

Chapter 10

Blackbrook, A Tribunal Case Study

Blackbrook lies outside the 8-mile radius of Leicester covered by the 1904 LFA map of Leicestershire footpaths and so the problems that existed over the Blackbrook-Drybrook paths were not cleared up in the pre-1904 period. There was a long history of disputes over paths on the Garendon Estates following the Charnwood Enclosure Act of 1808. Briefly, the Enclosure Act enclosed land which had been common land or which had had extensive rights of free pasturage for commoners and landowners in the area and gave these people, in exchange for their grazing rights, a plot of land which they could fence and own.

The biggest landowners were entitled to the largest plots and the biggest landowner in this area was Ambrose Phillips, whose heirs are the de Lisle family of Garendon. Smaller plots on the route we shall be discussing were allotted to William Fenton and Charles Bennett. And some large areas of land are described in the Award as Ancient Enclosures of Shepshed and Whitwick.

On the Award map the One Barrow Lane is described as "*a Private Carriageway, numbered LXXIII*" which leads from The Hermitage, near the Swannymote Road, past One Barrow Lodge where it joins another "*Private Carriageway, numbered LXXVI and goes on to Botany Bay.*" This was doubtless a very old route, as the Hermitage is on an ancient track, lying between the old forest courts of Barrow on Soar and Whitwick manors at the Swannimote Rock and Ives head. The Enclosure Awards do not record

public rights of way over the land that was enclosed, but confine themselves to describing the rights of access for the new owners of the land. Thus, on these maps, these roads are described as "*one other private carriage road of the width of 30 feet, branching out of the Charley to Ulverscroft Road number III and leading in a westerly direction to allotment no. 450 to Charles Bennett*" and "*one other private carriage road of the width of 20 feet, branching out of the Swannymote Road, number XVIII nearly opposite Hobs Hole Road Number XLVII and leading in a southwardly direction to Allotment no. 482 to the Leicester Navigation company.*"

The land on either side of the Carriage road between the Hermitage and what is now Botany Bay was allotted to William Fenton and along the northern boundary of his allotments there is a "*right of horse and foot road . . . to a messuage and ancient enclosure called The Hermitage and marked letter D.*"

When the de Lisle family made attempts to close the route from the Hermitage to Botany Bay complaints were made and in 1930 and 1931, as a result of evidence of use by a number of people whose names were supplied the ways were re-opened and the route was successfully kept free of obstruction for 23 years.

The map which marked this right of way was sent by LFA for re-confirmation by the local Parish council in 1938. The chairman of the parish council, J.B. Martin, Esq., of Charley Hall, in a letter dated Feb. 15th 1938, returned the map as correctly marking the rights of way.

Three important alterations were made to the One Barrow-Drybrook route which were to have important consequences later:

1. the de Lisle family built a private road to lead from One Barrow Lodge to Joseph's Corner;
2. the farmer who lived at One Barrow Lodge farm encouraged pedestrians to go through his farm buildings and down his farm road instead of keeping to the footpath which went diagonally across his mowing grass to join the One Barrow Lane.
3. Mrs de Lisle had a private route made to enable her to reach Mt St Bernard's Abbey, along a "black ash path".

This confusion of private and undoubtedly public paths was to be the source of much hostility. Gamekeepers and estate agents of the de Lises considered all the roads private and gates at the lodge houses at each end of the One Barrow lane were closed and many pedestrians were stopped; but Whitwick folk are an independent breed and many people walked the routes, gamekeepers or no, claiming that their forebears had walked this route unimpeded.

In 1950, when draft maps were sent out for inspection in preparation for the production of the Definitive Map of public rights of way, LFA noted the omission of rights of way along the Blackbrook-Drybrook routes and duly made objections. The Tribunal to consider the matter was held at Shepshed on Feb 23rd 1954 and its conclusion was that the One Barrow Lane should go onto the Definitive Map as a right of way. A Modified Map was issued in May 1954.

The de Lisle family (Garendon Estates) objected to this map and a second hearing was held on July 13th 1954 at Castle Donington. At this hearing, the Garendon agents claimed that the One Barrow lane was a private road and that quarrymen had been charged one penny a year and gates at each end of the path locked in order to keep the route private and a great deal of time was spent listening to arguments as to

the truth or validity of this claim. Many witnesses gave evidence of having used the path and at one point in his evidence, Mr Pick, for LFA, states angrily: "*It is an extremely selfish act on the part of the de Lisle Estates (to wish to close the lane) . . . and I can see no reason for it.*" The court was to some degree in sympathy with this sentiment but the final decision was in favour of the de Lisle's case and the road from the Hermitage to One Barrow Lodge farm was declared private. "*In considering this matter, the Tribunal, knowing that the ways in question were lanes enclosed on each side by fences and that reasonable use by the public would not be likely to cause any appreciable damage to the land, felt very sympathetic to the case of the (LFA) association.*"

"*The Tribunal felt, however, that it was not possible for them to reject the objection of the landowners for two reasons, namely, (a) that there was a body of evidence that, save when the property was requisitioned during the war, the gates had been regularly locked at weekends. Although it was true that there was considerable evidence of use by the Associations, the Tribunal felt that this was not necessarily inconsistent with periodical locking and the Tribunal did not feel justified in rejecting evidence of locking simply because it all came from Estate employees or tenants; . . . (b) the Association admitted their inability to substantiate the eastern part of the way from St. Joseph's corner to One Barrow Lodge and the Tribunal was advised that, on the wording of the appropriate section of the National Parks and access to the Countryside Act, 1949, it was not possible to allow the objection as to part and reject it as to the remainder.*"

The Tribunal accordingly recommended that the previous decision should be revoked and the objections of the landowners allowed, KNOWING THAT IN SO DOING THAT RECOMMENDATION LEFT THE FOOTPATH L20 ON THE DRAFT MAP, (from Oaks Road northwards to join the disputed way west of One Barrow Lodge) WITHOUT ANY

OUTLET AT THE NORTHERN END."

