

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

19 June 2019

Report of the Executive Director – Economy, Transport and Environment

**PROPOSED TRAFFIC REGULATION ORDER – STONEY MIDDLETON
BYWAY OPEN TO ALL TRAFFIC NO. 15 KNOWN AS JACOB’S LADDER**

(1) **Purpose of Report** To consider the objections and other responses received following consultation and publication of a notice of a proposal by the County Council to make a Traffic Regulation Order (TRO) to prohibit the use of this byway open to all traffic (BOAT) by mechanically propelled vehicles (MPVs), and to recommend that the Cabinet member authorises such a TRO to be made.

(2) **Information and Analysis**

The Route

Stoney Middleton BOAT No.15, known as Jacob’s Ladder, is a 540m long route, rising steeply with an average gradient of over 15% or 1 in 7 from The Nook to New Road, Stoney Middleton. It is shown as a length of non-classified highway maintainable at the public expense on the Council’s List of Streets, kept under Section 36 of the Highways Act 1980.

It was added to the definitive map and statement as a BOAT in November 2012, following a public inquiry into a definitive map modification order made by the Council, convened on behalf of the Secretary of State for the Environment, Food and Rural Affairs. The confirmed modification order indicates that the width of the highway varies between 3m and 3.5m. It is partly enclosed between stone walls and is, in places, a hollow way with steep banks on either side. The width of the usable road up to the banks, verges and walls forming the margins to the highway boundary varies between 1.88m at its narrowest and 3.05m, and includes a particularly steep section, as recently surveyed by the Council.

The BOAT and the length of minor road from its southern end up to the parish church which passes by the restored “Roman Baths” and former Spa area. (known as The Nook) provide a public pedestrian equestrian and vehicular link between the main village settlement of Stoney Middleton and the B class road at the northern end of the BOAT (known as New Road). This route is used by walkers, horse riders and cyclists, as well as 4 wheel drive vehicle users and motor cyclists. A short section of the BOAT at the village end provides the only

access to an adjoining cemetery. From the junction of the BOAT with New Road there are pedestrian and equestrian/cycling links to the wider rights of way network and countryside around Eyam which features several historic sites of cultural significance including the Riley Graves and Mompesson's Well, Eyam village.

The Council's Principal Engineer for Traffic and Safety has recently reported that the route has a very steep ascent from the Nook Stoney Middleton and that along the route there are numerous places where forward visibility is restricted due to both the route's horizontal and vertical alignments, which coupled with the fact it is tree lined, further compromises the inter-visibility between users of the route. He has also indicated that in places on the route safety concerns are raised where vehicular users encounter other users in the opposite direction including pedestrians, cyclists and horse riders.

Consultation Process

On 12 July 2016, the Cabinet Member – Highways, Transport and Infrastructure considered a report from the Strategic Director - Economy, Transport and Environment on a request for a TRO on the route to prohibit motor traffic. The Cabinet Member resolved to approve a 12 week public consultation to understand public opinion on the proposal, and that a report be submitted to him at a future date to recommend a way forward.

On 26 October 2017, the Cabinet Member received a report from the Strategic Director on the outcome of that consultation, with a recommendation that a TRO be made. At that meeting the Cabinet Member also allowed a representative of the Green Lane Association (opposing the proposal) and a representative of the Peak District Green Lane Alliance (supporting the proposal) each to address the meeting. After considering the report and the representations, the Cabinet Member resolved that the Strategic Director – Economy, Transport and Environment undertake the necessary steps required by the Local Authorities' (Traffic Procedure) (England and Wales) Regulations 1996 to make a TRO to prohibit MPVs from using the whole BOAT length of Jacob's Ladder, and that a further report be submitted to the Cabinet Member in the event that objections to the proposed TRO were received.

Following that meeting, a consultation of the statutory consultees was carried out alongside publication of the notice of the proposal to make a TRO between 17 May 2018 and 14 June 2018, and the proposed TRO was first formally advertised on 17 May 2018. An online questionnaire facility was provided as an optional means of response on the Council's website, which included a space for general comments (see background papers).

Due to the discovery of a defect in the response facility provided on the Council's website (in failing to provide for capturing of contact details), a new notice of the proposal was published on 6 September 2018 and a repeat of the consultation was carried out between 6 September 2018 and 5 October 2018 (together

referred to as 'the Consultation'). The responses to the Consultation are headlined below.

Consultation Responses

Overview of Consultation Responses

Over 1,000 responses to the Consultation were received. Some 831 respondents completed an online questionnaire, and there were over 300 responses by letter or email.

Of the completed online questionnaire responses:

- 26% were from those who answered as Derbyshire residents;
- 88% were in objection to the proposal;
- 74% answered as being primarily vehicle users contrasting with 16% as walkers, 3% as cyclists, 2% as horse-riders and 5% as 'other';
- 66% felt the scheme could be improved; and
- 12% considered themselves to be disabled.

All the responses are available within the background papers. The unstructured nature of the 'off-line' responses clouds the reliability of any attempt at similar numerical analysis of the origins of all these responses, therefore no such analysis is presented in this report.

