



Cabinet report

Date **8 SEPTEMBER 2022**

Title **THE ISLE OF WIGHT COUNCIL (VARIOUS STREETS, FRESHWATER) (TRAFFIC REGULATION) ORDER NO 1 2022**

Report of **CABINET MEMBER FOR INFRASTRUCTURE, HIGHWAYS PFI AND TRANSPORT**

EXECUTIVE SUMMARY

1. Proposed Traffic Regulation Order (TRO) - The Isle of Wight Council (Various Streets, Freshwater) (Traffic Regulation) Order No1 2022.
2. This report provides the details of recommendation for introducing new parking restriction as detailed in the map in Appendix 1 (TRO Map) – No Waiting at Any Time in Birch Close and Colwell Road in Freshwater.
3. The proposal is aiming to ensure safety for all road users, whilst securing the movement of the traffic – by increasing visibility at the junction and regulating parking at one side of the road.
4. The potential loss of parking spaces is low in number (maximum 4 spaces), as the restriction applies to the junction with Colwell Road and to the turning head where vehicles shouldn't park anyway, as well as to one of the sides of Birch Close. Parking on both sides of the road would obstruct access including emergency vehicles and deliveries.
5. The number of the potentially affected properties is five (5), however, they all have private driveways for at least two vehicles.

RECOMMENDATION

6. Cabinet approves the proposed restriction that is subject to this report in relation to The Isle of Wight Council (Various Streets, Freshwater) (Traffic Regulation) Order No1 2022 as proposed.

7. The road safety and highway engineers in Island Roads strongly advised the approval on grounds of safety. The loss of parking spaces in Birch Close is minimal, part of the street will remain unrestricted and available to park. The number of the affected properties is low (five properties) and they all have private driveways for at list two vehicles.

BACKGROUND

8. This report concerns the approval of a proposal for a new TRO as part of conditions attached to a planning permission granted on 16 November 2021.
9. The proposal is based on The Planning Application 21/00357/FUL for developing the land to the east of Birch Close and north of Solent Gardens in Freshwater, Isle of Wight for a residential development comprising of 50 dwellings with access from Birch Close, access roads, parking and landscaping.
10. A Conditional Planning Permission was granted on 16 November 2021 to build 44 dwellings, access roads, parking and landscaping - see Background Paper (Agenda Item 4, page 7 onwards) - Subject to S106 Legal Agreement.
11. The Planning Committee reviewed the application and concluded that the potential highways safety implications will need to be mitigated by introduction of parking restrictions, and accepted that the application would therefore comply with policies SP7 (Travel) and DM2 (Design Quality for New Development) if a condition to the permission is imposed, requiring a Traffic Regulation Order introducing double yellow lines on this part of the network.
12. The planning permission contains several special conditions, including Condition No 11 (page 40 in the Background paper), which is relevant to the proposed TRO:
13. “No development shall take place until a Traffic Regulation Order has been secured from the Local Highway Authority for the implementation of double yellow lines on the southern side of Birch Close about its junction with the site access and its junction with Colwell Road and on Colwell Road about its junction with Birch Close; and the development hereby approved shall not be occupied until the resultant on-street parking restrictions have been implemented.” Reason: In the interests of highway safety and to comply with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

14. The proposed new regulations are in line with the IoWC's [Corporate Plan 2021 – 2025](#) and more specifically with its vision and clear aim to work together openly and with our communities to support and sustain our economy, environment and people.

Provision of affordable housing for Island Residents

15. The proposal forms part of a planning permission dated 16 November 2021 for a new development under Planning Application 21/00357/FUL and the new traffic regulations are designed to mitigate the impact of increased traffic once the development has been populated.
16. The new development would consist of 44 dwellings, 35% of all dwellings will be affordable housing; this will help with meeting the housing demand on the island and will support the Council in meeting the affordable housing supply.

Responding to climate change and enhancing the biosphere

17. There may be some minor reduction in local air pollution and carbon emissions owing to fewer cars idling in the area, but it would most likely be a very small impact.

Economic Recovery and Reducing Poverty

18. It is not anticipated that the new regulations would have a direct impact on reducing the number of residents living in poverty.

Impact on Young People and Future Generations

19. The recommendation, if approved, would have a positive impact on young people and future generations living on the island, as the safety of all road users plays a big role in citizens' wellbeing on a daily basis – as pedestrians, drivers, cyclists and public transport users.

Corporate Aims

20. The key priorities within the plan, that this report is supporting are: 'Listen to people' – a 28-day island wide consultation was conducted; 'Encourage Sustainable transport and Active travel' – the recommended option would encourage walking, cycling and use of public transport.

