WILDLIFE AND COUNTRYSIDE ACT 1981

Dorset Council (Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish to be upgraded to Byways Open to All Traffic) Definitive Map and Statement Modification Order 2020

OBJECTION TO INTERIM DECISION 15 JUNE 2023
on behalf of the
TRAIL RIDERS FELLOWSHIP

DEFINITIONS AND ABBREVIATIONS

1. The following definitions and abbreviations are adopted:

TRF	Trail Riders Fellowship
Dorset	Dorset Council
DMS	Definitive Map and Statement
WCA 1981	Wildlife and Countryside Act 1981
NERCA 2006	Natural Environment and Rural Communities Act 2006
[DDoc/##]	A reference to documents in Dorset's submission for confirmation (or **[DDoc##/App##]** to an appendix to such a document)
[DSoC¶##]	A reference to the specified paragraph of Dorset's Statement of Case (which is at **[DDoc/4]**) or to an appendix to that **[DSoC/App##]**)
[TRFDoc/##]	Documents appended to this Statement of Case
Application	Application of Mr Jonathan Stuart dated 21 December 2004 **[DSoc/App3]**
Order	Dorset Council (Bridleway 8 (part), Cheselbourne and Bridleway 18, Dewlish to be upgraded to Byways Open to All Traffic) Definitive Map and Statement Modification Order 2020 **[DDoc/2]**
Modified Order	The Order as modified pursuant to the Interim Order Decision
Order Plan	The Plan annexed to the Order at **[DDoc/2]**
A-B-C-D-E	Points marked on the Order Plan
Interim Order Decision	Interim Order Decision dated 15 June 2023
[IOD¶##]	A reference to the specified paragraph of the Interim Order Decision

INTRODUCTION

2. On 21 December 2004, Mr Jonathan Stuart, for Friends of Dorset Rights of Way, made an application to have recorded A-B-C-D-E as a BOAT. The TRF took over conduct of the application, on or around 4 October 2010.

3. Dorset initially rejected the application, deciding on 7 October 2010 (see R (Trail Riders Fellowship) v Dorset CC [2012] EWHC 2634 (Admin) [2013] PTSR 302 **[TRFDoc/2]** at [13]), that the requirements of para. 1 Schedule 14 had not been met, in that the maps submitted were not at a scale of not less than 1:25,000. Broadly speaking, Dorset reached that view because the maps, although presented at a scale of not less than 1:25,000, had been printed to that scale from a digital product derived from an OS 1:50,000 map. The TRF bought judicial review proceedings challenging Dorset's decision that the applications were invalid (unsuccessful, at first instance, [2012] EWHC 2634 (Admin) [2013] PTSR 302 **[TRFDoc/2]** but succeeding in the Court of Appeal, [2013] EWCA Civ 553 [2013] PTSR 987 **[TRFDoc/4]**, whose decision was upheld by the Supreme Court [2015] UKSC 18 [2015] 1 WLR 1406) **[TRFDoc/7])**. As explained in more detail below, those proceedings determined the question of the validity of the applications at large, as reflected by the orders and declarations made, even though Dorset's defence to the proceedings (endorsed by Mr Plumbe) rested on an argument based on the scale of maps submitted.

4. Dorset proceeded then to determine the application, as it was required to do so by the orders made in the above-mentioned proceedings, deciding that A-B-C-D-E should be added as a BOAT. Dorset made the Order, accordingly, on 6 March 2020.

5. On 25 August 2020, Mr Plumbe objected to the Order.

6. On 30 June 2021, Dorset submitted the Order for confirmation by the Secretary of State. This was dealt with by the written representations procedure, with the Inspector conducting a site visit on 31 January 2023.

7. On 15 June 2023, the Inspector decided to confirm the Order but subject to modifications so as to record the route as a Restricted Byway rather than a BOAT.