Those responding in support of the proposed TRO include representatives of several walking groups in addition to residents of Stoney Middleton and other local residents. The general themes in the responses are that the use of this route by MPVs is perceived as spoiling the tranquillity of the area and deterring other potential users, owing to conflict between different modes of use due to topography and narrowness of the route.

Those responding in objection to the proposed TRO include representatives of several motorised vehicle user organisations, in addition to some local residents and visitors. The general themes in these responses are that such a TRO would undermine the lawful exercise of the right to use the route by any form of transport, and would damage the local economy, and amount to discrimination against persons with a disability who use vehicles as a means to enjoy the countryside.

Consultation Responses Generally in Favour of the proposal

Peak District Local Access Forum (LAF)

The Local Access Forum is a statutory body which exists to advise the Peak District National Park Authority and the County Council on the improvement of public access for the purpose of open-air recreation and for the enjoyment of the

area. The LAF has a Green Lanes Sub-Group which visited the site in June 2018 and the key points from its response are as follows.

- The LAF is aware of concerns from the Parish Council and horse riding interests, as well as Friends of the Peak District and Green Lanes Alliance, cyclists and walkers about the effect of recreational motor vehicles (4x4s and motorcycles) on other users wishing to use this particular BOAT.
- The majority of members feel that motor vehicle usage on BOATs of this kind, is alien to the character of the way, to principles of quiet enjoyment and (due to surface condition, poor drainage, high banks, narrowness, restricted visibility in places and an absence of passing places) is basically unsafe where pedestrians, horse riders and cyclists also have legal rights to use the way.
- There are very few bridleways in this locality and Jacob's Ladder is part of a valued off-road route for riders between Stoney Middleton and Eyam/Stoke, and a circuit for walkers. It offers a safe and pleasant alternative to the very busy main road, but many horse riders, cyclists and walkers seem to have been put off using Jacob's Ladder because of the dangers presented by recreational motor vehicles.
- The majority of LAF members give their support to a full TRO on Jacob's Ladder so that hazards presented by MPVs are reduced and access to the National Park's amenity in this area can be restored to cyclists, horse riders and pedestrians.
- At its meeting on 14 June 2018, 10 members supported the proposed TRO and 4 abstained. One Member requested that his minority response to press for only appropriate repairs, maintenance and monitoring at this stage be noted.

Peak Horsepower Bridleways Group (PHP)

PHP are a group dedicated to promoting better access for horse riding in the Peak District National Park. PHP say that riders are unable to use the route due to danger from recreational motor vehicles. They say that the route was previously popular and well-used, with usage declining when recreational motor vehicle use commenced. They quote from statements made by witnesses to the public inquiry into the BOAT order who mentioned fear of meeting motorcycles and 4 x 4s and a deterioration of the surface of the route. They refer to a safety survey of the lane carried out by a Health and Safety Practitioner in 2012 (appended to the Stoney Middleton Parish Council statement of case), which concludes that there is a risk of vehicle impact with other vehicles, pedestrians and horses due to the lack of crossing points and blind corners on the route as well as the lack of escape routes due to the banks which form part of the route.

Nottinghamshire Footpaths Society

This Society expresses support for the Proposal since it will restrict the damage, noise and disruption caused by vehicles.

Yorkshire Dales Green Lanes Alliance (YDGLA)

YDGLA agreed with the proposal, citing evidence submitted to the County Council by the Stoney Middleton Parish Council and responses to the 2016 consultation.

Friends of the Peak District

Wrote in support of the TRO, citing the steep and narrow character of the route, conflict with users and the impact on local amenity and the evidence submitted to the public inquiry into the status of the route.

Natural England

Natural England have not provided any informative commentary, but have confirmed that they have no objection to the proposed TRO.

Peak District National Park

The Peak District National Park Authority have not commented in detail, but have expressed support for making the proposed TRO on the grounds stated.

In addition, 35 individual representations have been received in support by letter or email. The key themes from the responses in favour are summarised in the table below, together with some officer observations:-

	Theme	Officer Observations
1	Concern about being knocked down.	Public safety is a material concern for the imposition of a TRO. There is no record of any actual collision having taken place on the route. The narrowness and steepness of banks on parts of the route does support this concern however.
2	Would make it safer for horse riders, cyclists and walkers. Horse riders are deterred by motor vehicles.	A TRO may facilitate the passage along this route by other classes of user if MPVs are seen as a deterrent. It is, therefore, quite reasonable to take the view that the normal traffic of the area, walkers, cyclists and horse-riders, should have priority over the route.
3	National Parks are places for quiet enjoyment.	On balance, it is considered that the continued use of the route by MPVs will have a negative impact on the wider goals of the Peak District National Park.
4	Protect the beauty and tranquillity of the area.	On balance, it is considered that the continued use of the route by MPVs will have a negative impact on the wider goals of the Peak District National Park.
5	Route being damaged by motor vehicles.	There is some evidence that MPVs are causing damage to the verges on narrow sections of the route. There is also some evidence of erosion by water.
6	Support for the quiet enjoyment of the area.	The proposal would assist enjoyment of this area, particularly by walkers and horse riders and cyclists.

