

Devon County Council (Road past Bouchland Farm, Burrington (Prohibition of motor vehicles) Order

Report of County Solicitor

1. Summary

This report updates members on the outcome of a High Court challenge by the Trail Riders Fellowship (TRF) against the decision of this committee to make and publish a Traffic Regulation Order to prohibit motor vehicles on the county road R7124 (see attached plan)

2. Background

Following concerns from Burrington Parish Council that the access of the R7124 onto the A377 was "very dangerous" Devon County Council gave notice of its proposal to make a TRO to prohibit vehicles from using a 370m length of the lane from the junction with the A377. Members of this Committee considered the matter on 25 October 2011 in the light of objections made to the proposal, including objections from the TRF. The officer report acknowledged that the safety assessment that DCC had carried out raised concerns about the standard of the junction, but nevertheless recommended "on balance" that no further action be taken and the junction should be monitored as part of the annual review process. Members resolved to hold a site visit, which took place on the 09 November 2011. The next meeting of the HATOC took place on 20 March 2012 where the officer report on the visibility of the junction referred to the hugely sub-standard visibility in both directions. The TRF attended that meeting as it had done the first meeting, and spoke in objection to the proposed TRO. Members resolved to approve the TRO "in the interests of public safety, in view of the sub-standard visibility distances at the junction of the road with the A377."

3. Legal Challenge by TRF

The TRO was made and sealed on 08 August 2012. On the 23 August the TRF sent a letter before claim setting out two grounds of challenge to the TRO. DCC's reply did not dissuade the TRF from issuing its claim in the High Court on 11 September 2012. In those proceedings the TRF then raised 8 separate grounds of challenge to the TRO, which counsel for DCC characterised as "arid complaints of form over substance". In essence the TRF claimed that the TRO was not made in accordance with statutory requirements set out in the Road Traffic Regulation Act 1984, in that DCC had failed to satisfy itself that it was expedient to make the TRO; that it was not made for any statutory purpose set out in the Act; that it failed to have regard to the prescribed statutory provision set out in S.122 of the Act, and S.130 Highways Act 1980 and that DCC failed to comply with procedural requirements relating to notification and publicity. The TRF also contended that DCC had acted irrationally as there was no evidence of any danger to the public. Counsel for DCC characterised this last ground of objection as "fanciful particularly given, for example, the woeful visibility distances at the junction with the A377 and the recent fatality less than 500 yards away".

4. The High Court Decision

The hearing took place in the High Court, London on 26 June 2013. Both the TRF and DCC were represented by counsel. Following submission of the TRF's case and DCC's in response the judge gave judgement in favour of DCC on the basis that DCC had been entitled to make a TRO prohibiting motor vehicles from using part of this road where that was expedient in the interests of road safety. The judge dismissed each of the eight separate

grounds of challenge advanced by the TRF. He concluded that it was self evident that DCC had considered it expedient to make the TRO on safety grounds, which was what S.1 of the Road Traffic Regulation Act 1984 envisaged; that the decision was not irrational and there was ample evidence that a TRO was expedient. The potential danger meant that an order to limit motor vehicles was justified. The committee had taken account of the objections and was entitled to conclude that the danger outweighed any other considerations. DCC had sufficiently complied with the requirements in the regulations to give notice and reasons.

5. Costs

The TRF was ordered to pay the legal costs incurred by DCC in defending this claim.

