

Traffic Regulation Order
THE VALE OF GLAMORGAN COUNCIL
(VARIOUS ROADS 20MPH & 30MPH SPEED RESTRICTION)
REVOCATION AND EXCEPTIONS ORDER 2023

Cycling UK objections

The proposed order

The Vale of Glamorgan Council (VoGC) gave notice (the notice) on 22 June 2023 that it proposed to make Traffic Regulation Orders (TROs) pursuant to the relevant sections of the Road Traffic Regulation Act 1984 (RTRA). The proposed orders would exempt certain roads from The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022 (the Wales 20mph order) as specified in the schedules to the notice.

Anyone seeking to make representations or object to the orders has until midnight on 19 July to do so in writing. This submission sets out Cycling UK's objections to the orders.

Cycling UK is a UK-wide cycling charity with over 2,000 members in Wales, including members and groups within the Vale of Glamorgan.

This response is being submitted by and on behalf of Cycling UK's national office; however, separate responses setting out objections to these TROs have already been submitted by Cycling UK partner group Vale Velo Ways, and by Cycling UK member Hugh Mackay. Vale Velo Ways' response refers to specific roads and particular TROs referred to within the schedule to the notice. Hugh Mackay's response references inter alia Cycling UK's interest and involvement. To avoid repetition within this response, Cycling UK nationally adopts, supports and repeats the submissions and objections set out within both of those responses.

In addition to those submissions, Cycling UK makes the following additional points and objections, focussing mainly on VoGC's failure to have regard to the relevant legislation, national guidance, or conduct a fair and lawful consultation.

President: Jon Snow Chief Executive: Sarah Mitchell

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Road Traffic Regulation Act 1984 (RTRA)

VoGC can make an order under section 1 of the RTRA where it considers it “expedient having regard to a number of factors” (the statutory purposes). Those statutory purposes are:

- 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
- (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).

Where a highway authority (HA) issues a notice proposing to make a TRO, that notice must include a statement of reasons (SoR) outlining the reasons for the order, which must have regard to and identify the statutory purposes for which it is satisfied that it is expedient to make the TRO. The SoR within the notice issued by VoGC on 22 June states that:

“The Order is necessary to maintain the existing speed limits of 30 mph on selected strategic roads within the County after the Welsh Government has passed legislation to implement a 20mph default speed limit in urban areas nationally throughout Wales in the interest of road safety (The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022). The Council as Local Highway Authority considers that these roads are strategic routes with higher volumes of daily traffic compared to urban residential streets and as such do not meet the criteria or the nature of a road with a speed limit of 20 mph. The Council considers that the existing 30 mph speed limit is an appropriate speed limit in order to maintain a reasonable traffic flow on higher traffic volume strategic routes.”

There is nothing within the SoR which refers to danger to road users, preventing damage, preserving amenities or any of the other statutory purposes. The SoR does refer to maintaining the speed limit to “maintain a reasonable traffic flow”, however that is insufficient to satisfy the statutory purpose with S1(1)(c) RTRA, which requires the HA to consider how to facilitate the passage on the road of any class of traffic, including pedestrians and cyclists.

VoGC has not:

- Identified which class of traffic it wishes to facilitate the passage of.
- Mentioned or in any way demonstrated that it has considered the requirements, passage, or safety of any or each class of traffic.
- Addressed in any way any safety issues.

When considering whether to make a TRO, VoGC also has a statutory duty to consider the matters outlined at section 122 RTRA, “to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)”. It is clear from the SoR that VoGC has failed to consider, adequately or at all, the expeditious, convenient and safe movement of cyclists and pedestrians.

Welsh Government guidance on setting exemptions to the 20mph default speed limit on restricted roads

The Senedd has approved legislation to lower the default national speed limit on restricted roads from 30mph to 20mph to reduce the number and severity of collisions and casualties, to enable more people to use active travel, to reduce environmental impacts and to improve people’s quality of life in communities across Wales. That legislation comes into effect on 17 September 2023. The roads to which these TROs relate are restricted roads, and accordingly, unless they are exempted from the new 20mph default speed limit through the TRO process, the speed limit on those roads will be reduced from 30mph to 20mph in September.