7	Unsuitable for motor vehicles.	This BOAT has particular physical limitations which are not shared by other BOATs.
8	Route steep, narrow and unsuitable for horses and walkers to share with motor vehicles.	This BOAT has particular physical limitations which are not shared by other BOATs.
9	Erosion is caused to the route by MPVs	Although the route has suffered from episodes of water runoff, MPV use can contribute to surface degradation.
10	The route was never originally constructed for motorised vehicles.	Whilst this statement is, broadly true, the route has for many years been used by MPVs.
11	Poor sight lines, motor bikes driving fast – danger to users.	This is reflected in the observations of the Principal Engineer.
12	Local observations focussed on amenity and safety concerns, including noise from motorcycles, use and night time vehicle use, disturbance, damage, danger, lack of maintenance, no need to use the road.	These themes have been apparent from the earlier representations including the 2016 informal consultation and were reflected in the Statement of Reasons for the proposal.

Consultation Responses Generally Opposing the TRO

The following responses generally opposed the implementation of a TRO to prohibit the use of the BOAT by MPVs.

Trail Riders Fellowship (TRF)

The TRF continues to object to the proposal to prohibit the use of the route by motorcycle traffic. The key points from its response are as follows:

- it is not in any way suitable and appropriate for facilitating the expeditious, convenient and safe movement of motorcycle traffic on Jacob's Ladder and the road network in the area;
- it is detrimental to national park purposes;
- it has an adverse effect on access opportunities for persons with physical disabilities.

The TRF argue that motorcycling is an important component of the cultural heritage of the national park, which the Council is obliged to conserve pursuant to Section 5(1)(a) of the National Parks and Access to the Countryside Act 1949, and that such a prohibition would prevent enjoyment by removing such opportunities as are referred to in Section 5(1)(b) of the 1949 Act.

The TRF also suggests that the County Council has an 'absolute duty' to maintain Jacob's Ladder, and that although its recent addition to the definitive map and statement as a BOAT amounts to a downgrading of the route, it does not relieve the County Council of its duty to maintain the road surface.

Green Lane Association (GLASS)

GLASS objects to the proposal to prohibit the use of the route by motorised vehicles. The key points from its response are arguments that the proposed imposition of a TRO tilts the balance too far in favour of 'other users', is illogical, and is not in accordance with TRO regulations and associated legislation. The GLASS submission suggests alternative proposals for the management of the route, to include a scheme for maintenance, possibly a TRO to manage conflict at busy times of the week and introducing a one-way restriction to prevent MPVs meeting in opposite directions. They also suggest that the County Council could consider a permit scheme for the route.

With regard to the County Council's grounds for proposing the making of a TRO, GLASS suggest that the route is not too narrow for recreational motor vehicles if properly maintained. They suggest there is a contradiction arising from a prohibition of only motorised vehicles, in that a horse drawn carriage would still be able to be taken along the route. They dispute the safety concerns, referring to a lack of records of any injuries being sustained by users of the route. GLASS assert that the character of the route is not adversely affected by the use of motorised vehicles and may, indeed, be dependent upon the use of such vehicles. They suggest that the route is not specially suitable for use by persons on horseback or on foot as it is uneven and steep, with tree roots causing a slipping hazard and the route being slippery when wet. They suggest that other nearby rights of way are more suitable for pedestrians and horses. They also suggest that the amenity of the area is unaffected by the presence of occasional vehicles on the route.

Association of Peak Trail Riders (APTR)

The submission by the APTR refers to the impact of the proposal on tourism and, in particular, business revenues.

Manchester 17 MCC Ltd

Manchester 17 MCC Ltd is affiliated to the Auto-Cycle Union and is dedicated to the organising and running of motorcycle events in the Cheshire, Staffordshire, North Derbyshire, Peak District and Shropshire area of England.

The submission suggests alternative options to making such a prohibitive TRO, including voluntary restraint or a seasonal TRO for all vehicles at certain times of the day or year. The submission also suggests that consideration should be given to a permit access system, as used in other Highway Authorities and National Parks, within the framework of such a TRO.

