

Agenda Item No. 4(d)

**DERBYSHIRE COUNTY COUNCIL**

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

**17 June 2021**

Report of the Executive Director – Place

**OBJECTIONS TO THE DOLES LANE, CLIFTON PROHIBITION OF MOTOR  
VEHICLES ORDER 2021**

(1) **Purpose of Report** To inform the Cabinet Member of the objections received during the public advertisement of the proposals to the Prohibition of Motor Vehicles Order 2021, Doles Lane, Clifton.

(2) **Information and Analysis** There have been a few incidents at the ford on Doles Lane where vehicles have become trapped by unexpected large volumes of water and on one occasion, this has led to a loss of life. Warning signs on the approach to the ford have been in place for some years. As part of a series of measures throughout Derbyshire, each ford is to be numbered to assist the response from the emergency services. In the case of Doles Lane, it is also proposed to prevent motor vehicles from crossing the ford. Access across the ford can be maintained for pedestrians and cyclists via the existing footbridge. Access will be maintained for motor vehicles where required for adjacent landowners and for maintenance purposes. It is intended that the closure will be enforced by erecting gates at both ends. The extents of the proposals are shown on Appendix A.

The proposals were advertised from 18 February 2021 to 12 March 2021. Comments in support were received from the local Member, Parish Council and a member of the public. Objections were received from five individuals and two interest groups.

**Objections**

Three of the objections related to the need to keep Doles Lane open as it is both an important recreational and rural link. One objector considers the proposed Order is a drastic measure and asks the County Council to consider signing in the first instance. Another objector asks why trail riders are not allowed to use the route and considers that as they are small and have a rider, they should be able to exercise caution and use the route.

Objections were received from both the Trail Riders Fellowship and the Green Lane Association.

The Trail Riders Fellowship objection mainly relates to there being no incidents reported of either motorcycles or quad bikes having safety issues when crossing the ford. They consider that the Traffic Regulation Order (TRO) is flawed as it does not consider that, as those vehicles are ridden, the rider is more able to accurately judge the circumstances relating to the ford and whether they should proceed.

The objection is listed in full in Appendix B.

The Green Lane Association objected on the following grounds:

- Warning signs are required.
- An unauthorised sign is in place.
- The depth gauge provided looks amateurish.
- There is no regime for checking inspecting fords within Derbyshire.
- No case, no justification for the TRO

The full objection is listed in Appendix C.

### **Officer Comment**

The proposed TRO has been supported by the Local Member and the Parish Council previously. Derbyshire Police and Derbyshire Fire and Rescue Service would prefer the road closed to motor vehicles.

There are already signs in place to warn of the ford on both approaches, with supplementary plates to say that the route is unsuitable for motor vehicles. The oldest of these signs are at the junctions of A515/Doles Lane and Watery Lane/Green Lane. These signs can be seen in place using a well-known internet search engine and can be shown in place from July 2009. An additional sign was installed at the Doles Lane/The Greenacre junction to reinforce the warning sign at the A515 junction. This sign can be seen using the internet and the earliest image is from May 2011. The signing in these circumstances has been placed at points of turn. The carriageway on Doles Lane from The Greenacre westwards to the ford is a single lane and the warning signs are in place where drivers turn around or proceed along the main road. On the western side of Watery Lane/Green Lane junction, the warning sign has been placed where drivers can proceed on the road network as again the carriageway is virtually a single lane from that point eastwards with no opportunity to turn.

The wording on the supplementary plate is that the route is unsuitable for motor vehicles has been consistent for over a decade. The definition of motor vehicles within the Order can be changed in line with the definition in the Road Traffic Act 1988.

A depth gauge was installed in the ford in 2018. Fords within Derbyshire are to be numbered to aid the emergency services. Sudden downpour events have become more regular which can change the conditions of local watercourse quickly which makes reactive signing of the risk at fords more difficult.

Notifications have been received from people local to Doles Lane to say that, on occasion, temporary measures put in place have been moved to facilitate access to the ford. Any signs that have been erected by private individuals on the highway will be removed.

In summary, drivers have continued to use the route regardless of the presence of warning signs on the approaches. The road concerned has been signed as unsuitable for motor vehicles for over ten years. Drivers have removed temporary signs to use the route. A numbering system is to be brought in to assist emergency services responding to incidents at fords within Derbyshire. These signs have been ordered and are to be installed soon.

### **Local Member Comments**

The Local Member, Councillor Bull, supports the scheme.