THE TRF'S POSITION

8. The TRF objects to confirmation of the Modified Order. The TRF submits:

8.1. The validity of the Application as a whole was decided in R (Trail Riders Fellowship) v Dorset CC [2015] UKSC 18 [2015] 1 WLR 1406, even though in resisting the proceedings Dorset and Mr Plumbe focussed on the requirement in para. 1(a) Schedule 14 WCA 1981 as to the scale of the maps submitted). The relief sought included a declaration as to the validity of the Application and a mandatory order requiring Dorset to determine the application (again, premised on the validity of the application). The relief obtained in the Court of Appeal, upheld by the Supreme Court, included a *declaration* that the Application was compliant with para. 1 Schedule 14 WCA 1981 (not just para. 1(a) Schedule 14) *and* a mandatory order as aforesaid. Moreover, the orders, in those terms, of the Court of Appeal and the Supreme Court were *agreed* by Dorset and Mr Plumbe (the Secretary of State was also a party to the proceedings but took no active part).

8.2. Dorset has *determined* the Application, as it was bound to do by the order of Court of Appeal, upheld by the Supreme Court. That determination was premised on the application being compliant (in that paras 3 and 4 Schedule 14 WCA 1981 are premised on a valid application having been made).

8.3. The Inspector was wrong, in any event, to decide that the Application did not comply with para. 1(b) Schedule 14 WCA 1981.

THE INSPECTOR'S INTERIM DECISION 15/6/2023

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9. The Inspector was satisfied that the route was a public vehicular highway **[IOD¶53, 62, 70]** (on the documentary evidence and/or by virtue of statutory deemed dedication or common law prescription).

10. The Inspector, however, considered that rights for MPVs had been extinguished by s. 67(1) NERCA 2006 **[IOD¶63-66, 71]**. The Inspector considered that the exception to extinction in s. 67(3)(a) did not apply, on the basis that '*The Application was made on 25 September 2004, but given my reasoning above did not become valid, in accordance with paragraph 1 of Schedule 14 of the 1981 Act, including the submission of documentary evidence until 2010 and therefore after the relevant date for the purposes of s. 67(4) of the 2006 Act.*' **[IOD¶65]**.

11. At **[IOD¶5]** the Inspector refers to the decision of the Supreme Court in [2015] UKSC 18 [2015] 1 WLR 1406. The Inspector comments '*Notwithstanding later correspondence (5 November 2019), it is clear from the judgment that the Court only considered the question of the map scale and as such the consideration of the validity of the of the entire application was not under scrutiny.*'.

12. The Inspector's reasoning as to the validity of the Application is contained at **[IOD¶8-25]**.

    12.1. It is not wholly clear to the TRF from the reasoning what the deficiencies in the Application are said to be.

    12.2. At **[IOD¶15-18]**, the Inspector refers to points made by Mr Plumbe that '*the extracts provided do not serve to make the application compliant with schedule 14*'. Mr Plumbe's contention appears to be an applicant cannot rely upon an extract from a document. But this contention appears to have been rejected (see **[IOD¶18]** and **[IOD¶22, 25]**).

    12.3. At **[IOD¶19-21]**, the Inspector refers to further evidence submitted after the Application, and at **[IOD¶22, 25]** the Inspector decided that this made the application non-compliant.

MR PLUMBE'S OBJECTION

13. Mr Plumbe's submissions appear from:

    13.1. A letter 11 August 2018 **[DDoc6/App1]**

    13.2. A letter 25 August 2020 **[DDoc5/p. 1-3]**; and

    13.3. Mr Plumbe's Statement of Case.

PARA. 8 SCH. 15 WCA 1981 (MODIFICATION PROCEDURE)

14. As to the scope of the further inquiry, see Marriott v Secretary of State for the Environment, Transport and the Regions [2010] 10 WLUK 264 [2001] JPL 539 at [84-86]; Whitworth v Secretary for Environment, Food and Rural Affairs [2010] EWCA Civ 1468 at [14] and Elveden Farms Ltd v Secretary of State for the Environment, Food and Rural Affairs [2012] EWHC 644 (Admin) at [42]. The Inspector is not precluded on the further inquiry from