In addition, about 266 individual representations have been received in objection by letter or email. The key themes from the responses in objection are summarised in the table below, together with some officer observations:-

	Themes	Officer Observations
1	Closure of 'green lanes' is a threat to the sport.	The aim of the TRO is to put in place restrictions in line with the legislative framework where this activity has a serious and identifiable impact on the use and management of the route.
2	Failure to explore all methods of control to allow safe and responsible use.	The feasibility of other options is addressed in this report. However voluntary restraint methods are considered to be insufficient in this case.
3	Historical vehicular right of way.	TROs can be applied to preserve the character of such routes.
4	Water damage has caused deterioration, not vehicles.	Water damage is known to be part of the cause of the decline of the surface of the route.
5	Proposal biased and targeting one group, of niche users on this route – motorcyclists.	The grounds for the proposal are considered to provide justification for MPV prohibition. The prohibition is aimed at MPV modes of use on a single particular route.
6	Byway wide enough to be sustainable, if kept well maintained.	The route is too narrow in certain sections for MPVs to pass either each other or pedestrians, cyclists and horse riders.
7	People who are disabled will face discrimination.	Refer to the equalities section of the report below.
8	The Peak District is a wide expanse – ample room for all to participate in their chosen hobby.	The National Park purposes are not generally in conflict with motorist use The grounds for the proposal are considered to provide justification for MPV prohibition. The prohibition is aimed at particular types of use on this particular route.
9	Local economy damaged if lane closed.	There is no evidence that this is the case.
10	Restriction will put pressure on other routes.	The Peak District National Park Authority has implemented several MPV prohibitive TROs on other green lanes. There is no evidence that any significant problems have arisen on other routes through any 'displacement'.
11	If this route is too narrow, then the argument to close the route could be applied to other (main) roads in Derbyshire.	The BOAT is unsuited to general motor use. The analogy does not hold up under scrutiny.
12	Erosion of rights will cause illegal use.	The experience of the Peak District National Park Authority is that there is some continued MPV use over routes where similar TROs have been implemented, but overall, the volume of use has dropped considerably. The proposal is supported by Derbyshire Police.
13	Enough paths and walk ways for others, why	The grounds for the proposal are considered to provide justification for MPV prohibition. The prohibition would

	stop one group of people using it?	apply to this mode of use on this particular route only. Each request of this nature is considered according to its specific circumstances.
14	Getting harder to ride legal routes due to their closure.	Each TRO of this kind does reduce total mileage of green lanes routes that are available to MPV users as well as others.
15	Motor bikes do not take up any more room than a horse or cyclist.	Motor bike use impacts in terms of safety and other users are dissimilar in various respects.

Relevant guidance and policies

Making the Best of Byways, DEFRA December 2005

This publication is a practical guide for the management of motor vehicles on byways for local authorities and other interested parties. In this document, it states that *“voluntary restraint can be a useful tool for management of By ways where reductions in numbers of mechanical propelled traffic is desirable, but not where the prohibition of mechanical propelled vehicles is agreed to be necessary.”*

Regulating the use of motor vehicles on public rights of way and off Road, DEFRA December 2005

This document provides some further guidance and examples of good practice of the use of TROs and other management options in relation to motor vehicles on BOATS.

Derbyshire County Council Management of Green Lanes 2012-2017

This document continues to represent the principles by which the Council seeks to manage Green Lanes and their use by motorised vehicles. It explains how the Council’s duty to maintain highways is generally applied to BOATS and features 8 Policy statements including the following:

Policy Statement 1

The Council aims to protect opportunities for recreational driving where conflict with other types of use is kept to a minimum and where this activity does not have an unacceptable detrimental impact on the environment or communities.

Policy Statement 2

- 2a) In recognition of the necessity to improve some routes the County Council will invest over the next 5 years to improve off-road vehicular routes.
- 2b) The County Council will encourage and support voluntary management schemes to assist with the management of off-road vehicular routes.
- 2c) The County Council will commit to a yearly inspection of routes where improvements have been made.

Policy Statement 4

- 4a) Derbyshire County Council will support voluntary restraint wherever it considers this to be appropriate and workable temporary solution.

- 4b) Voluntary restraint will not over-ride or preclude any form of management the Council may wish to implement.

Policy Statement 5

TROs shall be considered where:

- 5a) No other reasonable solution exists to resolve conflict between types of use.
- 5b) There is a clear danger to vehicle users.
- 5c) The safety of other users is compromised through continued use by vehicles.
- 5b) Any other relevant legal criterion is satisfied.

Officer Analysis

This report enables the Cabinet Member to review the expediency of making a TRO as proposed, taking account of the submissions received in response to the Consultation, which are summarised above, and having regard to the alternative options so far as they might provide realistic alternatives.

The TRO proposal and the subsequent Consultation has emerged from the previous consideration of the traffic issues concerning the route and Cabinet Member approval at the meetings of 12 July 2016, when the initial consultation was authorised, and on 26 October 2017, when publication of the proposal was authorised.

The Council's Statement of Reasons, published with the proposal, indicated that the Council proposed to make a TRO to prohibit MPVs on the grounds set out in sub-sections 1(a), (c), (d), (e) and (f) of the 1984 Act as recommended in the report to the Cabinet Member for the meeting 26 October 2017 except that the approved proposal covered the whole length of the BOAT instead of for a designated portion (where the road is most noticeably narrow) as had been recommended (Minute No. 110/17 refers). There is a lack of spaces for MPVs to turn around within the BOAT.

