

GREEN LANES PROTECTION GROUP

Regulatory C'tee
Dorset County Council
County Hall
Colliton Park
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Dorset
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18 March 2019

Dear Councillors

Meeting 21 March 2019 - Agenda Items 11 (T339), 12 (T353) and 13 (T354)

Regrettably for health reasons I am unable to travel to Dorset and attend the C'ttee meeting. I trust you will be able to take account of submissions on behalf of GLPG by way of this letter.

Compliance (all 3 cases)

As the Officer Report correctly states at Appx 2, para 6.4: "One of the exceptions to [extinguishment of vehicular rights under] section 67 [NERCA] is that an application had been made before 20 January 2005 to record a byway open to all traffic. The Courts have held that for this exception to apply, the application must comply with the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act."

Para 1 Sch 14 reads (emphasis added):

Form of applications

1. An application shall be made in the prescribed form and **shall be accompanied by:**
 - (a) a map drawn to the prescribed scale and **showing the way or ways to which the application relates;** and
 - (b) **copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.**

The question of compliance with para 1(b) arises in all 3 cases. It was held by the Court of Appeal in the *Winchester* case that strict compliance is required and that remains good law, notwithstanding the overturning of the decision re map scale by the Supreme Court in the *TRF v Dorset* case. It is this fundamental principle of law that the TRF seek to ignore in seizing on an ambiguity in the Declaration by the Court as to what the Court had ordered in the *Dorset*

The Green Lanes Protection Group presently represents the following organisations: Allen Valleys Action Group, Battle for Bridleways Group, Brecon Beacons Park Society, British Driving Society, Cambrian Mountains Society, Campaign for National Parks, Campaign to Protect Rural England, Campaign for the Protection of Rural Wales, Country Land and Business Association, Cycling UK, Exmoor Society, Friends of the Lake District, Friends of the Ridgeway, Green Lanes Environmental Action Movement, Long Bostle Downland Preservation Society, North Wales Alliance to Influence the

Management of Off-Road, Peak & Northern Footpaths Society, Peak District Green Lanes Alliance, Save our Paths (North Wales), South Downs Society, West Somerset & Exmoor Bridleways Association and Yorkshire Dales Green Lanes Alliance.

case. This is the reason for DCC's application to the Court for clarification (referred to in my email on 16 March). The absurd claim by the TRF relates to 5 cases in all.

No user evidence has been submitted in respect of the application to upgrade bridleway 14 at

the application to upgrade bridleway 14 at Beaminster. 12.10.18

User evidence

User evidence has been supplied in all 3 cases (we were told in October 'No user evidence has been submitted in respect of Beaminster (T353)'). The two principal purposes of user evidence are (a) to prove that motor vehicular rights exist under NERCA s67(2) (5 year main lawful use by the public in the period ending in May 2006) or (b) proof of implied dedication under s31 Highways Act 1980 based on 20 years use 'as of right' ending on the date when the issue is 'brought into question' - ie 2004. The user evidence was not produced until 2008-2010 and GLPG submits that, as such evidence is undoubtedly embraced by 'statements of witnesses' in para 1(b) and did not accompany the application, it means that all the applications are not compliant.

The Officer Reports do not consider the question of whether the evidence of use supports BOAT status by definition. Under s66 WCA 81, "byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used'. A record of fleeting visits by motorbikes ridden by people who in most cases live miles away does not address that question. Evidence of 'main use' can only be obtained from locals. The evidence recorded in the Reports clearly indicates the contrary, notably the comments in T339 from Cheselbourne and Dewlish Parish Councils, and in all cases by local landowners who say the only vehicles have been farm vehicles gaining access (presumably by private right). Locals generally have not been specifically consulted on this issue as the user evidence postdates the consultation period. Even on the evidence supplied, the claims do not meet the BOAT definition.

The Officer Reports also omit reference to whether the evidence serves its (ostensible) purpose. Implied dedication cannot be based on user which would be a public nuisance (the *Bakewell* case). The evidence is laced with comments such as '[The locals] feel that the use of the way with vehicles would pose a danger to the many users of the way who use the route on foot and horseback' and misguided responses from the Council such as 'Concerns of this nature cannot be taken into account by the Council'. That factor applies to all 3 cases.

Document Extracts (T339)

FoDRoW's evidence relied on extracts from documents, which does not amount to 'copies of any documentary evidence'. Examples were given as to how meaningless were the extracts. Although the point has not been tested in the courts, the best legal authority available is the Joint Opinion from George Laurence QC and Ross Crail dated 26.1.07 of which a copy was supplied. That opinion confirms that extracts do not meet the test.

Delayed or Premature Evidence (T353) The

applicant said:

FoDRoW believes enough evidence is being submitted to justify this claim. Further evidence does exist and may be submitted at a later date. However, having considered the volume of claims likely to be submitted in the coming years this claim is being submitted now to avoid a future flood of claims when they are all fully researched.

Delayed evidence was also considered by Leading Counsel who said it was non-compliant under para 1(b).

Furthermore, the evidence that was in fact submitted was contained on a CD produced in a different context and in November 2004, a month before the application. It cannot be said therefore that the evidence 'accompanied' the application.

Defective Application Map (T354)

The application map did not show 'the way or ways to which the application relates'; it only showed a short section. It was not therefore a compliant application.

Conclusion

For the above reasons, all 3 cases fail to qualify for exemption under para 1, Sch 14.

Yours sincerely