considering new evidence, even as to matters not relating to the modifications proposed. As per Marriott at [84], it would be '*most undesirable*' for an Inspector to be obliged to reach his decision '*on an incomplete or inaccurate basis*'. Those comments are directed at '*new information*', an example of which is given at [85] as being '*new, cogent evidence*'. But an Inspector's ability and/or obligation to revisit an interim decision is not so limited: cf. Elveden Farms Ltd v Secretary of State for the Environment, Food and Rural Affairs [2012] EWHC 644 (Admin) at [42] per Charles J '*It seems to me, and it seemed to me on the earlier versions of paragraph 8 without the final paragraph, that the process under paragraph 8 did not limit objections that could be made, and does not limit them to the modifications proposed by the inspector.*'. In this context, it should be borne in mind that, as here, it will not infrequently be the case that a person may have no objection to the order proposed to be confirmed but that may be changed very significantly by a modification. Here the modification is radical: the order as made, subject to confirmation, was to record a BOAT (i.e. public right of way including for MPVs); the order as modified is to record a Restricted Byway (i.e. a public right of way, excluding rights for MPVs).

15. The TRF submits further evidence and information to demonstrate, among other things, that the Interim Decision proceeds on the basis of a misapprehension as to what was decided in R (Trail Riders Fellowship) v Dorset CC and also a misapprehension as to the course of the investigation undertaken by Dorset.

R (TRAIL RIDERS FELLOWSHIP) V DORSET CC

16. The TRF brought proceedings to challenge Dorset's refusal to accept the Application (and four others) as having been validly made.

17. Mr Plumbe, for the Green Lane Protections Group, was an interested party in the proceedings and took and participated at all stages (first instance, Court of Appeal and Supreme Court). Mr Plumbe was represented by Counsel at first instance. Thomas Eggar LLP was instructed by Mr Plumbe throughout, although he appeared in person at the hearings in the Court of Appeal and Supreme Court.

18. The Secretary of State was an interested party but chose to take no active part in the proceedings.

19. The relief sought included not only the quashing of Dorset's decision to refuse to accept the Application (and four others) but moreover *'(1) A declaration that the five applications under section 53(5) Wildlife and Countryside Act 1981 were made in accordance with paragraph 1 Schedule 14 Wildlife and Countryside Act 1981; (2) A mandatory order requiring Dorset CC to determine those five applications*' (see section 6 Claim Form N461 **[TRFDoc/1]**). The declaration sought was as to compliance with para. 1 Schedule 14 WCA 1981 generally, rather than just para. 1(a). The mandatory order was premised on this: to require Dorset to determine the applications necessarily entailed that there was a valid application. Dorset could have sought to rely on matters other than the issue as to the scale of the maps. If it wanted to resist the declaration in those terms and the mandatory order by reference to other matters, it had to do so then. Mr Plumbe also followed Dorset's course in relying only on para. 1(a) Schedule 14 WCA 1981.

20. At first instance, the claim was unsuccessful, with the substantive part of the order only being to dismiss the claim.

21. The TRF's Appeal Notice to the Court of Appeal, again, at section 8 set out the relief sought corresponding to that in the claim form: '… *(2) It is declared that the five applications… were made in accordance with paragraph 1 Schedule 14 Wildlife and Countryside Act 1981*; *(3) Dorset CC be ordered to determine the five such applications.*' **[TRFDoc/3]**.

22. The relief obtained in the Court Appeal included the following **[TRFDoc/5]**:

    '*5. It is **declared** that the five applications dated 14/7/04 (ref. T338), 25/9/04 (ref. T339), 21/12/04 (ref. T350), 21/12/04 (ref. 353) and 21/12/04 (ref. T354) under section 53(5) Wildlife and Countryside Act 1981 **were made in accordance with paragraph 1 Schedule 14 Wildlife and Countryside Act 1981***.