(3) **Financial Considerations** There are no financial considerations associated with this report.

(4) **Legal Considerations** Section 122 of the Road Traffic Regulation Act 1984 states that it shall be the duty of every Local Authority exercising the functions in that Act (so far as practicable having regard to the matters listed below) to secure the expeditious, convenient and safe movement of and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.

The matters referred to above are:

- 1) the desirability of securing and maintaining reasonable access to premises;
- 2) 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 areas through which the roads run; 2ii) the national air quality strategy prepared under Section 80 of the Environment Act 1995;
- 3) 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
- 4) any other matters appearing to the Local Authority to be relevant.

Section 2 of the 1984 Act states what a TRO may provide for and this includes prohibition of waiting. Notice of proposals must be given in accordance with Regulation 7 Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and at least a minimum of 21 clear days for the receipt of written objections must be allowed. Objections can then be considered by the Local Authority. Regulation 14 of the 1996 Regulations enable an order making authority to modify an Order in consequence of any objections or otherwise, before it is made. Where substantial changes are to be made, the order making authority must notify those likely to be affected by the modifications and giving them an opportunity to make a representation which the authority shall consider. In this matter, it is considered that the modifications constitute a reduction and are therefore not a substantial change.

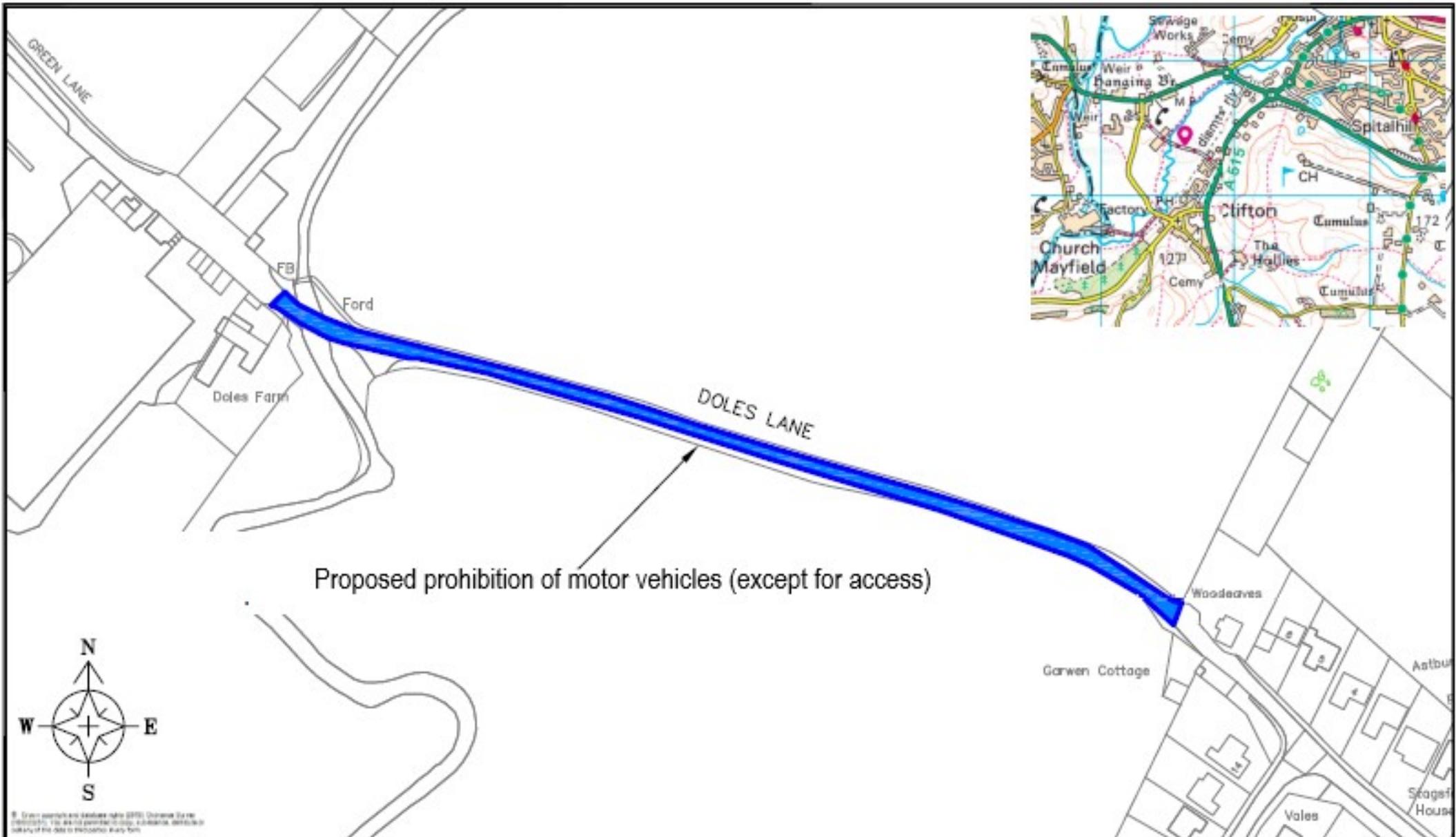
Having determined all objections, the Council may determine to introduce the new restrictions. The Order will need to be formally made, advertised and the requisite signs erected. An Order cannot be made until after the last date of publication of the notice of proposals. No part of a TRO can come into force before that date when it is intended to publish a notice of making it

