Council were consulted at all stages and were in agreement with the proposals. Medway Council made an Experimental Order for BOAT NS221 and Chapel Lane (part) at the same time that Kent County Council made its Order.
- 2.5 Experimental traffic regulation orders may operate for a maximum period of 18 months.
- 2.6 The County Council and Medway Council proceeded by way of an experimental scheme as they wished to assess the impact of the scheme:
- In reducing reported instances of antisocial behaviour/ criminal damage
  - In enabling the repair and recovery of the BOATs and their margins,
  - Allowing the recovery of ground flora within the SSSI.
  - In halting degradation of the BOAT surface resulting from vehicle use
  - In enabling more effective policing of the area,
  - In enabling access by permit to a number of motor vehicle users.

- 2.7 The experimental scheme was introduced using the provisions within section 9 of the Road Traffic Regulation Act 1984 for the purpose of preserving and improving the amenities of the area through which the road runs as set out in section 1 (f) of the same Act.
- 2.8 It was not necessary to amend the orders although the regulations would have permitted this.
- 2.9 The Orders were kept under review. They have now been in operation for over 12 months and a decision must now be taken on whether to make them permanent, amend or abandon them.
- 2.10 Kent County Council and Medway Council must have regard to the duty set out in Section 122 Road Traffic Regulation Act 1984 to secure the expeditious convenient and safe movement of vehicle and other traffic (including pedestrians) in reaching a decision about making the ETRO permanent.
- 2.11 The Experimental Traffic Regulation Order prohibited vehicular traffic subject to a number of exemptions:
- Emergency services vehicles,
  - utility company vehicles,
  - vehicles using the BOAT at the direction of the police,
  - those using the route to access their land or with the permission of the landowner,
  - motor vehicular users who had been issued with a permit
- 2.12 Permits were available to any motor vehicular user that applied subject to them providing details of their vehicles and agreeing to abide by the following terms and conditions:
- 1. The use of the BOATs subject to the access by permit scheme by vehicles is regulated by Road Traffic Regulation Act 1984 Orders made in accordance with the Road Traffic Regulation Act 1984. Contravention of a Traffic Regulation Order is an offence punishable by fine and / or penalty points.*
  - 2. Both the driver/rider and vehicle must be fully road legal: ie taxed, insured, licensed, holding a current MOT certificate.*
  - 3. Both the permit and Identification must be carried when using BOATs covered by the permit system.*
  - 4. Public vehicle access is **strictly** limited to the routes of the BOATs only. (Map and photographs to enable accurate route finding are provided with the permit).*
  - 5. Access to the routes is controlled by vehicle barriers. The barriers are secured by a combination lock. The combination will be provided to permit holders and those exempted in the Experimental Traffic Regulation Order.*

6. *The use of the BOATs should be avoided during wet weather.*
7. *The combination must not be provided, by permit holders, to other individuals or groups. Other individuals may apply in their own right.*
8. *The combination will be changed from time to time. Permit holders will be notified of the change of combination.*
9. *Always open and close barriers to access the BOATs.*
10. *If permit holders vehicles are seen off the route of the BOAT their permit will be withdrawn. Additionally Kent Police will be notified.*
11. *Permit holder co-operation is requested in preventing deliberate acts of trespass into areas beside the BOATs, irresponsible vehicle use and antisocial behaviour. Please report the details of vehicles seen being driven irresponsibly off the route of the BOATs to:*
  - *Kent report line 0845 3450210.*

2.13 In addition to the evaluation of the impact of the scheme in respect of the points set out in paragraph 2.6 above the following additional elements have been considered:

- The resource requirements of running a permit scheme.
- The impact of the scheme on the general amenity of the area.
- The impact on the convenient and safe movement of vehicular and other traffic as required by section 122 of the Road Traffic Regulation Act 1984.

2.14 3 representations either in support of or objecting to the introduction of the ETRO were received during the six month period in which they may be made. Those objections and the view of the PROW and Access Service on them are summarised in the Member decision report. (Ref)

### **Impact in reducing reported instances of antisocial behaviour/ criminal damage**

3.0 The Valley of Visions Landscape Partnership operates within the Medway Gap. An aim of the partnership was to improve the enjoyment of positive recreational activity in the area and to prevent damage to the landscape and flora of the area by unauthorised vehicle access and associated anti social behaviour. The Landscape Partnership used the National Police Intelligence Model to identify areas particularly affected by unauthorised motor vehicle access and to target appropriate interventions. The approach of the Landscape Partnership has enabled accurate recording of nuisance access by motor vehicles through:

- Police reports.
- PCSO patrols in the area.
- Landowner surveillance of non-public areas.