With regard to the duty under Section 122 (detailed in Legal Considerations), whilst the prohibition would represent a reduction in the available highway network facility which MPVs are entitled to use, the BOAT status of the section of road proposed for prohibition and its steep and narrow topography mean that there is barely any reduction in any utility for MPV use other than for "green laning" recreation using motorcycles and 4x4 vehicles with some off road capability. Only one of the respondents (an objector) has referred to what might be regarded as everyday routine use, as part of a route to and from work by motorcycle.

The analysis in this report is also guided by the National Park's purposes of (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area of the Peak District National Park, and (b) promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public, as described in the National Parks and Access to the Countryside Act 1949 and the duty of the County Council under the Act to have regard to those purposes in

exercising or performing its functions in relation to, or so as to affect land in the National Park.

The loss of enjoyment of use of the road to MPV users is a factor that needs to be taken into account. The use of unsealed minor highways by motorists for recreational purposes (known as Green Laning) has grown in popularity since the 1950's. There are a number of bodies, including the TRF and GLASS which promote responsible use of such routes by codes of conduct which their members should follow. Green Laning is a widespread activity in the Peak District National Park and as these bodies have observed, there are relatively few unsealed routes in Derbyshire which carry vehicular public rights. However, with regard to other types of traffic, it is considered that the route, would under such a prohibition, become significantly more commodious for pedestrians and horse riders to enjoy for their quiet recreation.

There are essentially four types of option to which the Cabinet Member should have due regard before reaching a decision:

1. making of a TRO as notified and consulted on [as per the provisional recommendation];
2. taking the proposal no further; seeking to rely on any other means available for addressing the conflict between modes of use on the BOAT;
3. pursuing a modified/different TRO proposal (e.g. a prohibition of use with MPVs excepting vehicles of less than a certain width – which might accommodate motorcycles); and
4. convening a public inquiry on the proposed TRO, to arrive at an Inspector's recommendation to the Council

Having regard to option 2, sealed surface improvement works have been utilised on other green lanes, but this is not seen by officers as offering an effective solution per se to the problems identified above in respect of this BOAT, and can be seen as detracting from the rural character of route. A sealed surface would also tend to cause increased run off into adjacent lower lying land and watercourses, which could be exacerbated by climate change. This type of scheme would also detract significantly from the traditional rural character of the route which is particularly valued by residents and users.

Voluntary restraint measures through co-operation from responsible recognised user organisations may provide options to help mitigate impacts, e.g. through undertaking to limit numbers and times of day and week for any organised convoys by their members. However, a sizeable proportion of MPV users would not be subject to such restraint measures, and consideration of these options in this context suggests that it would leave most of the disturbance problems highlighted by local respondents essentially unresolved. No voluntary restraint in this case is therefore considered to offer an effective solution to the ongoing problems.

Having regard to option 3, a more general exemption, whether seasonal, or for certain times of day or week, or based on maximum width, would only mitigate elements of the substantial impacts on enjoyment of the route the other users are experiencing and on the local amenities which are apparent. This would not sufficiently resolve the issues of conflict, and harm to the character of the road. Such a TRO would be less effective as a means to restore confidence in those horse riders who have been discouraged from using the route by their experiences or perceptions of conflict with MPVs travelling over the route. Safety would remain a serious concern with regard to any general MPV traffic that might remain unprohibited. The proposed exemption for MPV usage at the Council's discretion by prior arrangement provides a mechanism for allowing MPV usage on appropriate terms, despite the general prohibition where occasional requests are made which provide any persuasive reasons for authorising the specific MPV access being sought.

Having regard to option 4, the Council has the discretion to cause a public Inquiry to be held on the proposal before a specialist inspector. This option would have some merit in enabling both supporters and objectors to the proposal to present their arguments and evidence and provide the Council with an external recommendation. However, this would involve a delay of several months and a significant cost to the public purse. In this case, the key issues and arguments for and against a TRO as proposed have been apparent for some time and the formal consultation has tended to underline these rather than raising entirely new considerations. On balance, this option is considered not to be appropriate in this case.

Whilst the Council's policy statements support due consideration of all reasonable options, each case has to be assessed according to its own particular circumstances. In this case, each of the factors listed as (a) to (d) under Policy Statement 5 continue to provide a strong steer in favour of making a TRO as has been proposed.

The salient points in respect of each of the statutory grounds for the proposal, taking into account the significant themes under the Consultation responses, are as follows:

- a) 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**
- Jacob's Ladder is narrow over much of its length to the point that larger vehicles cannot pass when travelling in opposite directions and, in some sections, it is so narrow that other users may be forced off the route or onto steep banking to avoid oncoming traffic. This has been highlighted by several respondents.
 - There is some anecdotal evidence (from more recent personal statements received as well as under the personal statements within the Stoney Middleton PC 2012 submission) of "near misses" between equestrians or pedestrians and MPVs (4x4) and motorcycles on the route. Whilst that 2012 submission

also referred to someone having been 'knocked down' on the route, no evidence has been found to substantiate this and there is no record of any collisions or any personal injuries having been sustained on the route.