### **Other considerations**

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

- (5) **Key Decision** No.
- (6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.
- (7) **Background Papers** Held on file within the Place Department.
- (8) **OFFICER'S RECOMMENDATION** That the objections to the Prohibition of Motor Vehicles Order 2021, Doles Lane, Clifton be overruled and the Order, subject to amending the definition of motor vehicles, be made.

**Chris Henning**  
**Executive Director – Place**



Proposed prohibition of motor vehicles (except for access)

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**DERBYSHIRE**  
County Council  
Tim Gregory  
Director  
Economy, Transport and Environment

KEY:  
 EXTENTS OF PROPOSED RESTRICTIONS

**PROJECT TITLE**  
Clifton, Doles Lane, Proposed Prohibition of Motor Vehicles

**DRAWING TITLE**  
CONSULTATION DRAWING

**DRAWN**  
JHARRISON  
**Date**  
18/01/2021

**CHECKED**  
SALCOCK  
**Date**  
18/01/2021

**APPROVED**  
SALCOCK  
**Date**  
19/01/2021

**Project / Confirm Reference No.**  
PROJECT/CONFIRM\_REF  
**Drawing Number**  
HMT/SA/764/21

**SCALE**  
N.T.S.

File Created: 18 Jan 2021 11:04 AM  
 File Saved: 18 Jan 2021 11:04 AM  
 File Location: C:\Users\17772\Documents\Project\Drawing\Clifton Doles Lane.dwg



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11<sup>th</sup> March 2021

**Re: Z3256 THE DERBYSHIRE COUNTY COUNCIL ROAD TRAFFIC  
REGULATION ACT 1984 (DOLES LANE/GREEN LANE, CLIFTON)  
(PROHIBITION OF MOTOR VEHICLES) ORDER 2021**

Dear Sirs,

I write on behalf of the Trail Riders Fellowship (“TRF”) to object to the proposed traffic regulation order (“TRO”) insofar as it restricts access for motorcycles and quadricycles.

We have been unable to locate any decision records or background documents on the Derbyshire County Council (“DCC”) website that relate to the decision to propose the TRO.

We are aware of media reports recording a fatality linked to use of the ford in 2018.

There does not appear to be any reports of motorcycles or quadricycles having safety issues crossing the ford. Neither the statement of reasons, draft order, or consultation letter acknowledge the existence of motorcycle or quadricycle traffic. Rather, the term “motorised vehicle” and “vehicle” is used as a catch-all.

We say this is unfair and incorrectly attributes report of incidents involving cars, to motorcycles and quadricycles.

Cars are a class of traffic that are distinct from motorcycles and quadricycles, just as cars are distinct from horse drawn carriages, pedal cycles, and mobility scooters. The aforementioned are all vehicles, and some are motorised vehicles, but only cars appear to be subject of reports of becoming stuck in the ford.

The TRO process appears to be infected with a fundamental mistake of confusing “car” and “vehicle” as being one and the same thing as all the many classes of “motor vehicle”.

The restriction proposed is overly restrictive in that it prohibits classes of traffic that are not likely to become stuck in the ford.

Motorcycles and quadricycles are ridden as opposed to driven. That inherently sets them apart from cars in the manner that they use a ford. Riders have a better view of the ford than drivers. Further, the rider is inherently more cautious by virtue of not being enclosed as the driver is. Exposure to the environment is a factor that prompts caution. A rider is no more likely to venture into a deep fast flowing ford than a pedal cyclist or pedestrian.



