Case File

An unlawful path-closure

R (Open Spaces Society) v West Northamptonshire Council.

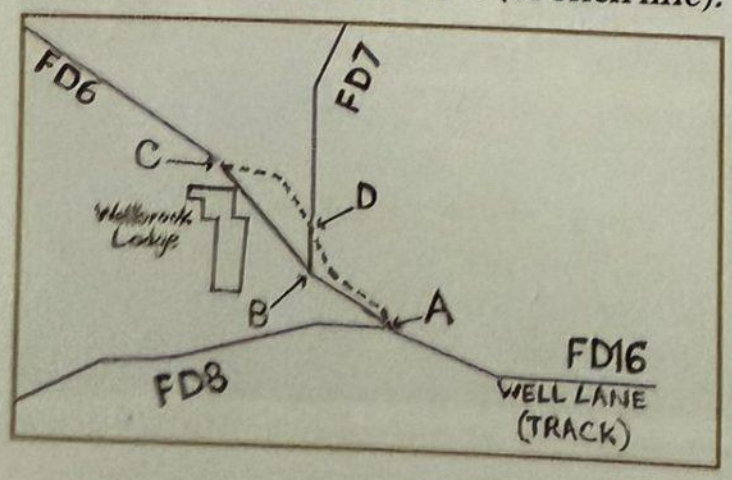
The society successfully challenged the decision of West Northamptonshire Council (WNC) to make a temporary traffic regulation order (TTRO) under section 14 of the Road Traffic Regulation Act 1984 (the 1984 act) closing parts of three footpaths in the village of Staverton, west of Daventry in Northamptonshire.

We were alerted to the case by our member, Staverton Parish Council. The council had been seeking the removal of obstructions on the footpaths for over a year, following the erection of gates across footpath FD16 (known as Well Lane) by the owner of Wellbrook Lodge, which is reached by the path.

Failed

WNC initially seemed inclined to act on the unlawful obstruction, requesting that the owner remove the gates. But it failed to follow through and later granted a lawful development certificate (LDC) to the property owner for the installation of new gates, fencing, and a stile, for 'demarcation' and 'physical separation' of footpaths FD16, FD6, and FD7 near the property.

Route to be closed A-B-C and B-D (solid line). Alternative route A-D-C (broken line).



The officer's report, which recommended that the LDC should be granted, recognised that it only confirmed that planning permission for the works was not required, and that it was the applicant's responsibility to abide by the Highways Act 1980 (the 1980 act).

Complaint

In spring 2024 gates and fencing were erected (replacing the gate that had previously been placed across FD16), enclosing an alternative, narrower route for parts of FD16 and FD6, and obstructing FD7. The parish council logged a complaint with WNC for the obstruction and unofficial diversion of the paths.

WNC's response was to issue a 21-day temporary closure notice, in purported reliance on section 14(2) of the 1984 act, specifying that the closure was required for 'public health and safety', which it followed up with a TTRO made under section 14(1). The order came into force on 3 September and was to continue for six months. The order identified the alternative route as the unofficial diversion created by the unauthorised gates and fencing.

Section 14(1) of the 1984 act empowers a traffic authority temporarily to restrict or prohibit the use of a road by pedestrians for any of three specific purposes: works on or near the road; likelihood of danger to the public; or for litter clearing.

The TTRO did not refer to the specific purpose for which it was made but stated that it was for 'public health and safety'.

The parish council was advised by WNC that the order had been made because the path crossed a driveway, people and loose dogs were at risk of an accident, and the path was being moved while a permanent solution was being investigated. WNC had also told the parish council that, since an application to divert the paths permanently had been made, it could not take enforcement proceedings against the obstructions. It suggested that it might seek extensions to the TTRO until the diversion had been completed, but that it could take many months before it was even looked at.

Inappropriate

We considered that the TTRO was an inappropriate use of the council's section 14 powers: public rights of way can and regularly do co-exist with private vehicular access. The situation was the result of unlawful obstruction of the footpaths, and any risk to the public was entirely avoidable. We surmised that WNC's actual purpose in making the TTRO was to evade its duties under section 130 of the 1980 act, namely to deal with the obstructions.

WNC also did not act on representations made by Staverton Parish Council that the paths were obstructed, as it was obliged to do under section 130(6) of the 1980 act.

The society has long been concerned about the abuse of TTROs by local authorities, preventing public use of routes which ought to be open and maintained. We considered this an egregious case with wider implications and (having first sought advice from counsel, Esther Drabkin-Reiter of Francis Taylor Building via Richard Buxton solicitors) we began proceedings for judicial review of WNC's decision to make the TTRO.

The main points of challenge were: (a) in making the TTRO, WNC had acted with an improper motive and outside the statutory purposes of section 14(1) of the 1984 act, namely temporarily to divert the



Wellbrook Lodge seen from point A: the definitive route goes through the gate, the proposed alternative is to the right.

footpaths before an application for a path diversion could be considered; (b) even if the decision to make the TTRO was made in line with the statutory purposes, it was irrational and unlawful, primarily for the reasons that it was made temporarily to regularise the unofficial diversion and the unlawful gates and fencing. The TTRO did not appear to be made based on evidence of safety concerns or risk of danger to the public. Further, in making the TTRO, WNC had failed to act in response to the parish council's representations under section 130(6).

Capitulated

WNC initially resisted, but, after we lodged proceedings in the high court, it capitulated and agreed to a consent order. It accepted that the TTRO was made for an improper purpose, temporarily to divert the paths pending consideration of an application for a path diversion order. It also agreed that it had a duty under section 130(6) of the 1980 act to secure the removal of the obstructions, and that it would take steps to do so within three months of the court order. It will also pay the society's reasonable costs in bringing the action.

We are delighted, and grateful to our legal team. This gives a clear message to other local authorities that they must not abuse their powers under section 14 of the 1984 act to evade their statutory duties under section 130 of the Highways Act 1980. ❐