

## CYNGOR SIR POWYS COUNTY COUNCIL

**CABINET REPORT**  
17<sup>th</sup> April 2012

**REPORT AUTHOR:** County Councillor Wynne Jones  
Portfolio Holder for Leisure and Recreation

**SUBJECT:** Protocol for authorising motor vehicle events affecting  
footpaths, bridleways and restricted byways

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**REPORT FOR:** Decision

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**Summary**

The County Council has a direct role in giving authorisation to those motor vehicle events which may cross or pass along public footpaths, bridleways and restricted byways. The law relating to such 'authorisations' is less than satisfactorily set-out in the legislation, as to how the Council is meant to perform its duties in considering and providing such authorisations.

In addition to interpreting the legislation specifically dealing with this issue, namely the Road Traffic Act 1988 (RTA 1988), other legislation also has a direct bearing on how authorisations are managed and conditions applied, namely the duty to conserve biodiversity under the Natural Environment and Rural Communities (NERC) Act 2006 and duty to safeguard the authority and public in discharging its duties under the Health & Safety at Work Act 1974 and in meeting the Council's duty to 'assert and protect the rights of the public' under the Highways Act 1980.

As a central theme within the Powys Change Plan, the Council is committed to supporting projects which drive Regeneration of the local economy within Powys. It is recognised that events affected by the paper can contribute significantly to this work, and in particular the larger national and international events with major stages in Powys and Mid Wales.

A trial of speed and races represent events where competitors compete with one another, as quickly as possible to complete a circuit or route. In the majority of applications received however, applications are for 'trials of average speed', where competitors are not required to complete a course in the fastest times but to do so within defined time controls, and these events are determined to be lawful by the Motor Sports Association. However, in some case the applications are less than clear as to the nature of the proposed event.

It is the duty of the County Council to ensure that for any event, where it affects a footpath, bridleway or restricted byway, that assessments and measures are put into place by the event organiser that fully safeguard the use of these public rights of way. It is intended that conditions regarding health and safety and safeguarding the local biodiversity are made explicitly clear in the authorisation of an event.

Where a motor sport event does not intersect with any public rights of way, the organiser has no need to seek a s.33 TRA authorisation from the County Council.

In setting out safe methods of work, the Council already expect that adequate control measures are put in place to safeguard rights of way users. This may include appropriate signage or marshalling. Concerns over signage are outstanding and representations should be made to the Governing bodies to improve and agree suitable wording.

Organisers are also required to put right any damage to the highway resulting from an event.

In order to ensure that local rights of way and local biodiversity interests are being fully safeguarded, random event monitoring will take place. Event organisers will be asked for copies of their Risk Assessments and evidence of appropriate mitigation measures.

Whilst s.16A of the Road Traffic Regulations Act 1984 does provide measures for a road to be closed by either the secretary of state or County Council, this does not represent an easy or affordable way to manage this issue.

In addition to safeguarding the public who may use local rights of way, the NERC Act requires the Council to formally consider how its actions affect wildlife. The NERC Act, Wildlife & Countryside Act 1981, and Habitats & Species Regulations 2010 also specifically protect a range of habitats and species, which the Council has a duty to ensure are not threatened by its actions. To this end, organisers will need to consult with the Countryside Council for Wales to identify areas of concern and agree ways to safeguard them.

Conditions will be set-out in authorisation letters, which will require full consultation having taken place with the CCW, that any areas of concern which relate to protected species or habitats have been discussed, mitigation measures agreed and put in place on the day/s of the event. Conditions will in each case require that any event organiser adheres to the advice and requirements for management of events as set out in either the Motor Sports Association (MSA) or Auto Cycle Union (ACU) handbooks.

To support the conditions, guidance notes will be produced which will advise organisers of their biodiversity responsibilities. Guidance will also include contact details in relation to the protection of ancient monuments (see Appendix 1).

Whilst not considered to be a routine occurrence, where an application crosses or is close to land designated as an Site of Special Scientific Interest (SSSI), or EU designated Special Protection Area (SPA) or Special Area for Conservation (SAC), the Council must consult with the CCW, and where required to do so will request additional information from applicants. This might include ecological assessments and proposed mitigation measures. Any measures required by the CCW as management or mitigation will be set-out as conditions in any authorisation.

Where a SSSI is directly affected by an application, Schedule 2, Part 4, Class B.1(c)(i) Town and Country Planning (General Permitted Development Order) 1995 also requires that planning permission would be required to allow an event to take place, which would separately involve full consultation with the CCW.

Applicant guidance will set out the need to undertake prior consultation with the CCW to ensure such issues are identified and fully discussed prior to any application being made to the Council.

In cases of EU designations, the Council is also required to ensure that an 'appropriate assessment' is undertaken of the assessments and mitigation measures provided by the

applicant, and these will be provided to the CCW, who will need to provide consents before any authorisation can take place.

In circumstances such as these, applicant guidance will set-out that adequate time is set-aside to allow consultation, assessment and mitigation issues to be properly considered prior to submitting an application and before any determination can take place.

### **Proposal**

That suitable procedures will be put in place, alongside clear conditions to safeguard biodiversity and the public using local rights of way, supported by guidance notes.

The approach set out acknowledges the economic opportunities that such events bring to the area, but also seeks to balance the needs to secure public safety and biodiversity.

The County Council formally supports the Countryside Service in taking a pragmatic approach when managing and giving authorisations which ensures that the Council complies with its statutory obligations and that the public interests and those of the Council are safeguarded as far as is reasonably practicable.

Where a breach of condition is found, a report to the Council's Cabinet will follow.

### **Powys Change Plan**

Regeneration is a central theme in the PCP, and this approach will continue to support this, whilst securing public safety and biodiversity interests.