Use of a ford with a standard car presents greater hazard than use of a ford by motorcycle or quadricycle. Standard cars are prone to trapping their drivers, floating and overturning, and stalling in water.

Being ridden, motorcycles and quadricycles are not prone to trapping riders. The construction does not float as a car does. The wheels of a motorcycle/quadricycle maintain contact, drive, and steering where a standard car floats and the wheels lose effective traction.

The proposed restriction does not prevent electrically assisted pedal cycles and pedal cycles from crossing the ford. Neither does it prevent horse drawn vehicles from crossing the ford. A wide range of motorised vehicles are exempt from restriction for purposes of access. The order and statement of reasons contemplates a wide range of traffic using the road safely.

The statement of reasons relies on the alternative of a footbridge for pedestrians and cyclists. That alternative is also available to motorcyclists who are pushing their motorcycle with the engine switched off.

Cyclists are not permitted to cycle on the footway/footbridge and would have to push their bikes to avoid contravening s.72 Highway Act 1835. Cyclists are considered to be foot-passengers on the highway when pushing their bikes. What applies to a pedal bicycle also applies to a motorcycle.

Pushing a motorcycle is not riding or driving it.

The alternative of a footbridge does not translate into a restriction on use of the ford.

Pedestrians and cyclists are not prohibited from using the ford – even where it may be deep and fast flowing – by the existence of the alternative.

But motorcycle and quadricycle riders encountering the ford when it is deep and fast flowing are likely to use alternative tarmac routes rather than use the footbridge.

The draft order does not restrict horse drawn vehicles. It follows that any physical barriers used to enforce the TRO must allow for horse drawn vehicles to pass (so that they might use the ford). Providing a gap sufficient for horse drawn vehicles to pass the barrier would defeat the effectiveness of the barrier to prevent cars from passing. We recommend that the Council contact Mark Weston of the British Horse Society to explore the issue.

We are concerned that the draft order has departed from the definition of “motor vehicle” as provided by s.185 of the Road Traffic Act 1988. The definition used in the draft order omits reference to section 20 of the Chronically Sick and Disabled Persons Act 1970. The effect may be that the restriction would bite on mobility scooters. We respectfully suggest that the Council should prefer the statutory definition of “motor vehicle”.

A depth gauge can be provided at the ford. Depth gauges are a traffic sign and must be authorised as appropriate. We understand that the Traffic Signs Regulations and General Directions does not prescribe a depth gauge sign. There is a risk that unauthorised depth gauges may be dangerously inaccurate. We are concerned by reports that suggest the unauthorised use of traffic signs, including depth gauges. In particular, the Clifton Parish Council minutes dated 25<sup>th</sup> July 2018 record:

*“The gauge has now been marked with the levels – but it was a bit concerning it did not show the metre depth points it could have been more clearly marked. It was agreed it would be appropriate to put up a separate small sign to warn people of the marker been in metres.”*



Minutes date 16<sup>th</sup> May 2018 record:

*“The signs warning of the potential danger of following sat nav instructions to the ford have been erected and generally observed, although the depth gauge has yet to be finished. The cost to the council so far has been £180.”*

Minutes 16<sup>th</sup> January 2019 record:

*“FORD - Regarding the recent very sad accident at the ford Cllr J Harrison is following up the enquiry with the relevant authorities both as a landowner and councillor – updates will follow”*

TRF sympathises with the Parish Councils concerns about the ford and desire to make the road safer. We say that the road can be made safer, and the amenity of the road improved without a total and permanent restriction of public use of the road with motorcycles and quadricycles.

In the event that DCC decides to modify the Order, we ask that we are consulted on any modifications or otherwise provided with a reasoned explanation as to why we are not going to be consulted.

The road provides a valued amenity to members of the Trail Riders Fellowship, who enjoy riding it on motorcycles and quadricycles.

We ask that DCC modify the TRO so as not to restrict motorcycle and quadricycle traffic.

Alternatively, we ask that DCC provide an exemption within the TRO to permit members of the Trail Riders Fellowship to use the road with motorcycles and quadricycles. As riders with an interest in riding green roads, our members are especially familiar with riding fords, generally ride motorcycles and quadricycles that have good fording capabilities, and this sets them apart as more proficient users of fords than the wider public. Further, our members agree to abide by the TRF's Code of Conduct as a condition of membership and are recognised as responsible users of highways.