(And indeed, hereby hangs a tale! The L20 path has been the source of dispute since that day! The year 1986 will hopefully end the dispute, as we shall explain . . . at the end of this story.

In July 1954, Gilbert Odell, sec. LFA, appealed against this judgement and was granted permission to approach Dr. Parker, the County Archivist, to act as witness. At the enquiry (held at Shepshed on Nov. 4th 1954) George Green of Loughborough made a long statement on behalf of LFA declaring that:

- we have such strong evidence of the publicity of the paths that we must do our best to safeguard the rights of the general public*
- our witnesses, very honest working men with long residence in the district*
- the earliest Ordnance Survey map of 1835 shows these lanes*
- the examination of the locality as it existed in pre-Enclosure days makes it virtually certain that the lanes are of great antiquity.*

Ernest College of Whitwick presented evidence collected from many old people who declared that, like him, they had used the paths without challenge. "*Once I crossed over the two fields when two men were working in it . . . I have passed Mr Gorman, the gamekeeper, who always acknowledged my greeting. His son told me his father knew it was a public footpath because he had asked Mr Peberdy of Shepshed. I believe he was gamekeeper on de Lisle's estate.*" But the Appeal hearing was lost, and with it, the stretch of footpath connecting footpath L20 and L10A.

The Secretary's report for the year ending Dec 1954 declares, "*Early in the year we had been notified of the result of our appeal to the minister for the retention of the Blackbrook paths on the Provisional map: but in spite of much hard work and a determined fight by Messrs Green and Colledge, the case has been lost.*"

The appeal against this decision was held on April 12th 1955 at Castle Donington, but the verdict remained:

Dear Mr Hall

Mr Smith has asked me to pass on to you the enclosed receipt, and to answer your enquiry concerning the Blackbrook footpaths.

I'm afraid it is true that we have lost these paths. When we found that they had been missed off the draft map, we made objections, and at the first hearing they were added to the map. The Agent for Garendon Estates then objected and after a long secondary hearing they were deleted from the map. Following this we appealed to the Minister, and a special ministerial enquiry was held at which our case was put by Messrs Green and Colledge. Unfortunately we were unable to get more than one or two witnesses who were willing to come to the enquiry and testify to the fact that they had used the paths, and the Minister dismissed our appeal.

The provisional map is now published and shows a very curious state of affairs. The way from Botany Bay, as far as the reservoir bridge is shown as public, but no further; and the path beside Drybrook Cafe is shown as public as far as the farm road from St. Josephs Corner to Swanimote Road, and the way past One Barrow Lodge have been lost to us: both of these bits of public path are dead ends.

I am afraid the minister's decision is final, and there is nothing further we can do at this stage.

Letter from Sec LFA JUNE 20th 1955 to Mr E. Hall, Shepshed re Blackbrook paths enquiry.

In 1985 this 'missing link' came to a head for me when writing a book of walks around Charnwood. I was particularly anxious to describe only undisputed rights of way, and very keen to include the beautiful route across the Blackbrook reservoir.

I had, of course, walked the disputed path many times, initially in innocence but later with a determination to re-establish the route because it is such an obviously

natural and logical link between Whitwick and Shepshed.

After a great deal of research in the Record office and in the Modern records department of County Hall I felt sure enough of my facts to confront the landowner with a request to provide an alternative link. The correspondence relating to a meeting of LFA secretaries with the landowner and agent of the Garendon estates tells the story:

Dear Squire de Lisle,

Many thanks for retrieving my (much battered, but beloved) brief case! The kindness and efficiency of your action was much appreciated.

Our thanks, too, for arranging the meeting and considering so patiently our exposition of the problem of the 'missing link' path between Drybrook Lodge and One Barrow (L20 and L10A).

I have been continuing my researches as you suggested, in the hope that we can unearth evidence for a mutually acceptable solution to the problem which has festered for so long, creating ill-feeling and hostility.

I am not sure which documents of the history of this disputed path that you have to hand, so I am including as many relevant ones as I have so far procured.

These are: some general maps of the whole route, to give the context. (My Enclosure Map is at the moment very sketchy, I'm afraid, as I haven't managed to find time to get a photo-copy from the Records Office, but it does show how the modern routes have been built on ancient thoroughways.)

The A . . . F route is the Enclosure Award route. The D . . . E route was a much later addition, presumably by your family. Perhaps you have details of its history? I do not know the date of the 'Black Ash' path, either. Perhaps it is in your family records or estate maps?

Specific information about the Drybrook (L20) path is all to be found in the written evidence of the 1952 and 1954 Tribunals, rather than in maps. The transcripts of the evidence of the walkers (mainly old Whitwick quarrymen) given in the Tribunal are very detailed in their description of stiles and crossing points. Eight of the statements refer to the fact that until 1919 the path used to cross two fields (at Point C) leaving the lane by means of a stile and going diagonally across two fields by the blacksmith's shop, Bennet's farm, and re-entering the lane near the reservoir bridge by a handgate. They all say that the tenants of One Barrow Lodge farm used to ask people to proceed via the farm track to avoid damage to mowing grass.