Whether or not any particular HA supports or otherwise agrees with the changes introduced by the Senedd is, respectfully, irrelevant. The new default limit applies unless the HA makes a TRO exempting the default limit. To ensure that a consistent approach to exemptions across Wales is taken by HAs, the Welsh Government has introduced guidance (the guidance) on setting exceptions: <https://www.gov.wales/setting-exceptions-20mph-default-speed-limit-restricted-roads.html> to the default limit. The guidance is to be used as a basis to demonstrate reasoning for making any exception, and includes a two stage test, set out below, which involves HAs asking themselves two principal questions when deciding whether a 30mph exception should be made, namely:

Question A: Are there significant numbers (or potential numbers, if speeds were lower) of pedestrians and cyclists travelling along or across the road?

If the answer to A is ‘no’ then an exception for a 30mph speed limit may be appropriate.

Question B: If the answer to A is ‘yes’, are the pedestrians and cyclists mixing with motor traffic?

If the answer to B is ‘no’ then a 30mph speed limit exception may be appropriate.

If the answer to B is ‘yes’ then a 20mph speed limit will be appropriate unless the robust and evidenced application of local factors indicates otherwise.

It is important to note that question A refers to the potential numbers of pedestrians and cyclists who might travel along or cross the road if the speeds were lower, not just the existing numbers, given that the existing numbers may well be lower than they could be, because people will be deterred from using active travel modes if the road conditions do not feel safe. Part of the rationale for the introduction of the new default limit was to lower existing speeds on restricted roads, so that more people felt that it was safe enough to walk or cycle, and to enable more active travel journeys. Accordingly, the guidance specifically states that decisions on exceptions should not be influenced by existing traffic speeds.

VoGC has manifestly failed to address the criteria within the guidance or consider the two stage test set out within the guidance. It has merely asserted that “these roads do not meet the criteria or the nature of a road with a speed limit of 20 mph”. There is no evidence or information to suggest that VoGC has:

- Considered the existing cyclist and pedestrian flow along or across any of the roads subject to these TROs.
- Considered the potential cyclist and pedestrian flow along or across any of these roads, if the speed limit was reduced.
- Considered the extent to which pedestrian and cycle flow along or across any of these roads is deflated or discouraged by perceived or actual road safety concerns.
- Understood, or considered adequately or at all, the guidance, and in doing so addressed the two stage test within the guidance.

Unfair consultation process

Attention is drawn to the Gunning Principles on fair and lawful consultation, namely that:

- Consultation must be at a time when proposals are still at a formative stage
- Sufficient reasons must be put forward for any proposal to permit ‘intelligent consideration’ and response
- Adequate time is given for consideration and response
- The product of consultation is conscientiously taken into account by the decision maker(s).

Put simply, these criteria are a prescription for fairness and mean that a public body must: consult before they have made up their mind; provide people with the right kind of information for them to be able to take part in the consultation; give people enough time to participate and respond; and give consultation responses conscientious consideration.

As already outlined, VoGC appears to have concluded already that the roads subject to these TROs are strategic routes with higher volumes of daily traffic compared to urban residential streets and as such do not meet the criteria or the nature of a road with a speed limit of 20 mph. No evidence has been presented to support that contention, and that argument is presented in a manner which implies that VoGC believes that to be the relevant test.

In fact, as already outlined, VoGC has failed to consider the statutory purposes within the RTRA, and to that extent, the nature and limitations upon its powers to make lawful TROs. It has also failed to consider adequately or at all the relevant guidance.

In responding to this consultation, Cycling UK and indeed others, can only respond to the information provided. It is unreasonable and unfair to require anyone to respond to matters, evidence, or things that were in the minds of council officers when they launched this consultation but failed to set out accurately or at all within the SoR or accompanying documents.

If, in response to this and other consultation responses, VoGC now wish to refer to other data, evidence, or arguments not previously presented in a manner in which the public could readily understand and respond to, then the public have not been provided with sufficient reasons by VoGC for the proposals to permit 'intelligent consideration' and response. To that extent the consultation process is flawed, unfair, and unlawful.

Conclusion

VoGC has misdirected itself regarding the powers available under the RTRA and failed to consider adequately or at all the statutory purposes under S.1 RTRA. It has also failed to consider adequately or at all the guidance on exemptions from the default speed limit, and made proposals for exemptions without any or adequate consideration of the relevant legal framework, criteria or national guidance. It has also provided inadequate reasons and explanation for its proposals within the consultation, failing to provide the public with an opportunity for intelligent consideration and response, rendering the consultation process flawed and unlawful.

If VoGC wishes to make these orders, Cycling UK would require VoGC to provide a full response to the points and concerns raised within this submission.

Duncan Dollimore, head of campaigns and advocacy, Cycling UK

19 July 2023