CONSULTATION

21. Following the legal TRO making process and its requirement for a Formal Consultation, a public Notice (see Appendix 2 – Notice of Intention), outlining the proposals and inviting public comments, was published in the Isle of Wight County Press on 13 May 2022. Notices and plans were also displayed on-street for a period of 28 days, which is a week longer than the legally required 21 days. The closing date for representations was 10 June 2022.
22. The number of representations received by the Authority during the consultation period was 48, a summary of the representations and Local Highway Authority's responses are included in Appendix 3.
23. All objections share the same basis – potential loss of on-street parking space and knock-on effect to the neighbouring streets.
24. This TRO proposal, if implemented, will increase the visibility at the new and old junctions, and will regulate the parking to one side of the road. The actual number of lost parking spaces is four as parking on one side of the road does not necessarily reduce the number of available on-street parking spaces, as it can create more usable spaces when compared with uncontrolled parking in an alternating manner on both sides of the road. Likewise, parking on both sides of the road ordinarily requires more space on the carriageway for passing the parked vehicles.
25. In addition, the number of the affected properties is five (5) which all have private driveways for at list two vehicles. Furthermore, part of the street will remain unrestricted and be available for parking.

26. Birch Close currently has a small number of parking spaces, some of which will remain unrestricted and available to park; therefore, it is not anticipated that the proposed parking restrictions will have a knock-on effect to the area and have an impact on attendance at the local church.

FINANCIAL / BUDGET IMPLICATIONS

27. The total estimated cost of making of the TRO, implementing the restriction and maintaining the respective Double Yellow Line (DYL) will be covered by the Developer.

LEGAL IMPLICATIONS

28. The Statutory Authority for making new TROs is contained within the Section 1 (1) in the Road Traffic Regulation Act 1984:

(1) 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).

29. Orders are progressed in accordance with the Local Authority’s Traffic Regulation Order (Procedure) (England and Wales) Regulations 1996.

30. The Statutory Authority for signs and road markings are by virtue of the Traffic Signs Regulations and General Directions 2016.

31. The council is under a duty pursuant to Section 16 of the Traffic Management Act 2004 to manage their road network, whilst having regard to their other obligations, policies and objectives at the same time, with a view to facilitate the passage on the road or any other road of any class of traffic (including pedestrians) and 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.

32. Consideration will need to be given to the duty under Section 122 of the Road Traffic Regulation Act 1984 when deciding whether to make, or to refuse to make a traffic regulation order.
33. Section 122 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities. In carrying out this exercise the council must have regard to the:
 - (a) desirability of securing and maintaining reasonable access to premises;
 - (b) the effect on the amenities of any locality effected 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 road(s) run;
 - (c) any strategy prepared under section 80 of the Environment Act 1995 (the national air quality strategy);
 - (d) 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;
 - (e) any other matters appearing to the local authority to be relevant.
34. Regulation 13 of the 1996 Regulations confirms that before making an order, the traffic authority shall consider all objections duly made to the TROs that have not been withdrawn.
35. The validity of any traffic regulation order made by the council can be challenged by application to the High Court to challenge the validity of a TRO, or any of its provisions, within six weeks following the date the order on the grounds identified in paragraphs 35-36 of Schedule 9 to the Road Traffic Regulation Act 1984.
36. The court has the power to suspend an order or any of its provisions until the final determination of the proceedings.
37. A person aggrieved by a decision of the council to refuse to make a traffic regulation order can seek a judicial review of the exercise of those functions. That challenge can be brought on the grounds of illegality, irrationality, and/or procedural impropriety.
38. A public body which is charged with the power to make a decision in the course of a statutory process must exercise this discretion in accordance with public law principles, that being that it must have regard to all material facts and make a decision that is reasonable having regard to the relevant provisions of Section 122 above and not immaterial consideration. In exercising this judgement it should apply appropriate weight to the decisions made in the relevant planning process. This weighting process is a matter for the highway authority; albeit, subject to review by the courts if it is alleged that it has acted perversely.

EQUALITY AND DIVERSITY

39. The Council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
40. Under the Equality Act 2010 the Council is required to have due regard to its equality duties when making decisions, reviewing services, undertaking projects, developing and reviewing policies.
41. Due regard to the Council's responsibilities under the Equality Act 2010 has been given at the formative stage of this proposal. An Equality Impact Assessment (EIA) form has been completed in Appendix 4.

