

meeting	RIGHTS OF WAY COMMITTEE		
date	16 June 2010	agenda item number	8

REPORT OF THE CORPORATE DIRECTOR (COMMUNITIES)

THE MAKING OF AN APPLICATION UNDER SECTION 116 OF THE HIGHWAYS ACT 1980 TO DOWNGRADE TWO LENGTHS OF RESTRICTED BYWAY IN WELLOW TO FOOTPATH

Purpose of the Report

1. To seek approval to stop up North Dark Lane and South Dark Lane, Wellow so as to downgrade them from Restricted Byways to Public Footpaths.

Background

2. North and South Dark Lane in Wellow are two well used paths that currently are unregistered as public highways. North Dark Lane runs south from its junction with Newark Road to join with Eakring Road. South Dark Lane continues from Eakring Road to Potter Lane. Both the routes are shown on **Plan A**.

Highway Description

3. **North Dark Lane.** The first 35 metres from Newark Road goes over land that is part of the registered common land for Wellow and is also part of a 3 metre wide access track for Institute Cottage. It then narrows to a width varying between 1.5 and 0.6 metres wide with there being a very steep bank on the western side leading up to the grounds of Wellow House School and on the eastern side a similarly steep bank down into the Gorge Dyke, **Photograph A**. It then exits on to another access track, this time leading from Eakring Road into the school playing fields of Wellow House School, **Photograph B**. This section of track is also registered as common land. Wellow Parish Council have in the past undertaken some maintenance work along this route by putting edging boards on either side of the route and some revetment

work along the bank of the Gorge Dyke. Recently at one point, the dyke has undercut the bank and has eroded part of the route.

4. **South Dark Lane.** This varies in width from 1 to 1.5 metres apart from a section in the middle that widens out to 3 metres. There is a steep bank on one side leading up to gardens and on the other side of the route is a drop of about 1 metre down to the stream, **Photograph C.** There are guardrails along the route for a few metres at both ends of the path, **Photograph D.** As with North Dark Lane, the Parish Council have carried out maintenance along the route including some surfacing work with edging boards.

Request from the Parish Council

5. The Parish Council contacted the County Council in 1983 asking for these paths to be registered as public footpaths and submitted 13 user evidence forms showing that use of these paths on foot went back to at least 1932. However, the application was turned down due to procedural reasons and was not resubmitted. According to the Parish Council, there appears never to have been any challenge to the use of these paths.
6. Wellow Parish Council contacted Nottinghamshire Country Council in April 2008 to ask if the County Council would consider registering these paths as public footpaths, particularly as some of the banking of North Dark Lane was beginning to fall into the stream.
7. Initially it was envisaged that it may be possible to record the rights along the route using a creation order to register footpath rights along North and South Dark Lane. However, documentary evidence was discovered that highway rights already existed along these routes.

Documentary Evidence

8. Both routes are shown on the 1835 Sanderson map and are depicted as being 'cross roads'. Both routes are shown in the 1842 Wellow Inclosure Award and are described as 'Old Roads' in exactly the same way as the Worksop to Kelham Turnpike (the current A616). In the Inclosure map both routes are coloured yellow, again in the same way that the current A616 is depicted. However, at this stage they are shown as being very narrow adjacent to a stream.
9. In the 1845 Tithe Award they are again shown, this time under the heading of 'Public roads and Drains' and again shown on the Tithe map and coloured in the same way that all the other public roads are depicted. The routes are shown on 1885 and 1900 Ordnance Survey plans but without any annotation. Both routes are excluded from the adjoining land parcels on the 1910 Finance Act plans in the same way

that other public roads are. However, on the 1919 and 1938 Ordnance Survey plans both North and South Dark Lane are labelled as 'footpath'.

10. When all the paths in Wellow were being recorded in 1953 in response to the National Parks and Access to the Countryside Act 1949, North and South Dark Lane were not recorded. However, the Schedule was poorly completed and not all the routes within the parish were properly claimed. Subsequent Ordnance Survey plans show these routes, but do not indicate any status.

Legal Framework

11. The documentary evidence does indicate that there are public vehicular rights along both North and South Dark Lane. However, as a result of the coming into force of Section 67 of the Natural Environment and Rural Communities Act 2006, motor vehicular rights are generally extinguished on such routes and can be recorded on the Definitive Map as Restricted Byways. Restricted Byways gives the public a right of way on foot and horseback and with pedal cycles and to drive horse-drawn vehicles along them. However, both North and South Dark Lane are very narrow and are not wide enough to safely accommodate cyclists, horse riders and horse drawn vehicles, and with steep banks on both sides there is no room to be able to substantially widen the routes.
12. The County Council is empowered by section 116 of the Highways Act 1980 to make an application to the Magistrates Court for the 'stopping' up of a highway on the grounds that it is unnecessary. This may be for the purposes of all traffic (thus extinguishing the way) or subject to the reservation of a lower level of rights (downgrading the way).
13. Therefore in this particular case, it is proposed that an application be made to the Magistrates Court to stop up North and South Dark Lane subject to the reservation of a public footpath.

Consultations

14. On the northern and southern section of North Dark Lane there are small sections of Common Land but the remaining sections of North Dark Lane and all of South Dark Lane have no registered owners, **Plan A**. Notices have been placed at either ends of these 2 routes to alert any unknown owners concerning the proposals but no one has come forward.
15. Consultations have been carried out with statutory undertakers, user groups and Parish and District Councils into the proposals to register these routes as footpaths. Two observations were made on the

proposals with the first being from the Trail Riders Fellowship that they were happy with the majority of the routes being footpaths but requested that the first 20 metres of the southern section of North Dark Lane that is also the rear access to Wellow House School, be retained as a Restricted Byway. The other observation was from the Byways and Bridleways Trust that it may be possible following some clearance work for the routes to be used by cyclists and horse riders and therefore presumably be recorded as bridleways.

16. Despite the observations from the Trail Riders Fellowship, retention of a small section of the route as a Restricted Byway would be of no real benefit to the rights of way network, being simply a dead ended path, and not providing any meaningful provision for cyclists, horse-riders, and carriage-drivers. It would neither have the benefit of being a through route or leading to a place of popular public resort, such as a viewpoint or an area of natural beauty. Furthermore, despite the observations from the Byways and Bridleways Trust, there is wholly insufficient width to safely accommodate anything other than pedestrians along these routes, due to the presence of the Gorge Dyke. In order to provide sufficient width for any levels of traffic higher than on foot it is envisaged that substantial works in piping the dyke so as to provide a wider surface would be needed. Such works would be disproportionate to the highway needs and would destroy the current character of the route.

Statutory and Policy Implications

17. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder and those using the service and where such implications are material they have been described in the text of the report.

RECOMMENDATION

18. It is RECOMMENDED that Committee authorises the making of an application to the Magistrates' Court for an order stopping up North Dark Lane and South Dark Lane, Wellow, subject to the reservation of a right of way on foot only.

TIM MALYNN

Corporate Director (Communities)

Legal Services' Comments

The recommended decision is within the power of the Committee, pursuant to Part Three, Table 7, function no. 67 in the Council's Constitution. [JI - 03/06/10]

Comments of the Service Director (Finance)

This report has been noted – there are no direct financial implications. [DJK - 17/05/10]

Background Papers Available for Inspection

Office case file

Electoral Division(s) Affected

Southwell and Caunton

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