

Principal Officer
Countryside Records
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND



By email only to: countrysiderecords@oxfordshire.gov.uk

28 May 2021

Dear Sir/Madam,

REF NO: 03092

DESCRIPTION: Spelsbury Byway-Open-to-All-Traffic No. 44 Notice of Modification Order 2021

The above modification order, relating to the 'upgrading' of a footpath to a Byway Open to All Traffic (BOAT) through the ancient woodland of Dean Grove, has been brought to the attention of the Cotswolds Conservation Board ('the Board').

The footpath that is the subject of the proposed upgrading (Spelsbury Footpath No. 44) is located in the Cotswolds National Landscape, which is a designated Area of Outstanding Natural Beauty (AONB). The proposed upgrading therefore relates to – and affects – land in an AONB.

For the reasons outlined below, the Board objects to the modification order.

The modification order has come about as the result of an appeal decision by the Planning Inspectorate. However, the appeal decision makes no mention of the AONB designation or its implications. As such, the Planning Inspectorate and, by extension, the Secretary of State, has failed to fulfil the statutory duty to have regard to the purpose of AONB designation. This calls into question the validity of the appeal decision, the direction to make the modification order and the modification order itself.

We consider that the proposed upgrading of the footpath to a BOAT has the potential to adversely affect the natural beauty of the Cotswolds National Landscape.

In particular, we consider that the upgrading has the potential to adversely affect the tranquility of the Cotswolds National Landscape, which is one of the area's 'special qualities'. The upgrading would not be compatible with relevant national and local policies and guidance in this regard.

We also consider that that upgrading has the potential to adversely affect the biodiversity of the Cotswolds National Landscape. The potential adverse impacts on the irreplaceable habitat of the ancient woodland of Dean Grove are particularly important in this regard. Again, the upgrading would not be compatible with relevant national and local policies and guidance.

We recommend that the modification order should not be confirmed and that the relevant section of Spelsbury Footpath No. 44 should not be upgraded to a BOAT.

Cotswolds Conservation Board

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The Cotswolds National Landscape is a designated Area of Outstanding Natural Beauty (AONB), managed and looked after by the Cotswolds Conservation Board.

cotswoldsaonb.org.uk

Chairman:
Brendan McCarthy
Vice Chair:
Rebecca Charley

If there are legal technicalities that mean that the footpath has to be upgraded to a BOAT, we recommend that Oxfordshire County Council should consider making a Traffic Regulation Order to prohibit the use of recreational motor vehicles on the BOAT.

Further information is provided in Appendix 1.

If you have any queries regarding this response please feel free to contact me.

Yours faithfully,

A handwritten signature in black ink that reads "John Mills". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

John Mills

Planning & Landscape Lead

john.mills@cotswoldsaonb.org.uk | 07808 391227

APPENDIX 1. FURTHER INFORMATION

Duty of Regard

Oxfordshire County Council, the Planning Inspectorate and the Secretary of State are ‘relevant authorities’, under Section 85 of the Countryside and Rights of Way (CROW) Act 2000. Section 85 of the CROW Act sets out a ‘general duty of public bodies’, which states:

- *In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.*¹ [N.B. Underlining added for emphasis.]

This ‘duty of regard’ is not discretionary. Relevant authorities are expected to be able to demonstrate that they have fulfilled the duty of regard, for example, by clearly showing how they have considered the purpose of AONB designation in their decision making. Under the duty of regard, adverse impacts should be avoided (or mitigated) where possible.²

The Planning Inspectorate’s Appeal Decision of 25 February 2021 (Appeal Ref: FPS/U3100/14A/6) makes no reference to:

- the AONB designation;³
- the purpose of the AONB designation;
- how this purpose has been considered in the decision making process; or
- how adverse impacts on the purpose of designation will be avoided or mitigated.

As such, the Planning Inspectorate has failed to implement the ‘duty of regard’. Equally, the Secretary of State, in directing Oxfordshire County Council to make the modification order on the basis of this appeal decision, has also failed to implement the ‘duty of regard’.

This calls into question the validity of the appeal decision, the direction to make the modification order and the modification order itself.

¹ <https://www.legislation.gov.uk/ukpga/2000/37/section/85>

² Further information on the ‘duty of regard’ is provided in Appendix 4 of the Cotswolds AONB Management Plan 2018-2023 ([link](#)).

³ The statutory purpose of AONB designation is to conserve and enhance the natural beauty of the area, as defined in Section 82 of the Countryside and Rights of Way Act 2000 ([link](#)).