    *6. The First Defendant **will proceed to determine such applications** in accordance with the provisions of Schedule 14 Wildlife and Countryside Act 1981*.' (emphasis added)

23. That order, which reflected both the relief sought in the Claim Form **[TRFDoc/1]** and by the Appeal Notice **[TRFDoc/3]**, was agreed between the TRF and Dorset, and then by Thomas Eggar LLP for Mr Plumbe. See **[TRFDoc/6]** – the order as agreed between the TRF and Dorset was sent in draft to the Court of Appeal before Thomas Eggar LLP had commented on the draft previously provided, with the Court of Appeal being so notified

(email 11:36 17/5/13). Thomas Eggar LLP then indicated that it was content with the order, when providing to the other parties submissions to the Court of Appeal on the question of permission to appeal (email 16:35 17/5/13)[1].

24. The order in the Supreme Court, upholding the decision of the Court of Appeal, included **[TRFDoc/ 8]**:

'*THE COURT ORDERED THAT*

1) The appeal be dismissed

...

*IT IS **DECLARED** that*

*4) The five applications dated 14 July 2004 (ref. T338), 25 September 2004 (ref T339), 21 December 2004 (ref. 350), 21 December 2004 (ref 353) and 21 December 2004 (ref. T 354) made to the Appellant under section 53(5) of the Wildlife and Countryside Act 1981 **were made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981**.'* (emphasis added)

25. The form of order was again agreed between the parties[2]: see **[TRFDoc/9]**

26. Therefore, the Court of Appeal and the Supreme Court unambiguously declared that the applications were compliant with paragraph 1 Schedule 14 WCA 1981, which provides:

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.

[1] For the TRF, Adrian Pay, Counsel, instructed by Brain Chase Coles, solicitors (Margaret Stevenson). For Dorset, George Laurence QC, instructed by Sarah Meggs, solicitor, of Dorset).
[2] For the TRF, Adrian Pay, leading Thomas Fletcher, Counsel, instructed by Brain Chase Coles, solicitors (Margaret Stevenson). For Dorset, George Laurence QC, leading Kira King, Counsel, instructed by Sarah Meggs, solicitor, of Dorset).

27. After the Supreme Court decision Dorset and Mr Plumbe sought to suggest that the order should be varied so as to only refer to paragraph 1(a) Schedule 14, on the purported basis that the point taken in resisting the TRF's claim by Dorset (and supported by Mr Plumbe) was the point in relation to the scale of the maps.

28. That attempt was misconceived, given the plain terms of the final order of the Court of Appeal and Supreme Court. It was unambiguously rejected by Lord Carnwath, on whose behalf by email to the parties (including to Mr Plumbe) on 5 November 2019 **[TRFDoc/10]**, the registrar of the Supreme Court conveyed the following:

> 'The court sees no reason to vary the terms of the order which was agreed between the parties and reflected the form of relief sought in the original claim. Had the council wished to challenge the validity of these applications on other grounds within schedule 14 para. 1, they should have done so expressly in these proceedings or reserved their position. That not having been done, it is too late to raise such issues at this stage.'.

29. Thus Lord Carnwath was making a number of cumulative points which each illustrated that the attempt was misconceived: (1) the terms of the order had been agreed (this also having been the case as respects the Court of Appeal order); (2) the relief reflected that which had been claimed; (3) Dorset (and also Mr Plumbe) had not sought to defend the proceedings by impugning the validity of the applications on other grounds, nor reserved their position. In those circumstances, it was too late to take any such point after the conclusion of the proceedings.

30. The Inspector refers to this communication at **[IOD¶5]** '*Notwithstanding later correspondence (5 November 2019), it is clear from the judgment that the Court only considered the question of the map scale and as such the consideration of the validity of the of the entire application was not under scrutiny.*'. It is surprising that the Inspector considers it open to the Secretary of State to take a view contrary to that which Lord Carnwath explained and still more so when the Inspector has not addressed what Lord Carnwath conveyed. The Inspector has misunderstood the point. Notwithstanding that the arguments and issue in the appeal concerned the scale of the maps accompanying the application (i.e. para. 1(a) Schedule 14), the proceedings themselves addressed the validity of the applications as a whole. The declaration that the applications comply with para. 1 Schedule 14 (i.e. as to both limbs) is conclusive. It is not open to Mr Plumbe to gainsay the declaration (nor would it be open to Dorset to do so, as it rightly recognises).

