

PROHIBITION OF DRIVING HURST LANE BYWAYS OPEN TO ALL TRAFFIC NOS 45 AND 46 ELY, NOS 47 AND 48 LITTLE DOWNHAM

To: **Cabinet**

Date: **5th July 2011**

From: **Executive Director : Environment Services**

Electoral division(s): **Sutton
Ely South and West**

Forward Plan ref: **2011/043** *Key decision:* **Yes**

Purpose: **To determine objections to the Cambridgeshire County Council Byways Open to All Traffic No 45 and No 46 Ely and No 47 and No 48 Little Downham Prohibition of Driving Order 2011**

Recommendation: **That Cabinet:**

- a) determine the objection without holding a Public Inquiry;**
- b) introduce the Order as advertised**
- c) inform the objectors accordingly.**

| <i>Officer contact:</i> | | <i>Member contact</i> | |
|--------------------------------|--|------------------------------|--|
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1. BACKGROUND

- 1.1 The Rights of Way and Access Team requests that a Prohibition of Driving Order (PDO) under Section 1 of the Road Traffic Act 1984 is placed on byways open to all traffic (BOATs) Nos 45 and 46 Ely and Nos 47 and 48 Little Downham to prevent any person using a motor vehicle with more than 2 wheels between 1st October and 30th April annually. Any person requiring access along the byways to land will be given keys. Appendix 1 consists of a map showing the location of these routes (connecting West Fen Road Ely with Little Downham) and of the proposed gates required to enforce the Order.

- 1.2 These routes are registered on the Definitive Map and Statement as byways open to all traffic, the statutory definition of which is:

'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'

Although the public have the right to use these routes with vehicles, the main use will be by pedestrians, cyclists and horse riders. The County Council manages these routes accordingly. The making of this Order does not alter the County Council's maintenance responsibilities. The County Council has a duty to protect the interests of all public users.

- 1.3 The routes in question consist of un-surfaced 'green lanes'. The County Council has records of regular and repeated complaints about rutting and damage to the surface going back to 1998. Damage has arisen as a result of the dumping of dredged material on the surface of the byway, agricultural activity and inappropriate use by recreational vehicles. Repairs have been carried out in 1999, 2005, 2007 and 2008. In 2005 the routes were subject to a voluntary closure operated by motorised user groups. In 2006 the routes were subject to a temporary closure order to allow repairs to set and the surface to re-grass.
- 1.4 Through discussions with the local Internal Drainage Board (I.D.B.) and farmers, damage through land management operations has been reduced. The remaining issue is one of inappropriate use by recreational vehicles. The Council's adopted policy on managing vehicles on byways is to firstly ensure the County Council has reasonably fulfilled its statutory maintenance duties, should this fail it seeks voluntary restraint by users, and only finally resorting to Permanent Seasonal Closures where all other measures have failed.
- 1.5 It is proposed that the Order will be enforced by means of statutory signage, with gates erected where affected byways meet the adopted highway or other byways not covered by the Order. This scheme is proposed to be in place by 1st October 2011.
- 1.7 All the routes are currently subject to temporary closures (since 30th April 2011) for six months to allow for restoration works to the surface. Locked gates are in place to enforce this temporary closure.
- 1.8 BOATs 45 Ely and 47 Little Downham form part of the Hereward Way, a regional long-distance path between Oakham and Thetford in Norfolk, which

is supported by the County Council, and of the Bishops Way, a County Council promoted circular walk and ride.

2. MAIN ISSUES

- 2.1 The proposed closure was originally requested by Little Downham Parish Council, primarily through the village's Conservation Group. Letters of support for the proposed Order have been received from the City of Ely Council, the British Horse Society and 2 adjacent landowners. The Littleport and Downham Internal Drainage Board has no objections. The County Councillor for Little Downham supports the order.
- 2.2 49 letters of objection to the proposed PDO have been received (43 of these are photocopies of the same letter but signed individually). An analysis of the signatories to the letters shows that 18% live within the village, a further 61% live in the wider Parish and 21% lived outside the area e.g. Isleham, Chatteris, Littleport. A summary is attached in Appendix 2.
- 2.3 The main issues of concern are:- the historic status of the droves and the County Council's right to gate them, ongoing maintenance of the droves, querying the need to gate the droves thereby restricting access for agricultural machinery, and the cost of installing the gates. One objector is querying the location of the gate on BOAT Ely 45/Lt Downham 47.
- 2.4 Copies of the actual letters of support and objections, and proposed restrictions will be available at the meeting.
- 2.7 Gates are necessary to enforce the proposed order. All landowners and tenants needing access along the BOATs are given keys to allow them to open the gates. All the costs of installing the gates and of making the PDO are being funded by an external grant secured by the Rights of Way and Access Team from the European Community Rural Development Fund. There are no costs, other than staff costs, to the County Council.
- 2.8 In September 2009 Little Downham Parish Council formally resolved to request an order to restrict access by 4x4 vehicles during the winter months. This request was supported by landowners at the southern and northern entrances to the routes and by the relevant District Councillor.

3. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

3.1 Supporting and protecting vulnerable people when they need it most

There are no significant implications for this priority.

3.2 Helping people live healthy and independent lives in their communities

Closing these routes to 4x4 motor vehicles during the winter should result in permanent improvements to the surface of these routes, which will allow walkers, horse-riders and cyclists to use the routes more easily throughout the year, and to encourage local people to use the routes for informal exercise as well as travel between Little Downham and Ely.

3.3 Developing the local economy for the benefit of all

Improvements to the surface of these routes will encourage visitors to use the Hereward Way and Bishops Way promoted routes, and contribute to the local economy. Improvements are being funded as part of a European funded economic regeneration project.

3.4 Ways of Working

The following bullet points set out implications identified by officers for being a genuinely local Council:

- Responding directly to request from Little Downham Parish Council for action
- Working with and responding to local landowners requests to manage public access
- Responding to the needs of local users
- Enabling effective local land management for the future

4. SIGNIFICANT IMPLICATIONS

4.1 Resource and Performance Implications

The report above sets out details of significant implications in paragraph 2.7

4.2 Statutory, Risk and Legal Implications

There are no significant implications within this category

4.3 Equality and Diversity Implications

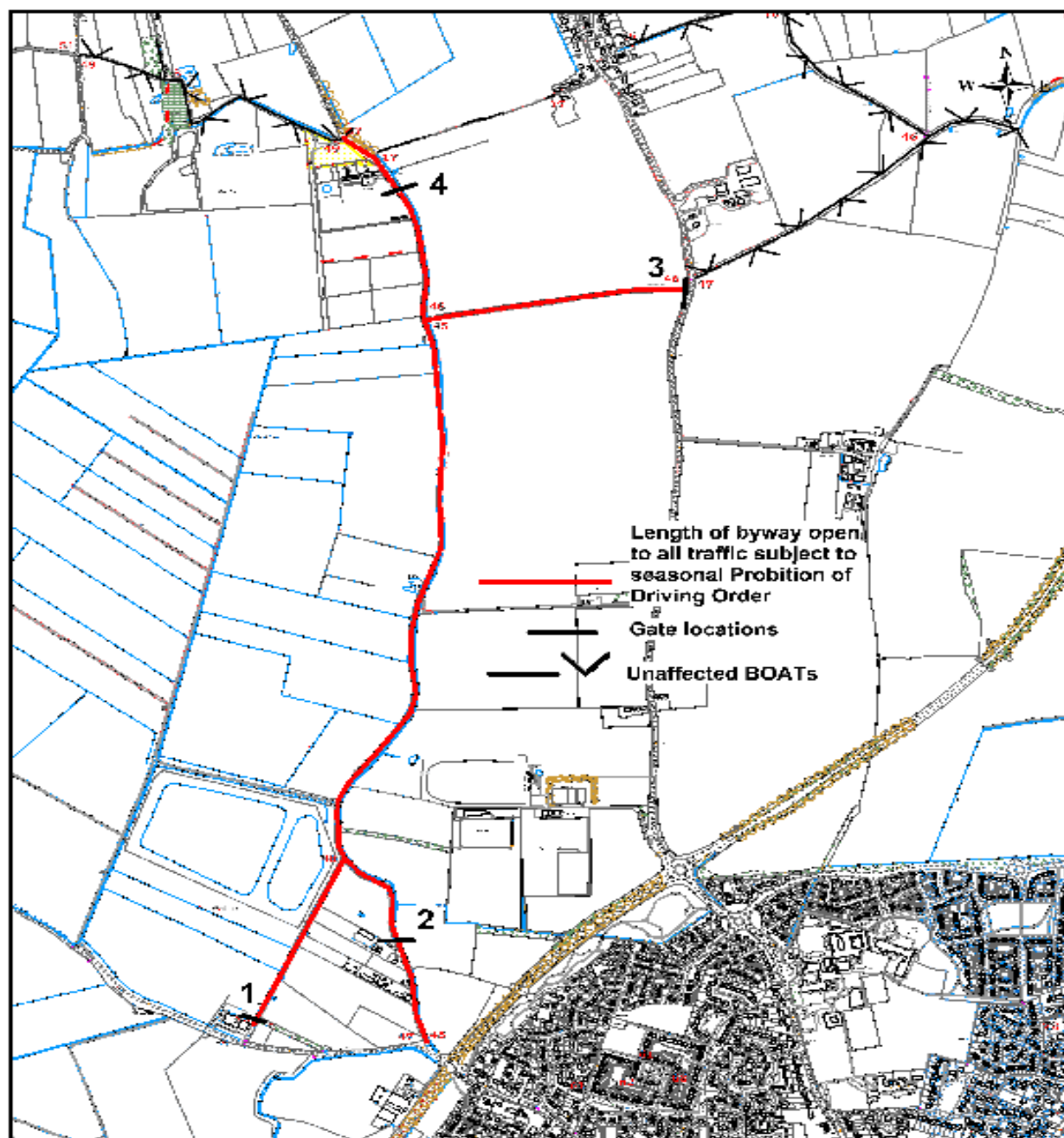
There are no significant implications within this category

