

APPENDIX A

POLICY FOR THE MANAGEMENT OF DAMAGE OF WEST BERKSHIRE'S PUBLIC RIGHTS OF WAY BY VEHICULAR USE

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

Note: There are case studies, summarized at Appendix B, showing how policing has helped to combat illegal vehicular use.