31. Moreover, the Secretary of State, who was a party to the proceedings, must give effect to the declaration. Cf. Craig v HM Advocate [2022] UKSC 6 [2022] 1 WLR 1270 at [46] per Lord Reed:

'**The Government's compliance with court orders, including declaratory orders, is one of the core principles of our constitution**, and is vital to the mutual trust which underpins the relationship between the Government and the courts. The courts' willingness to forbear from making coercive orders against the Government, and to make declaratory orders instead, reflects that trust. **But trust depends on the Government's compliance with declaratory orders in the absence of coercion**. In other words, it is because ours is a society governed by the rule of law, where the Government can be trusted to comply with court orders without having to be coerced, that declaratory orders can provide an effective remedy… Furthermore, a declaratory order itself has important legal consequences. First, the **legal issue which forms the subject matter of the declaration is determined and is res judicata as a result of the order being granted**: St George's Healthcare NHS Trust v S [1999] Fam 26, 59—60. In addition, a minister who acts in disregard of the law as declared by the courts will normally be acting outside his authority as a Minister, and may consequently expose himself to a personal liability for wrongdoing: Dicey, Introduction to the Study of the Law of the Constitution, 10th ed (1959), pp 193—194.'.

32. Notwithstanding Lord Carnwath's trenchant explanation of the position, Mr Plumbe sought in the context of the confirmation process as respects another of the five applications encompassed by the proceedings (as respects Bridleway 14, Beaminster – T353) to again revisit the validity of the applications and to purport to criticise Lord Carnwath's reasoning. This resulted in the TRF's solicitors having to write further on 16 December 2019 **[TRFDoc/11]**, laying down the marker that '*The TRF has incurred costs in responding to Mr Plumbe's misconceived collateral attack on a decision of the Supreme Court. The TRF regards Mr Plumbe's submissions as unreasonable conduct.*'. In the context of that application, on an appeal under para. 4 Schedule 14 (following Dorset's determination that the evidence did not meet the threshold for making a modification order to add a BOAT), the Inspector's decision **[TRFDoc/12]** upheld Dorset's decision on the merits but commented as respects attempts to reopen the question of the validity of the applications:

'30. *The declaration [viz. that of the Supreme Court] clearly states that the application is compliant with paragraph 1, which is the matter to be decided in terms of the relevant exemption in the 2006 Act*.'

(going to reinforce that conclusion, by also rejecting that argument on its own terms : the application was indeed compliant).

'*Nonetheless, the information provided by the Council indicates that the application was received before the cut-off date and that all of the documents listed in the application form were supplied by the applicant. There may well be additional evidence that is later found to be relevant, but the Council does not consider that the applicant deliberately withheld any evidence.*'.

COMPLIANCE WITH PARA. 1(B) SCHEDULE 14

Legal principles

33. Para. 1 Sch. 14 WCA 1981 provides:

> 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.

34. In R (Wardens and Fellows of Winchester College and anr) v Hampshire CC [2009] 1 WLR 138, the Court of Appeal examined the effect of paragraph 1 Sch. 14 WCA 1981 and section 67 NERCA 2006 in the context of two applications which listed numerous documents but did not attach copies of any documents at all (see [20-25] for a description of the applications). Dyson LJ held at [42] that an application is not made in accordance with para. 1 Sch. 14 unless it complies with all the requirements – i.e. one cannot separate the requirement that the application be in the prescribed form, from the other requirements as to a map and accompanying documents, to say that an application is nevertheless 'made' for the purposes of para. 1 Sch. 14 even if it is not accompanied by a map or documentary evidence. Dyson LJ further held [54] that:

> '…[S]ection 67(6) requires that, for the purposes of section 67(3), the application must be made strictly in accordance with paragraph 1. That is not to say that there is no scope for the application of the principle that the law is not concerned with very small things (*de minimis non curat lex*').'.