The proposal supports the delivery of One Powys, notably 'People in Powys benefit from a thriving diverse economy' for which would be a deliverable under the regeneration strategy.

### **Options Considered/Available**

#### **Proposal**

- A. Applications under s.33 Road Traffic Act 1988 for a race or trial of speed will be refused.
- B. Applications under s.33 Road Traffic Act 1988 for average trial of speed or other events which are not trials of speed or races will be approved subject to the following –
  - (i) Full compliance with the protocol (Appendix 1) as attached.
  - (ii) That organisers comply with guidance as set out in the current Motor Sport Association or Auto Cycle Union handbooks, including signage.
  - (iii) Applicants who are not members of either governing body will be expected to follow guidance as set out by MSA or ACU, as relevant for their event.
  - (iv) If MSA/ACU signage is not used, personalised signage must be agreed by the County Council in advance of the event.
  - (v) That in authorising an application, the Council will issue a letter containing conditions which the authority think fit (section 33 RTA 1988), which will specifically require compliance with guidance on Health and Safety, and Biodiversity.
  - (vi) That full prior consultation will have taken place between an applicant and the CCW where the event may affect a SSSI or EU designated conservation site, with additional consultation taking place between the Council and the CCW upon receipt of such an application.

- (vii) The Council being satisfied that it is not likely to have a significant effect on a European site or having ascertained, following an appropriate assessment, that it will not adversely affect the integrity of a European site.
- (viii) The Council will carry out monitoring on a random basis and without notice, to ensure that any conditions are adhered to and that where events are found to be in serious breach –
  - (a) a report will be made to the ACU/MSA as appropriate.
  - (b) a report will be made to the County Council Cabinet, who will decide upon appropriate sanctions or approach to future applications.
- (ix) A timetable will be issued to guide prospective organisers in procedures for making their applications.
- (x) On receipt of an application, the Council will endeavour to determine an application within 4 weeks. In the event of failure to meet this deadline, the applicant will be advised of the reasons.

## **Proposal 2**

To make representations to the ACU and MSA on improvements to national signage, to ensure that any signage advises the public on an event, but also ensures that wording is neither false or misleading, nor seeking to directly deter legitimate use of a public right of way.

### **Preferred Choice and Reasons**

It is recommended that Proposal 1 and 2 are adopted as protocol. These provide for simple but clear expectations upon event organisers to meet their statutory and civil duties in safeguarding the public and biodiversity.

### **Sustainability and Environmental Issues/Equalities/Crime and Disorder/Welsh Language/Other Policies etc**

Powys County Council has signed up to the Welsh Government's Sustainability Charter committing the Authority to make sustainable development its central organising principle. A sustainable future for Wales includes a commitment '*to support healthy, biologically diverse and productive ecosystems, by actively recognising and supporting our environmental assets including land, water and biodiversity*'. This proposal mirrors recommendations in the accompanying guidance document for embedding sustainability across the organisation. This further adds to the duty under the NERC Act 2006 and Wildlife & Countryside Act 1981 (as amended) which requires the Council to consider biodiversity in exercising its functions and in safeguarding protected species and habitats.

The proposal would not impact upon Welsh language, Equalities or Crime and Disorder policies.

### **Children and Young People's Impact Statement - Safeguarding and Wellbeing**

The proposal would not impact on securing the safety and protection of children and young people and supporting the promotion of their wellbeing.

**Local Member(s)** N/A

### **Other Front Line Services**

If the event runs though a Special Site of Scientific Interest, then planning permission is required under Schedule 2, Part 4, Class B.1(c)(i) Town and Country Planning (General Permitted Development Order) 1995. It states within this section that development is not permitted if the land is, or is within, a site of special scientific interest and the use of the land is for motor sports.

Alan Southerby comments: 'There are no specific comments from the Development Management team that deals with planning applications other than to confirm that in the event of a planning application being submitted, this would be processed in the normal way giving any interested parties the opportunity to comment and make representations before any final decision is taken.'

**Support Services (Legal, Finance, HR, ICT, BPU)**

Finance - The Principal Accountant for Community, Skills and Learning comments that each application made under s.33 RTA1988 is already subject to a fee of £100. The proposal does not have any direct budgetary implications and may be reviewed accordingly.

Legal - The comments of the Principal Solicitor (Shire) have been incorporated in the report.

**Local Service Board/Partnerships/Stakeholders etc**

Although the Countryside Council for Wales and the Brecon Beacons National Park Authority are Local Service Board Members, they are already included in consultations and this report does not affect their interests as LSB members.

**Communications**

Proactive news release required following decision taken by Cabinet.

**Statutory Officers**

The Strategic Director, Law & Governance (Monitoring Officer) comments "I am content with the report."

<b>Recommendation:</b>	<b>Reason for Recommendation:</b>
To approve Proposals 1 & 2 as set out	Safeguard Authority position and officer interests and role

<b>Relevant Policy (ies):</b>	
<b>Within Policy:</b>	Y
<b>Within Budget:</b>	Y

<b>Relevant Local Member(s):</b>	None
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<b>Person(s) To Implement Decision:</b>	Chris Jones
<b>Date By When Decision To Be Implemented:</b>	Immediate effect

Contact Officer Name:	Tel:	Fax:	Email:
Stuart Mackintosh	01597 827583	01597 827555	Stuart.mackintodh@powys.gov.uk

**Background Papers used to prepare Report:**

1. *Guidance for Public Authorities on Implementing the Biodiversity Duty* (2007) Department for Environment, Food and Rural Affairs.
2. Background legislation (extracts from the Road Traffic Act 1988 (s.12,13 and 33))
3. Appendix 1 - Guidance Note: Conservation of Wildlife And Heritage