- 3.1 In the month prior to the introduction of the ETRO over 120 instances of illegal motorised access occurred in areas accessed from the BOATs. Within 4 months the levels of access had reduced to negligible levels. In the period May – August 2013 no instances of unlawful access were reported.
- 3.2 The introduction of the ETRO is only one of a number of measures that have been used to control access, these include:
- Boundary strengthening.
  - Targeted police activity.
  - PCSO patrols.
  - Landowner stewardship.
  - Repair of the BOAT to encourage use of the correct route.
  - Improved signage.
- 3.3 It has, however, proved the key component in bringing about a reduction in the level of nuisance and illegal activity. It has:
- Enabled the BOAT to be repaired and resurfaced in a manner that should sustain future vehicle use.
  - Enabled the number of access points to be better secured.
  - Encouraged investment by the landowner to secure boundaries
- 3.4 The ETRO has clearly contributed significantly to the successful prevention of unlawful use.

#### **Enabling the repair and recovery of the BOATs and their margins,**

- 3.5 The BOATs were closed on a temporary basis following the introduction of the ETRO to facilitate repair work, some of which was undertaken once vehicle access had been allowed by permit. Areas of significant undercutting were filled, posts installed to prevent further deliberate running on the margins of the BOAT. The BOAT was re-surfaced. The landowner undertook work to strengthen boundaries including felling and laying trees. Inspection of the BOAT on the 11 September 2013 indicated that the BOAT was in a good condition, clearly defined and safe to use for all lawful user types.
- 3.6 The ETRO had clearly facilitated both the repair works and improvement of the BOAT to a suitable standard for public use although there is a little evidence of running on the BOAT margin at one location it has not to date been damaging and is not at anything like previous levels which served to undo any repair work almost immediately.

### **Allowing the recovery of ground flora within the SSSI.**

- 3.7 The BOATs path through the Halling to Trottiscliffe Escarpment SSSI, designated as representative of chalk grassland and beech woodland on chalk. The woodland through which the BOATs pass is noted for its ground flora of bluebells and other ancient woodland indicator species.
- 3.8 Damage to ground flora was wide spread with large areas effectively denuded of ground flora altogether as a result of motor vehicle activity. Areas over which vehicle access has been prevented have started to re-vegetate with the more aggressive rapidly growing species such as brambles already in evidence. Recovery of the target species will inevitably take much longer and will only occur if the areas involved remain traffic free over a considerable period.
- 3.9 In respect of the recovery of ground flora there is evidence of the damaged areas re-vegetating. However there is little evidence as yet of the recovery of target species. It would appear that the ETRO facilitates the conditions in which this outcome will be achieved in the long term.

### **In halting degradation of the BOAT surface resulting from vehicle use**

- 3.10 There is anecdotal evidence of a change in the balance of use on the route, with greater use by equestrians, cyclists and pedestrians being highlighted. On inspection a number of cyclists were witnessed and there was clear evidence of equestrian use. Motor vehicle use is less evident than prior to the introduction of the ETRO and appears to be largely confined to the running surface of the BOATs.
- 3.11 There is some evidence of degradation of the surface of the BOAT on inspection. However this is consistent with the majority of the PROW network where wear is confined generally to the centre of a route. The key point is that the nature and pattern of use appears to have changed and as a result deliberate acts designed to undermine the fabric of the highway have largely been eradicated. The wear now evident is consistent with what may be expected on a BOAT subject to “normal” use and the maintenance requirements as a consequence are consistent with what may reasonably be expected for a public highway of this status.

### **In enabling more effective policing of the area**

- 3.12 The implementation of the ETRO was co-ordinated with a number of operations by the Kent Police Off Road Team. A PCSO (funded through the Valley of Visions Landscape Partnership) was employed for the area and regularly patrolled the BOATs – checking permits.
- 3.13 The permit application requires an undertaking to adhere to a code of conduct. (Set out in paragraph 2.12)

- 3.14 The ETRO is enforced by means of barriers locked with a combination lock with radar key operated bypass gates for mobility vehicle, wheelchair and disabled users.
- 3.15 All of the above contribute to the effective policing of the ETRO. In terms of assessment of the operation of the ETRO, criminal and antisocial behaviour have been reduced to almost nil, a clear indication that the ETRO has facilitated more effective policing of the area.

#### **In enabling access by permit to a number of motor vehicle users**

- 3.16 Permits for access were not issued for the first six months of operation of the scheme to enable repair and boundary strengthening work to be undertaken. The last of the works were completed after vehicle access was allowed for permit holders.
- 3.17 Two access by permit schemes were already in place for BOATs at Bredhurst and Lenham. They were widely suggested by motor vehicle users as a model for the Holly Hill area, rather than the introduction of an outright ban as had first been proposed by the County Council. The opportunity was taken to review the permit scheme with partners and particularly Kent Police. As a consequence amendments were made to improve our ability to administer the scheme and to police it. Significantly all of the permit schemes were amalgamated as a result of which future administration and the costs involved are considerably reduced and should be sustainable in the current climate.
- 3.18 To date 567 permits including access to Holly Hill have been issued to motor\_vehicle users. Motor vehicle use has returned to the area which to date appears to be lawful users, who are permit holders, who are using the BOATs in a responsible way.
- 3.19 The ETRO appears to have been successful in enabling continued motor vehicle use without the return of the issues previously affecting the area.