- Several respondents including the TRF and GLASS suggest that traffic safety concerns reflect a lack of objective evidence or exaggeration or misunderstanding of the actual risks and hazards. Nevertheless the observations of the Principal Engineer have reinforced the significance of the unsuitability of the topography of the road for general MPV use including motorcycles in terms of safety. The Engineer's assessment supports the finding that there is some likelihood of danger relating to MPV modes of use that would be substantially reduced through prohibition.

c) Facilitating the passage on the road or any other road of any class of traffic (including pedestrians)

- It is the view of a number of consultees, and the Parish Council, that use by MPVs restricts the use and enjoyment of Jacob's Ladder by other users owing to a likelihood of conflict between the different modes of use. The setting of Jacob's Ladder offers access to visitors and residents to enjoy quiet recreation, however, the nature and type of recreation will have a material effect on any person's enjoyment of the countryside. This is a vehicular highway and therefore legally available to users of MPVs. It is part of the road network, but, in practice, used primarily for recreational purposes. Officers take a view that the non MPV public traffic, which includes pedestrians, cyclists and horse riders, should take precedence where there is conflict with motorised users on a route that is especially narrow in parts for a BOAT, having regard to the National Park location.
- The condition of the route has a history over the past thirty years of damage by erosion as a result of surface water run-off which may have been exacerbated by MPV use. Derbyshire County Council's duty to maintain the route is commensurate with the status of the highway, in this case a BOAT. Officers do not accept that there is an 'absolute' duty to maintain this route to 'carriageway standard'. There is no single standard applicable to all carriageways, and the County Council may consider the use of a route in determining the level of maintenance needed. It is accepted that some works of maintenance are required on this route, but once undertaken this would not provide a route with a useable width of 3m to 3.5m as the banking and tree lined nature of the route is part of the fabric of the lane.

d) For preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property

- It remains clear that the narrowness of Jacob's Ladder means that there is no opportunity for larger MPVs to pass each other over a substantial length and little opportunity for other pedestrians to step aside. Even motorcycles will occupy a significant proportion of the width of the route on narrower sections and, therefore, the use of both motorcycles and wider vehicles is unsuited to the narrowness of the route, be they ascending or descending.

e) Without prejudice to the generality of paragraph (d) above, for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot

- As referred to above, the general character of this route is a tranquil rural track. It passes from the village and ascends a wooded hillside, passing the local cemetery. It is the view of officers that this route provides an opportunity for safe recreation for persons on horseback and on foot, both in itself and as part of the wider Public Rights of Way Network in the local countryside.
- Given the narrowness of the route it would be beneficial to persons on horseback or on foot to preserve the character of the route by preventing the use of the route by MPVs.

f) For preserving or improving the amenities of the area through which the road runs

- The amenities of the area, in this context, may best be defined as a combination of the benefits derived from open air recreation, tranquillity and the landscape. If these are affected by the use of MPVs then the Council may conclude that there are grounds to implement a TRO in order to preserve and indeed work towards improving the amenity of this area. The area of the National Park in which the BOAT lies is of exceptional quality for recreational amenity and appreciation of cultural heritage. The amenities close to the route include the adjacent cemetery, where relatives of the deceased take time to tend graves and sit in quiet contemplation. Respondents to the TRO suggest that this tranquillity is interrupted by MPVs (particularly motorcycle use) along the route.
- Whilst construction and use regulations and vehicle testing generally prescribe maximum noise levels according to type of MPV, respondents highlight that when motorcycles make progress along the route the engine noise is often disruptive especially when groups of motorcycles are encountered impacting on the amenity.
- Whilst it is recognised that motorised vehicle users, in undertaking their chosen form of recreation, also appreciate the special qualities of the area, their continued use of the route by this mode of transport is adversely affecting those special qualities to a more significant extent than other users.

Officer Conclusions

It is concluded that, having regard to the proposal and the other possible options available, making a TRO as has been proposed, with limited types of exemption in accordance with the published notice of the proposal, is the most expedient course of action to recommend. The basis for reaching this conclusion is broadly in accordance with the published Statement of Reasons, and takes into account all of the relevant Consultation responses, which are described above.

Local Member Comment

Councillor Atkin, as local member, has been consulted and supports the proposal.

(3) **Financial Considerations** The expenses associated with the making of a TRO and associated signage would be met from the Public Rights of Way Revenue Budget. The extra costs associated with referring the proposal to public inquiry would be substantial, since this would require payment for the services of an Inspector from the Secretary of State's panel, in addition to representation of the County Council case for the proposal, with at least one professional witness. The number of days required can vary for such an inquiry and therefore the cost is uncertain. An allowance of £20,000 is considered to be appropriate.

(4) **Legal Considerations** The Road Traffic Regulation Act 1984 provides, at Section 1 (1) that:

The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road where it appears to the authority making the order that it is expedient to make it—

- (a) 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*
- (b) for preventing damage to the road or to any building on or near the road, or*
- (c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or*
- (d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or*
- (e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or*
- (f) for preserving or improving the amenities of the area through which the road runs or*
- (g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).*

Section 2 of the 1984 Act states what a TRO may provide for and this includes prohibiting the use of a road by vehicular traffic or by vehicular traffic of any class specified in the order.