Yours sincerely,

John Vannuffel

Technical Director

Trail Riders Fellowship

Director  
Economy, Transport & Environment  
Derbyshire County Council

(By Email)

**Green Lane  
Association**

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04/03/2021

Dear Sir/Madam

**Proposed Traffic Regulation Order – Doles Lane/Green Lane – Clifton – Derbyshire – Ref Z3256**

I am writing to you on behalf of the Green Lane Association (GLASS) in respect of the above proposed Traffic Regulation Order (TRO), to which we are making a formal objection. We are aware that there was a fatality at the ford in 2018 and that over the previous 11 years it has been reported that there had been 4 incidents involving vehicles being caught in flood water at the ford. Whilst the loss of a life in such circumstances is tragic, both our objection to the proposed closure of the highway, and the highway authority's reasons for closing the highway, must avoid emotion and be entirely based on an objective analysis of all of the available evidence.

Due to the short timescale to respond to the proposed TRO I have been unable to ascertain from Derbyshire County Council (DCC) directly as to what their inspection regime for highways that feature fords may be. However, I have examined several published DCC documents including the Highways Inspection and Maintenance Procedures Review, dated 11<sup>th</sup> March 2015, the Resilient Network Plan and the Highways Infrastructure Assets Safety Inspection Manual, both dated June 2018, the latter has been subject to a number of reviews the last being dated 1<sup>st</sup> February 2020. None of these documents make any specific reference to fords, namely how and when they will be inspected. Of all of the published documents I have discovered, only 2 mention fords, the Highway Infrastructure Asset Management Strategy & Plan, dated June 2018, which on page 16 briefly mentions fords under public rights of way, although this is omitted from the revised version, dated 10<sup>th</sup> July 2020, which makes no reference to fords. There is also a reference to fords in the Data Management Strategy 2018, revised July 2020, at page 8, Figure 3, Asset Owners Organogram, which simply identifies who, within DCC, is responsible for them.

It may be that there exists somewhere a document defining how and when fords located on DCC's highway network are inspected, but I have not been able to discover it. Should it transpire that DCC has not provided such information to its highway inspectors, or that it does not have a regime for the inspection of fords within its network of highways, then that may be considered, at best, remiss on its part. By comparison it is relatively easy to discover how other HA's deal with the inspection of fords on their own highway networks. For example, Cornwall Council have published a document entitled "Cornwall Rural Highways Best Practice", fords and their management are specifically dealt with at chapter 8.2. In addition, their "Highway Maintenance Manual 2020", page 89, deals specifically with the inspection of fords, "C18 Specialist Inspection of Fords" which in respect of Cornwall's maintenance regime are, with the exception of tracks, inspected at least annually, inspections relate to the examination of signage, depth gauges, scour (damage to river bed or apron caused by water flow) and the condition of the river bed itself. In Shropshire and Dorset, fords are inspected at the same frequency as the highway on which it is located and include a check that a depth gauge is present.

The Traffic Signs Manual 2018 states at chapter 10.1 that the 'Ford' sign should be used at all fords, including those that dry up in the summer. It further states that additional signs should be placed at the entry to the road leading to the ford and should be accompanied by a distance plate. Although no longer prescribed, highway authorities are nevertheless encouraged to continue to provide depth gauges, particularly so where the ford may become impassable due to flood. At chapter 10.1.5 the document states that depth gauges should be provided at fords or locations where flooding is known to be a persistent problem. Section 103(1) of the Highways Act 1980 states that *"it shall be the duty of a highway authority to provide, in connection with any highway for which they are the highway authority and which is subject to flooding to any considerable depth, graduated posts or stones in any case where they consider the provision thereof necessary or desirable for the purpose of indicating the depth of water covering the highway"*.

To the best of my knowledge DCC has not put in place any warning signs nor has it ever had any warning signs in place at the ford itself, nor have they provided a depth gauge, although it may be the case that the Parish Council took it upon themselves to provide one, which a local resident stated did not work and described as looking something akin to what his kids may have constructed. Signs have been erected at the entry roads, one at the Watery Lane – Green Lane junction, some 230 metres to the north west of the ford, the other one being located at the junction of Doles Lane and the A515, some 430 metres south east of the ford, neither of which have any distance plates or arrows on them. With respect to warning signs, an additional sign appears to have been erected at or close to the junction of Doles Lane and The Greenacre. I have no information to confirm whether this sign was erected by the highway authority or by an authorised third party. There is no record of a TRO prohibiting vehicles from using this highway and yet this sign advises users that vehicles are prohibited. Consequently, this sign is misleading nor does it comply with the appropriate sign to use in such circumstances, should they actually exist, as advised in the Traffic Signs Manual (2018) published by the Department for Transport.