#### **The resource requirements of running a permit scheme.**

- 3.20 The amendments to the permit scheme as indicated above have, following an initial investment in time, permit cards and print supplies, reduced the time and therefore cost associated with the administration of the scheme.
- 3.21 Applicant details are captured not just as a requirement of the scheme but also to enable updates, such as changes to combinations or temporary closures to be notified electronically at the minimum of cost. The administration of the scheme now occupies 30 minutes per week of a grade 3 post – approximately £10/ week.
- 3.22 The ETRO is enforced by means of heavy duty horse barriers at either

end of BOAT and at the junction of the BOAT with restricted byway KH433. Owners/ occupiers, emergency services and permit holders are provided with the combination to the barrier locks. The barriers may be bypassed by means of radar key operated pedestrian gates by those with mobility impairment. The pedestrian gates are a standard production line, the heavy duty horse barriers are also a standard production item.

- 3.23 The cost of barriers is £800 . They are of a design that elsewhere have proved resilient to deliberate acts of damage. They were marked with smart water when installed to assist detection in the case of theft and this may have acted as a deterrent. To date there has been only minimal damage to them. The costs associated with the barriers are currently sustainable but it would not prove possible to replace them on anything other than a very occasional basis at current budget levels. Replacement may not be possible if budgets are further reduced.
- 3.24 As with the existing schemes at Bredhurst and Lenham the combination locks have proved to be prone to damage and theft. Such acts seem to have reduced in recent months perhaps as a result of:
- more active policing and
  - the use of overt surveillance in respect of fly tipping at two locations
- Both serve to make detection more likely.
- 3.25 Additionally practical actions taken to prevent removal of the locks such as welding them to lengths of chain have delayed removal or damage but have not resulted in complete eradication of the problem.
- 3.26 The maintenance of combination locks is not essential to the functioning of the scheme, the presence of the locks simply serves to assist in the policing of the ETRO. I do not believe that it will be possible to continue to replace locks regularly and although it may prove possible to make the existing arrangements more resilient to theft and damage the barriers may well be without locks for significant periods in the future. I believe that the presence of the barriers along with mandatory signage will have a deterrent effect to many users who do not hold permits. It will however mean that the barriers are less effective and there would have to be an acceptance of this by the local community.

#### **The impact of the scheme on the general amenity of the area.**

- 3.27 Inspection on the 11 September revealed a much-improved environment. Much of the previous damage had been repaired, was vegetating or was screened by the felled timber left in situ. The BOATs could be used easily and safely on a bicycle, with the exception of a section of Chapel Lane which is subject to erosion and pot holes.
- 3.28 Land at Haydown Wood is now being actively farmed which has improved visual amenity in that area.



- 3.29 In my opinion the general amenity of the area has improved considerable and will improve further following leaf fall when the visual impact of the resurfacing will be softened.

**The impact on the convenient and safe movement of vehicular and other traffic**

- 3.30 The ETRO's provided exemptions to those needing access for land management purposes, utility companies, police and emergency services vehicles. I do not believe that the ETROs have had an adverse impact on the safe movement of vehicular traffic and have facilitated safer access by non vehicular traffic and cycles.
- 3.31 Motor vehicle access, south/ north was maintained by not including BOAT MR45 in the order, thus maintaining a link between Holly Hill and Wrangling Lane.
- 3.32 The introduction of the permit system enabled continued access to those motor vehicle users willing to adhere to the permit terms and conditions.
- 3.33 I do not believe on the basis of the above that there has been an adverse impact on the convenient and safe movement of vehicle and other traffic.

**The impact of the scheme on the use and enjoyment of the public highway.**

- 3.34 The ETRO was conceived in an attempt to both meet local concerns, and pressure to exclude nuisance vehicles. A key principle behind its design was that lawful vehicular use should continue in line with the County Council's duty to assert and protect the rights of users to the use and enjoyment of the highway. I believe that this has been achieved.
- 3.35 The barriers used represent the least restrictive option that both enforces the ETRO and accommodates users.
- 3.36 No representations have been received from walkers or equestrians to suggest that their use of the route is affected by the existence of the barriers. Mobility vehicle users are able to bypass the barrier by means of a radar key operated gate. No reports have been received from disabled users indicating that they are unable to operate the barriers.

**Displacement Activity**

**Conclusion**

I believe that the scheme has succeeded in achieving its prime

objectives of improving the amenity of the area by reducing anti social, nuisance and unlawful behaviour; almost reducing such use to zero over the last four months. I recommend that the ETRO is made permanent.