

Mrs S L Meggs  
Dorset County Council  
Colliton Park  
Dorchester  
Dorset  
DT1 1XJ

23<sup>rd</sup> October 2008

Your Reference:  
Our Reference: MJCC/pg

Direct Line: 01225 340060  
Direct Fax: 01225 319735  
E-mail: jcheal@ttuk.com

Dear Mrs Meggs

**Re: Byway claims in Dorset**

As you know TTLP represents several landowners within Dorset whose properties are subject to claims for BOATS submitted prior to 20th January 2005. In all these cases the Applicant is FoDROW. Although, of course, individual submissions have been or will be made with regard to each case, a number of key points common to each application have emerged upon which it would be helpful to have the council's view at this stage. I am in close touch with Graham Plumbe of the Green Lanes Protections Group, and am aware that he has already been corresponding with you on the first of the points set out below.

**1 The scale of the plan**

- 1.1 Each of FoDROW's applications which we have seen has been submitted with a map showing the ways, originally **drawn** on a scale of 1:50,000, but **enlarged** by printing to 1:20,000 or greater.

Given that the map has not been **drawn** to the prescribed scale, these applications are non-compliant for the purposes of s67(3) NERC.

In the *Winchester* case, the Court of Appeal made clear that, for the purposes of s67(3) NERC, strict compliance with the requirements of paragraph 1 of Schedule 14 Wildlife and Countryside Act is necessary. At para 46 of his judgment Dyson LJ states:

*"in my judgment, as a matter of ordinary language an application is not made in accordance with para. 1 unless it satisfies all three requirements of the paragraph"*

The paragraph states, *inter alia*, that the application **shall** be accompanied by a map 'drawn to the prescribed scale and showing the way'. Regulation 2 of the relevant regulations states that the map 'shall be on a scale of not less than 1/25,000'. The Regulation goes on to allow a limited discretion to a surveying authority, when it is drawing a map, to show particulars on an inset map to a larger scale.

As a matter of ordinary language, a map **drawn** to 1:50,000, although magnified by printing, is not **drawn** to the required scale. This is illustrated by the definition of 'to scale', contained within the Shorter Oxford English Dictionary, which states the meaning as being "so as to

Midland Bridge Bath ■ BA1 2HQ ■ T 01225 340000 ■ F 01225 319735 ■ DX 8002 Bath  
E [solicitors@ttuk.com](mailto:solicitors@ttuk.com) ■ W [www.ttuk.com](http://www.ttuk.com) Incorporating Wood Awdry & Ford

Also in Bristol, London and Swindon. A list of partners is available at the above address.  
Regulated by the Solicitors Regulation Authority. Authorised and regulated by the Financial Services Authority.

represent every part of the original in exact proportion". On a 1:50,000 map, the original data are at this scale i.e. at this proportion. Enlargement does not change this fact or alter the scale of the map as drawn: it merely makes the 1:50,000 map bigger and enlarges the features, including the inaccuracies, contained within the original data. It still remains a map of the accuracy of 1:50,000 and is thus not NERC-compliant.

*Winchester* has made clear that the Council would be acting ultra vires if it sought to waive any of the requirements of paragraph 1 for the purposes of NERC. The drawn scale, i.e. accuracy of the map submitted with the application, is a fundamental part of that application. Regulation 2 contains the limits of the surveying authority's discretion and acceptance of a less accurate map clearly exceeds these limits.

This is an absolute test. It is not left to the Council's discretion as highway authority (or indeed to the discretion of the Government Office) as to the waiver of any of the NERC requirements. Nor is it a matter of "*de minimis*"; it is true that Dyson L J referred to "*minor departures*" in para 54 of his judgment, but the submitting of a plan **not drawn** to the required scale, ie not of sufficient accuracy and not devoid of risk of distortion in the enlargement process, cannot be dismissed as a minor departure.

## 2 The evidence submitted with the Application

- 2.1 In each of FoDROW's applications which we have seen, it is stated by the Applicant that "*Further evidence does exist and may be submitted at a later date*".

In *Winchester*, Dyson L.J. accepted that the requirement within Schedule 14 para. 1 to submit copies of any documentary evidence which the applicant wishes to adduce in support of the application, should be construed as being to accompany the application with copies of all the documents which the applicant wishes to adduce in support of his application, save for any which it is impossible for him to obtain (paragraphs 50 and 51 of the judgment). It is thus expressly apparent from FoDROW's application that they have failed to adhere to this requirement.

- 2.2 FoDROW's practice has been to provide an "*Analysis of Documentary Evidence*", in which reference is made to specific documents which are not listed and which are not contained on the CD submitted with the Application.

Following *Winchester*, it seems clear that in such a situation the application falls foul of the requirements of Schedule 14 paragraph 1 in that copies of the evidence are not attached.

Overall, where one or more of the above situations arises, the application is non-NERC-compliant and as such any public vehicular rights that might have existed will have been extinguished. It will be helpful at this stage for Dorset County Council as soon as possible to make clear whether it agrees with this conclusion; if not, please supply reasons.

We repeat that we may already have made these points in the cases in which we are already instructed, but this general note will serve to cover all of them. For the record, we are instructed in byway claims in the areas of Piddlehinton, Tarrant Gunville, Stourpaine, and Beaminster.

Yours sincerely

M J C Cheal

Partner

Midland Bridge Bath ■ BA1 2HQ ■ T 01225 340000 ■ F 01225 319735 ■ DX 8002 Bath  
E [solicitors@ftuk.com](mailto:solicitors@ftuk.com) ■ W [www.ftuk.com](http://www.ftuk.com) Incorporating Wood Awdry & Ford

Also in Bristol, London and Swindon. A list of partners is available at the above address.  
Regulated by the Solicitors Regulation Authority. Authorised and regulated by the Financial Services Authority.