Warning signs are an important means of providing the 'user' with information as to any potential hazards that may lie ahead of them, in this instance signs with distance plates at the 'entry' road would provide an early warning. This is of particular use to those unfamiliar with the road as well as providing a reminder to those who are, and from which, especially in inclement weather conditions, they are able to make informed choices as to whether it would be appropriate to use the ford or to use a different route. This is not to say that everyone would choose another route, which is why warning signs at the ford itself, along with a depth gauge should it be known that the ford is subject to flooding, are additional and essential safety requirements and would provide all the relevant information to enable a user to make up their own mind.

DCC's 'statement of reasons' refers to 'regular concerns' having been raised in respect of vehicles becoming stuck in the ford. It provides no other details such as the timescale over which these concerns have been raised. If the information in respect of the other incidents, which are said to have occurred over a period of some 11 years, is correct, it raises the question that if DCC were aware that the ford could become hazardous during times of flood, and had been so aware since at least 2007, and in reality probably well before that time, why they did not consider complying with their duty under Section 103(1) of the Highways Act 1980 and provide a depth gauge along with additional warning signs at the ford itself? This in itself raises a further question, if such warning signs and a depth gauge, to the prescribed designs, had been provided, would the unfortunate victim have had sufficient information by which they may have chosen not to attempt to cross the ford and instead retrace their steps?

Unfortunately, in the circumstances, that is a question that cannot be answered other than to say it may have prevented the incident from occurring. As it stands, without sufficient warning signs any potential user may be lulled into a false sense of security, they may take the view that the ford holds

no particular hazards as if that were the case then there would surely be warning signs to that effect. A survey conducted by the AA revealed that a significant number of drivers would risk driving through 2 feet of standing water (up to their knees), whilst 36% of those who responded would seek an alternative route. I can only surmise, but if such drivers were met at a ford with a gauge indicating that the water was 1 or 2 metres deep then even those more 'adventurous' drivers may well decide to abandon any attempt to proceed. Running water, especially in flood, is far more hazardous, but without the information that a depth gauge would provide many people may have been led to assume that it was safe to proceed.

There is no 'getting away' from the fact that highways in the UK contain many potential hazards, bends, narrow bridges, low bridges, trees, lamp posts, telegraph poles, pot-holes, other road users and fords to name but a few. There is also no escaping the fact that accidents involving the loss of life occur on UK highways on a daily basis. For example, in 2020 a motorcyclist was killed on the A515 at Biggin, the Coroner concluded that it was a tragic accident resulting from a momentary lapse of judgement. In November 2018, two people died following an accident on the A515 at Clifton. However, despite these examples of the tragic loss of 3 lives no one has called for the A515 to be closed, and DCC have never proposed such a thing by means of a TRO. However, it is not the case that following such an accident that the only solution to be found is to permanently close a road to the public, if that were the case most, if not all, highways would be permanently closed. Generally speaking, there would be a short closure to allow an investigation of the circumstances surrounding the incident, following which there may be a further closure in order to allow for any identified defects or improvements to be repaired or carried out. Whilst I do not have the data to confirm it, it would appear that under normal conditions this road and its associated ford provide no greater hazard to normal road users than any other highway in Derbyshire.

Consequently, there is no case, no justification has been provided, for the proposed TRO. The tragic death of an individual and the other recorded incidents at this ford serve only too well to emphasise the need for what DCC already knew and that which has been clearly identified. Namely that there always was and there remains a need for the highway authority to provide proper signage and a depth gauge at the ford itself, as well as conducting appropriate repairs to the road surface at the entry points either side of the ford. At the time of the fatal incident DCC is on record as stating "As always, drivers have to take personal responsibility for their actions". Whilst that is not an unreasonable statement to make, it would carry much more weight had DCC ensured that the ford had been provided with such equipment and signage that would have provided users with sufficient information to enable them to reasonably determine whether or not it was safe for them to proceed. This conclusion is further supported, if indeed further support is necessary, by the fact that this proposed TRO does not include the prohibition of equestrian use or use with horse drawn vehicles.

Yours faithfully

Green Lane Association