OPTIONS

42. Option 1: To approve the proposed restrictions that are subject to this report in relation to THE ISLE OF WIGHT COUNCIL (VARIOUS STREETS, FRESHWATER) (TRAFFIC REGULATION) ORDER NO 1 2022 as proposed.
43. Option 2: Not to approve the restrictions that are subject to this report in relation to THE ISLE OF WIGHT COUNCIL (VARIOUS STREETS, FRESHWATER) (TRAFFIC REGULATION) ORDER NO 1 2022 and to abandon the proposal.
44. Option 3: To approve the proposed restrictions that are subject to this report in relation to THE ISLE OF WIGHT COUNCIL (VARIOUS STREETS, FRESHWATER) (TRAFFIC REGULATION) ORDER NO 1 2022 with amendment – such as reducing the length of the proposed restriction.

RISK MANAGEMENT

45. A risk has been identified to the future of the development if this proposal is rejected.
46. At the same time, as stated in Para 34 above, Section 122 in the Road Traffic Regulation Act 1984 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities.
47. Therefore, a thorough consideration is needed on what material factors might weigh in the balance of approval or refusal of this proposal, in form of justification for the decision made.
48. A risk has been identified to pedestrians, cyclists and efficient movement of vehicles, if the development is constructed, due to the increased traffic in and out of the development.

49. The TRO proposal, if implemented, will ensure safety for all road users, once the development is constructed, whilst securing the movement of the traffic – by increasing visibility at the junction on to Colwell Road and regulating parking at one side of the road.
50. The IWC, as a Local Highway Authority, has a duty to ensure the expeditious and safe movement of people, services, and goods on the island's highway. In some cases priority needs to be given to the road safety and movement of traffic over preservation of parking spaces.
51. The risk associated with the potential loss of parking spaces is considered to be low, as the number of the affected properties is five (5) and they all have private driveways for at list two vehicles. Furthermore, part of the street will remain unrestricted and available to park.
52. The Authority will monitor the impact of the changes and review the restriction if necessary.

EVALUATION

53. This report concerns the approval of a proposal for a new TRO as part of conditions attached to a planning permission granted on 16 November 2021.
54. Section 122 of the Road Traffic Regulation Act 1984 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities. In some cases a balance needs to be made between the requirement for a TRO for the reasons provided above and the need to take account of the impacts to any loss of residential on-street parking, especially in areas of parking stress, when set against the benefits of the proposed TRO and to ensure endeavours are taken to minimise the net loss of parking where possible.
55. Birch Close currently has a small number of parking spaces, some of which will remain unrestricted and available to park. The potential loss of parking spaces is low in number (maximum 4 spaces) as the restriction applies to only one side of the road. Parking on both sides of the road, at the junction and at the turning head would obstruct access including emergency vehicles and deliveries. Due to the low number of parking spaces removed, it is not anticipated that the proposed parking restrictions will have a knock-on effect to the wider area. Furthermore, the number of potentially affected properties in Birch Close is low (five properties) and they all have private driveways for at least two vehicles.
56. Option 1: To approve as proposed - The road safety and highway engineers in Island Roads strongly advised the approval on grounds of safety. The loss of parking spaces in Birch Close is minimal, part of the street will remain unrestricted and available to park. The number of the affected properties is low (five) and they all have private driveways for at list two vehicles.
57. Option 2: Not to approve – Cabinet may be minded to refuse this application due to the loss of parking spaces in Birch Close. The road safety and highway engineers in Island Roads strongly advised against this option on grounds of safety if the development were to be implemented as once a safety risk on the highway has been identified, the Local Highway Authority has an obligation to address it.

58. Option 3: To approve with amendment, such as reducing the length of the proposed restriction – As per Option 2 the road safety and highway engineers in Island Roads strongly advised against this option on grounds of safety if the development were to be implemented.

APPENDICES ATTACHED

59. Appendix 1 – TRO Map
60. Appendix 2 – Notice of Intention
61. Appendix 3 – Summary of Representations
62. Appendix 4 – EIA

BACKGROUND PAPERS

63. [Planning Permission](https://iow.moderngov.co.uk/documents/g508/Public%20reports%20pack%2016th-Nov-2021%2016.00%20Planning%20Committee.pdf?T=10)
<https://iow.moderngov.co.uk/documents/g508/Public%20reports%20pack%2016th-Nov-2021%2016.00%20Planning%20Committee.pdf?T=10>

Contact Point: Scott Headey, Deputy Strategic Highways and Transportation Manager,
☎ 821000 e-mail scott.headey@iow.gov.uk

COLIN ROWLAND
Director of Neighbourhoods

CLLR PHIL JORDAN
*Cabinet Member for Infrastructure, Highways PFI
and Transport*