6. Comment

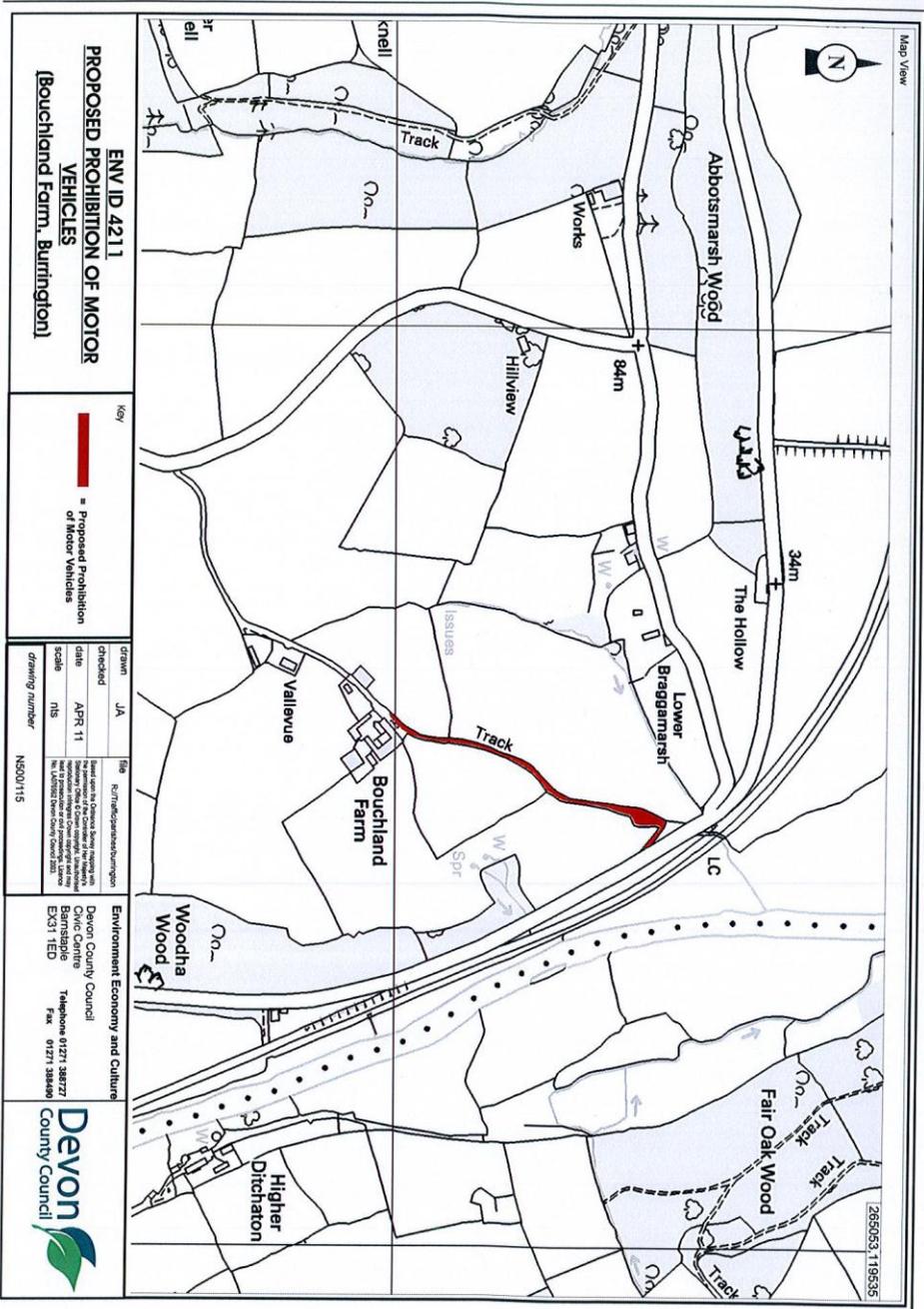
In view of the clear evidence on sub-standard visibility at the junction of this road with the A377, and the accident statistics in the vicinity of the junction, it is understandable that members felt that a TRO was appropriate. What is perhaps less understandable, in the light of the available evidence, is why the TRF considered this case worth challenging in the High Court.

Jan Shadbolt
County Solicitor

Electoral Division: Chulmleigh & Swimbridge
District Ward: Chulmleigh

Local Government Act 1972: list of background papers

Contact for enquiries: Simon Clarey
Room G14 County Hall Exeter



ENV ID 4211
PROPOSED PROHIBITION OF MOTOR VEHICLES
[Bouchland Farm, Burrington]

Key
 = Proposed Prohibition of Motor Vehicles

| | | | |
|----------------|---------|----------|-----------------------------|
| drawn | J.A. | file | ENV\map\env4211\env4211.dwg |
| checked | | revision | 1 |
| date | APR 11 | author | J.A. |
| scale | 1:5 | checked | J.A. |
| drawing number | NE00115 | approved | J.A. |

Environment Economy and Culture
 Devon County Council
 Civic Centre
 EX31 1ED
 Telephone 01271 382721
 Fax 01271 382499



255053.119535

