

Please ask for/reply to: Barry Crossby
Tel/Typetalk: 020 8686 4433 ext 64980
Fax: 020 8760 5486
Minicom: 020 8760 5797
EMail: barry.crossby@croydon.gov.uk

Mrs I Prosser
Secretary of the Welcomes Road & Uplands
Road Association
55 Welcomes Road
Kenley
CR8 5HA

www.croydon.gov.uk

Your ref:
Our ref: URD/HR//Bjc
Date: 22nd July 2004

Dear Mrs Prosser

Re: Preserving the Private Status of Welcomes Road, Kenley

I refer to your letter dated 12th July 2004 concerning the above.

I have given due consideration to the wording of private signs you could erect at the entrances to Welcomes Road and set out below my suggestions:-

<p>WELCOMES ROAD (Public footpath No 157) No Public Vehicular Access BEWARE ROAD HUMPS</p>

The wording "**Unauthorised Motor Vehicles Prohibited**" or "**No Through Road for Vehicular Traffic**" could be substituted with the wording "No Public Vehicular Access".

The unlawful use of Welcomes Road could be attributed in part to the fact that there is no reference to the existence of the public footpath in the wording of your sign. You may wish to consider a supplementary sign stating:-

<p>WARNING It is a criminal offence to drive over a public footpath without lawful authority Trespassers may be prosecuted</p>
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Whilst there is a Council public footpath direction sign in close proximity to your sign it only states the distance to Kenley Lane.

Continued.....

As to the other specific questions raised I comment as follows:-

- How can we stop non-residents from using the road?

You have to first distinguish between lawful and unlawful use. This would not be as simple as it sounds as a non-resident may be an “invitee” to a property in Welcomes Road or one of the linking roads. This would be treated in law as a lawful use and not contravene an offence of driving over a public footpath. You have every right to challenge unlawful use but in practice this is not going to be easy to enforce.

- Can we legally stop each car and inquire of its occupant’s reason for using the road?

It is my opinion that only the true owner of the road or a Police Officer who would be legally empowered to stop a car to inquire of the occupant’s reason for using the road. Although you are controlling the road in respect of maintenance this does not equate to ownership and could be regarded as a violation of human rights.

- Can we erect one or more moveable barriers to stop through traffic?

Whilst I am aware of your plight that the owner of Welcomes Road has never been traced you are in the eyes of the law regarded as being legally in possession of the road.

This may imply that you can go ahead and erect a moveable barrier but other issues would need to be addressed namely the agreement of the highway authority, emergency services, statutory undertakers and all persons that have a lawful right to drive over the public footpath. Erecting a movable barrier is also not a practical solution as extensive signage would be required to direct visitors and lawful users of the street to their destination. A far better solution would be the installation of a permanent barrier with pedestrian access maintained located somewhere between Simone Drive and Mary Hill Close. This would enable a turning facility to be provided within both bellmouth areas for delivery vehicles and cars. Permanent signage could then be displayed directing visitors to the correct end by listing the house numbers and streets accessible within each severed length.

Please be aware that you would need to have 100% support from all affected residents and as a starting point I would advise you to undertake a consultation exercise with the residents of Welcomes Road, Uplands Road, Kearton Close, Zig Zag Road, Mary Hill Close, Simone Drive and St Winifreds. The residents of Benthall Close and more importantly Abbots Lane should also be consulted, as they are likely to see an increase in vehicular traffic. If you successfully complete this consultation exercise the matter can then be addressed with the highway authority and other statutory bodies.

- Can we charge non-residents a toll?

Although it is accepted that you are controlling the road you are not the lawful owner and any attempt to collect a toll could in my opinion lead to a challenge in court.

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- Could we prosecute non-residents for using the road?

Signs stating “trespassers may be prosecuted” might act as a deterrent but the trespass would only apply to the true owner of the road and not those controlling it. Section 34 of the Road Traffic Act, 1988 states that without lawful authority a person who drives a mechanically propelled vehicle on any road being a footpath, bridleway or restricted byway is guilty of an offence. As it is clearly a criminal offence I suggest that you contact the police who may be able to offer advice.

- Every car takes a minute layer of road surface which is paid for and thereby owned by the residents; as this layer is not returnable, is this theft?

This is an interesting scenario but unlikely to be something you can enforce, as the surface of Welcomes Road is a footpath maintainable at public expense. The theft is therefore against the council as the surface is vested in the highway authority ownership. However, as you maintain the road for private vehicular use the Council is never likely to be in a position where maintenance of the footpath is required.

- As there is a public footpath are cars trespassing and by what bylaws?

Non invitees are not only trespassing but also committing an offence for which they can be arrested by a Police Officer. In practice the Police are unlikely to have the resources to deal with this type of enforcement. There may also be a council bylaw in force to prevent unlawful use of a public footpath but again it would be difficult to enforce.

Whilst writing I would inform you that matters affecting minor highways i.e. public footpaths and bridleways has now transferred to the Council’s Environmental, Cultural and Sports Services Department. However, no public rights of way officer to date has been appointed.

I trust the information supplied is sufficient for your needs, however, if there is any further point which you would like to discuss please contact me direct on the above telephone number.

Yours sincerely

Barry Crossby
Senior Engineer
Highway Records Section

cc... Dave Wickens Head of Engineering & Project Co-ordination
Barry Castrique Environmental, Cultural & Sports Services Department