Relevant factors relating to the purpose of AONB designation

Tranquillity

The relative tranquillity of the Cotswolds National Landscape is one of the area's 'special qualities'. As such, it is one of the key attributes on which the priorities for the area's conservation, enhancement and management should be based.⁴

In addition to being a special quality in its own right, the tranquillity of the Cotswolds National Landscape is also an integral component of the landscape and scenic beauty of the National Landscape. As such, great weight should be given to conserving and enhancing tranquillity in the Cotswolds National Landscape, in line with paragraph 172 of the National Planning Policy Framework (NPPF).⁵

The Cotswolds AONB Management Plan 2018-2023 sets out a desired outcome in which the tranquillity of the Cotswolds National Landscape will have been conserved and enhanced, with fewer areas being affected by noise pollution and other aural and visual disturbance. Policy CE4 (Tranquillity) of the AONB Management Plan states that:

- *Proposals that are likely to impact on the tranquillity of the Cotswolds AONB should have regard to this tranquillity by seeking to (i) avoid and (ii) minimise noise pollution and other aural and visual disturbance.*⁶

The tranquillity map, in Appendix 3 of the Board's Tranquillity Position Statement shows that the section of the Cotswolds National Landscape in the vicinity of Dean Grove, north-west of Charlbury, has a high level of tranquillity.

Further information on the issue of tranquillity, in relation to the Cotswolds National Landscape, is provided in the Board's Tranquillity Position Statement.⁷

A related special quality of the Cotswolds National Landscape is '*an accessible landscape for quiet recreation ... with numerous walking and riding routes*' (N.B Underlining added for emphasis). The public rights of way (PROW) through - and adjacent to Dean Grove - are an integral component of this accessible landscape. The fact that there are two named recreational routes that overlap with the affected footpath (i.e. Oxfordshire Way and Wychwood Way) adds to this significance.

Paragraph 180 of the NPPF states that '*planning... decisions should ... protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason*'.⁸

Allowing motor vehicles to use a Public Right of Way (PROW), by upgrading a footpath / bridleway / restricted byway to a Byway Open To All Traffic (BOAT), would not be compatible with these special

⁴ Please refer to Chapter 2 of the Cotswolds AONB Management Plan 2018-2023 ([link](#)) for further information regarding the 'special qualities' of the Cotswolds National Landscape.

⁵ Ministry of Housing, Communities & Local Government (2019) *National Planning Policy Framework* ([link](#)). Paragraph 172.

⁶ Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023* ([link](#)). Policy CE5.

⁷ Cotswolds Conservation Board (2019) Tranquillity Position Statement ([link](#)).

⁸ Ministry of Housing, Communities & Local Government (2019) *National Planning Policy Framework* ([link](#)). Paragraph 180.

qualities, or with the policies outlined above, and would potentially adversely affect the purpose of AONB designation in this locality.

Biodiversity

Another factor that contributes to the natural beauty of the Cotswolds National Landscape is its natural heritage, including its biodiversity. Paragraph 172 of the NPPF states that '*the conservation and enhancement of wildlife ... are ... important considerations*' in AONBs.⁹

The Defra 'MAGIC' website shows that Dean Grove is an area of ancient woodland. In other words, there has been continuous tree cover here since at least 1600. Ancient woodlands are relatively undisturbed by human development. As a result, they are unique and complex communities of plants, fungi, insects and other microorganisms.

One of the 'special qualities' of the Cotswolds National Landscape is the area's '*internationally important ancient broadleaved woodland*'. Although the ancient woodland of Dean Grove doesn't have an international (or national) nature conservation designation, it is clearly an integral component of the 'ancient broadleaved woodland' of the Cotswolds National Landscape and is, therefore, an important asset.

Paragraph 175 of the NPPF states that:

- *Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.*¹⁰

Dean Grove is located in Landscape Character Type (LCT) 16 (Broad Floodplain Valley). The Cotswolds AONB Landscape Strategy and Guidelines for LCT 16 identifies the risk of ancient woodland becoming degraded and states that ancient woodland should be safeguarded.¹¹

Allowing motor vehicles to use the PROW through the ancient woodland of Dean Grove would potentially result in the deterioration of this irreplaceable habitat. As such, upgrading the PROW would not be compatible with the policies and guidance outlined above.

⁹ Ministry of Housing, Communities & Local Government (2019) *National Planning Policy Framework* ([link](#)). Paragraph 172.

¹⁰ Ministry of Housing, Communities & Local Government (2019) *National Planning Policy Framework* ([link](#)). Paragraph 175.

¹¹ Cotswolds Conservation Board (2016) *Cotswolds AONB Landscape Strategy and Guidelines. 16: Broad Floodplain Valley* ([link](#)). Section 16.26.