"Road" for the purposes of the 1984 Act includes a BOAT. BOAT – byway open to all traffic (as defined in the Wildlife and Countryside Act 1981) means "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used".

Section 122 (1) of the 1984 Act, states that it shall be the duty of every local authority exercising the functions in that Act (so far as practicable having regard to matters listed in Section 122(2)) (and subject to the provisions of Part II of the Road Traffic Act 1991) to secure the expeditious, convenient and safe movement

of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.

Derbyshire County Council is the traffic authority for Derbyshire, including the areas of the County in the Peak District National Park.

The matters listed in Section 122(2) are: the desirability of securing and maintaining reasonable access to premises, the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the area through which the roads run, the national air quality strategy prepared under Section 80 of the Environment Act 1995, the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles, and any other matters appearing to the Local Authority to be relevant.

The courts have found that the duty set out in Section 122(1) of the 1984 Act is not absolute. Cranston, J. in *Trail Riders Fellowship and Ors v Powys County Council* [2013] EWHC 3144 (Admin) found that “the duty imposed by Section 122 of the 1984 Act is a qualified duty. Against the duty to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) is to be balanced the factors in Section 122(2), such as the effect on the amenities of the area and, in the context of making a TRO, the purposes for this identified in Section 1(1). As a matter of law the duty of securing the expeditious, convenient and safe movement of vehicle and other traffic (including pedestrians) is not given a primacy...”. Cranston, J. acknowledged the obvious tensions that arise between the reasons for making a TRO with the duty under Section 122(1), confirming that it is a matter for the decision-maker to balance that duty against other factors.

The National Park considerations also affect the exercise of traffic regulation functions relating to areas of the Peak District National Park, Section 11A (2) of the National Parks and Access to the Countryside Act 1949 provides that:

“In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park”

The County Council is such a ‘relevant authority’.

The purposes set out in Section 5 of the 1949 Act are (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park

areas, and (b) promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 set out the steps to be followed by a traffic authority ('the Authority') before making a TRO. Regulation 9 enables the Authority, first to cause an inquiry to be held into the proposed order before an inspector appointed by it from the Secretary of State's panel instead of proceeding directly to make a proposed TRO. Regulation 14 enables the Authority to make a TRO with modifications from the previously proposed order, in consequence of any objections or otherwise. Where substantial changes are proposed to be made, the Authority must notify those likely to be affected by the modifications and give them an opportunity to make representations which the Authority shall consider.

Where a TRO is made it is required to be advertised and appropriate signs erected. No TRO can be made more than two years after the date of publication of the notice of proposals, and no part of a TRO can come into force before a notice of its making is published.

(5) Equality and Diversity Considerations Representations have been received to the effect that the proposed TRO would disadvantage those drivers with disabilities who would only be able to use this route using a MPV. This is a particular theme of the representations from the TRF and GLASS, but some individual respondents have also indicated in their comments that they or a family member cannot experience the route except by MPV.

The public sector equality duty came into force on 5 April 2011. As a consequence, public bodies have to consider the effects on all individuals sharing protected characteristics when carrying out their decisions and in their day to day work.

The prohibition of all MPVs, including any specifically adapted for users with disabilities to use routes of this type, is not considered, in this instance, to constitute any particular disadvantage or discrimination against the group of users having the relevant disabilities in common. The representations have not generated any evidence which suggests that the route is of any disproportionate importance to such users in particular due to disability. The closure of the route to all MPVs is not considered to be disproportionately disadvantageous for any members of the public through having any disability. The proposal includes exemption for use with an invalid carriage (under the definitions in the Use of Invalid Carriages on Highways Regulations 1988) It would therefore preserve the opportunity for people at least 14 years old with physical disabilities to use the route with a qualifying vehicle. Since these vehicles are markedly different in appearance to other MPVs this exemption does not appear to raise any particular enforcement challenges. Since none of them are designed to be capable of exceeding 8 mph on the level under their own power, their use does not provoke the same safety concerns.

Further exemption could, in principle, allow for continuing more general entitlement to use the BOAT by Blue Badge holders in MPVs. This would involve relatively few journeys, so might not be significantly deleterious to the amenity of the area or the character of the area or other users' enjoyment of the route. Such exemption would also be tolerating some continued use by vehicular traffic which is associated with unresolved safety concerns. Therefore there does not appear to be any persuasive case for such a further exemption.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, human resources, environmental, health, property, social value and transport considerations.