4.4 Engagement and Consultation

There are no significant implications within this category

| Source Documents | Location |
|---|--|
| Correspondence and maintenance records held by the Public Rights of Way and Access Team | A Wing 3rd Floor Castle Court Box CC1305 |

Little Downham/Ely proposed PDO



Scale (at A4): 1:12000

Date: 25/03/2011

By: tg257

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Appendix 2

| Objector | Reasons for the objection | Officer Response |
|----------|--|--|
| 1 | <ul style="list-style-type: none"> The classification of access droves as byways is incorrect and the legal process was never completed. The County Council has no right to gate private property Hard surfacing of droves would be unacceptable urbanisation The cost of maintaining and insuring access droves if they were byways would be an unnecessary burden to the County Council. | <ul style="list-style-type: none"> Our records confirm due legal process has been followed in accordance with the Wildlife and Countryside Act (1982). Objectors have been advised of the appropriate channels to challenge and, if appropriate, amend the legal record. The Road Traffic Act (1984) gives CCC the authority to introduce measures to regulate traffic whilst protecting the interests of landowners and occupiers There are no proposals to harden the surface of these byways The County Council already has a duty to safe guard public access along the byways. The proposed TRO will not alter the financial or legal liability of CCC towards users of the byways. |
| 2 | <ul style="list-style-type: none"> Proposed closures are illegal and will not resolve the problem Farmers will still require access and can not be banned from earning a living, it infringes their human rights Cost of surfacing the byways cannot be justified in terms of level of recreational use Walkers and riders do not mix with farming and agriculture Future maintenance costs of the gates Concern over use by motor bikes and fly tipping | <ul style="list-style-type: none"> Road Traffic Act (1984) provides the legal framework. Seasonal Closures have proved successful across the County and are seen as best practise in the management of byways. Farmers will still have access There are no proposals to surface the byways Recreational use of the countryside is recognised as a legitimate land-use and has many positive benefits when properly managed. The future maintenance costs of the gates are outweighed by the costs of repairing the damage caused by inappropriate use of the byways. Gates will go some way to regulating inappropriate use by motorbikes and fly tipping. |
| 3 | <ul style="list-style-type: none"> Objects to the proposed location of gates Gates erected before the consultation has been completed | <ul style="list-style-type: none"> Location of gates has been reviewed as part of this consultation Gates were erected as part of a temporary closure to protect works. |
| 4 | <ul style="list-style-type: none"> Erection of barriers would be illegal and contrary to Human rights Cost can not be justified, farmers should be paid to maintain the byways Council can not expect farmers to regularly level the droves | <ul style="list-style-type: none"> Road Traffic Act provides the legal framework Farmers have traditionally done a lot of maintain and level the droves. In this instance, local farmers have stopped carrying out maintenance work because it is repeatedly undone by inappropriate use by 4X4 vehicles. Farmers are required to make good any damage caused by farming operations to the surface of a highway |
| 5 | <ul style="list-style-type: none"> Access for farmers and emergency vehicles | <ul style="list-style-type: none"> Access will be maintained for farmers. Emergency vehicles carry |

| | | |
|--------------|--|--|
| | | equipment to gain access if required. The gates will remain open for 6 months of the year |
| 6- 63 | <p>The main issues of concern are:-</p> <ul style="list-style-type: none"> - the historic status of the droves and the County Council's right to gate them, - ongoing maintenance of the droves, - querying the need to gate the droves thereby restricting access for agricultural machinery - the cost of installing the gates. <p>One objector is querying the location of the gate on BOAT Ely 45/Lt Downham 47.</p> | <ul style="list-style-type: none"> ○ Our records confirm due legal process has been followed in accordance with the Wildlife and Countryside Act (1982). Objectors have been advised of the appropriate channels to challenge and, if appropriate, amend the legal record. ○ Ongoing maintenance of the droves will remain the duty of the County Council who will continue to seek to work in partnership with local landowners ○ The proposed gating arrangements have been designed in consultation with local farmers and with due regard to access for agricultural machinery. ○ The future maintenance costs of the gates are outweighed by the costs of repairing the damage caused by inappropriate use of the byways. ○ Keys have now been supplied to address access issues that arose as a result of the location on BOAT Ely 45/Lt Downham 47 |