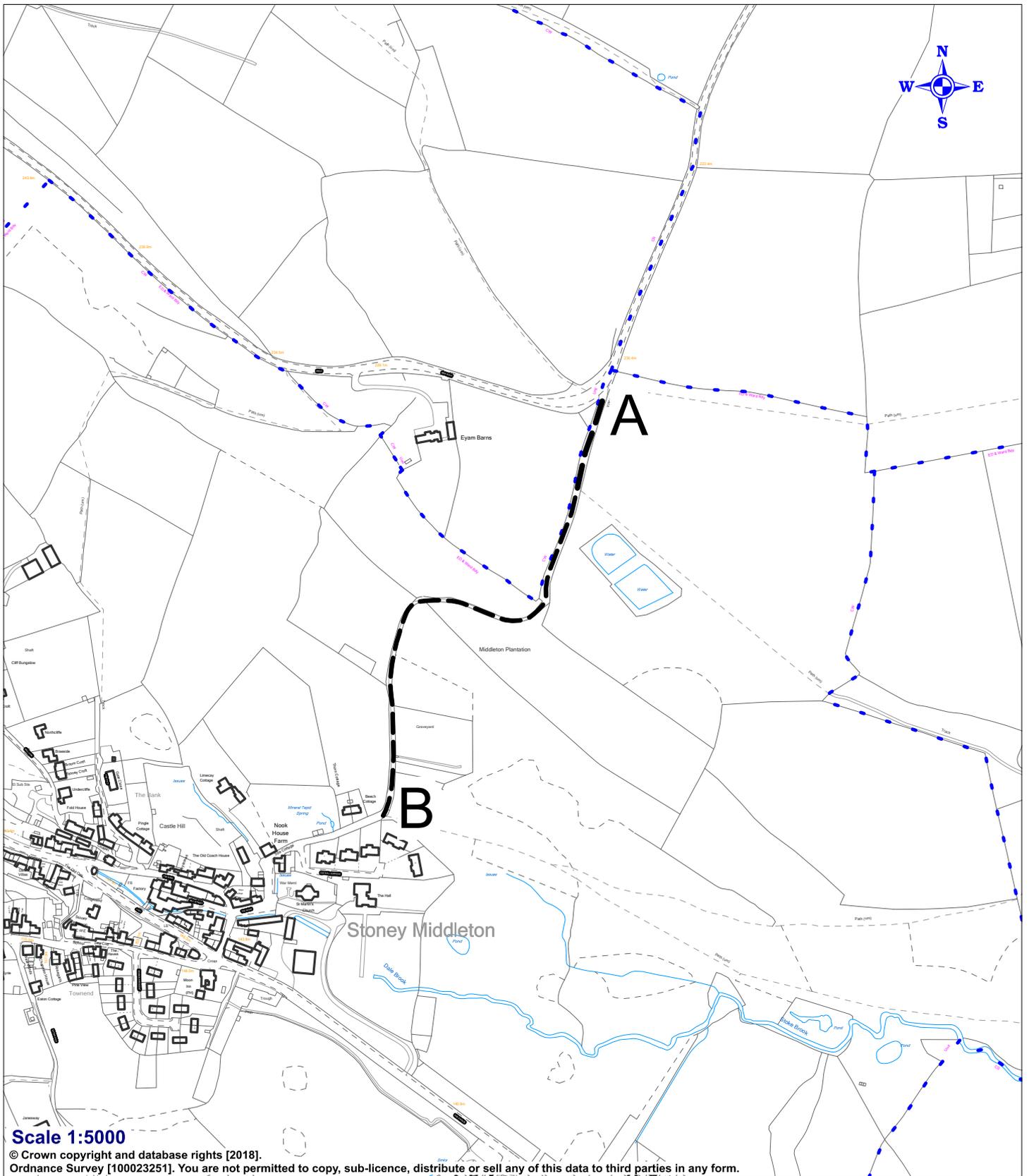
(6) **Key Decision** No.

(7) **Call-in** Is it required that call in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file in the Economy, Transport and Environment Department, including: the previous reports on this proposal by Strategic Director – Economy, Transport and Environment to the Cabinet Member, Stoney Middleton Parish Council submission of case for TRO, traffic surveys of November 2014 to April 2015, responses to consultation, traffic and road safety assessment, Surveyor's plans and measurements. Officer contact details – Richard Taylor, extension 38120.

(9) **OFFICER'S RECOMMENDATION** That the Cabinet Member authorises the making of a Traffic Regulation Order under Section 1 of the Road Traffic Regulation Act 1984 to prohibit the use of the road which is recorded as Stoney Middleton Byway Open to All Traffic No. 15 known as Jacob's Ladder, with mechanically propelled vehicles, subject to the exemptions proposed in the formal Notice of the proposal of the Traffic Regulation Order published on 6 September 2018, on the grounds set out in that notice.

Mike Ashworth
Executive Director – Economy, Transport and Environment



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THE DERBYSHIRE COUNTY COUNCIL
(STONEY MIDDLETON BYWAY
OPEN TO ALL TRAFFIC No. 15
(JACOBS LADDER)
PROHIBITION OF
MECHANICALLY PROPELLED VEHICLES)
TRAFFIC REGULATION ORDER 2018
ROAD TRAFFIC REGULATION ACT 1984 (as amended)

Extent of Prohibition of Mechanically Propelled Vehicles

A - Grid Ref: SK 2344 7594

B - Grid Ref: SK 2323 7555