35. In Maroudas v Secretary of State for Environment Food and Rural Affairs [2010] EWCA Civ 280, the Court of Appeal considered the validity of an application which was not signed and which was not accompanied by a map. The Court was prepared to consider subsequent

correspondence as potentially making good an otherwise deficient application, rejecting the submission that it should do otherwise [26-28]. At [30], the Court stated:

'I do not find it necessary to define the limits of permissible departures from the strict requirements of para 1 Schedule 14. In particular, I do not find it necessary to decide whether para 1 of Schedule 14 requires that the map, which should accompany the prescribed form, must be sent at the same time as the form. It seems to me that the map and copies of the documentary evidence referred to in the form are required to be treated in the same way.'.

In the particular case, the Court held that the application was invalid: the application remained unsigned for 10 weeks [36], it was unclear as to the extent of the route [37] and it had never been accompanied by a map [38].

36. In Trail Riders Fellowship v Dorset CC [2015] UKSC 18 [2015] 1 W.L.R. 1406, the Supreme Court considered the validity of applications which were accompanied by maps which were presented at scales of greater than 1:25,000 (as the legislation requires) but which had been derived from OS 1:50,000 maps. The appeal raised two issues (i) whether such applications complied with the requirements paragraph 1 Schedule 14; (ii) if not, whether Winchester was correctly decided. The Supreme Court held by a majority that the applications complied (Lords Clarke, Carnwath and Toulson; with Lords Neuberger and Sumption dissenting). Accordingly, the Winchester point did not need to be decided. The judgments, however, contain discussion of Winchester and Maroudas which is germane although *obiter*. Lords Toulson [48-50], Neuberger [92-105] and Sumption [108] were of the view that Winchester was correctly decided. Lord Carnwath [69-79], however, with detailed reasons, indicated his view that Winchester was wrongly decided: in particular, Lord Carnwath highlighted [69] that the Court in Winchester had failed to consider the possibility that an application's validity could be saved by amendment after the cut-off date and had not considered the guidance of Inverclyde DC v Lord Advocate (1981) 43 P&CR 375, HL (referring also to Oxfordshire CC v Oxford CC [2006] Ch 43):

'This is not a field in which technical rules would be appropriate, there being no contested *lis* between opposing parties. The planning authority must simply deal with the application procedurally in a way which is just to the applicant in all the circumstances. That being so, there is no good reason why amendment of the application should not be permitted at any stage, if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided upon.' (p 397).

Lord Toulson preferred to express no view on the issue, but expressed sympathy with Lord Carnwath's approach [34].

37. In Trail Riders Fellowship v Secretary of State for Environment, Food and Rural Affairs [2016] EWHC 2083 (Admin), the Court considered an application which listed documents upon which the Applicant wished to rely, but which failed to provide a copy of one of those documents. The Court applied Winchester and held that the application did not comply with para. 1 Schedule 14 and that the failure was not *de minimis*.

38. The principles are therefore, briefly:

    38.1. Subject to the below, an application which does not 'strictly' comply with paragraph 1 Schedule 14 WCA 1981 is not an application which has been made for the purposes of section 67(3) NERCA 2006 (Winchester at [54] per Dyson LJ).

    38.2. Where departures from the requirements of paragraph 1 Schedule 14 WCA 1981 are minor, that will not invalidate an application (by application of the rule *de minimis non curat lex* (Winchester at [54] per Dyson LJ)).

    38.3. Winchester and Maroudas offer examples of minor departures which may be within the scope of the rule *de minimis non curat lex.* These examples suggest that the ambit of the rule *de minimis non curat lex* may be reasonably generous in the present context (e.g. (i) an absence of signature may be cured by a later letter if sufficiently close in time (Maroudas at [28]), (ii) a misdescription of the route may be cured by a later letter if minor and sufficiently close in time (Maroudas at [29]); (iii) supplementary information may be treated as part of the application if provided sufficiently close in time (Maroudas at [30])). The category of such examples is not closed: see especially Maroudas at [30] per Dyson LJ '*I do not find it necessary to define the limits of possible departures from the strict requirements of para. 1 Schedule 14.*'.

Compliance in the present case

39. As set out above, the Inspector addressed two points taken by Mr Plumbe:

    39.1. That an applicant cannot rely upon extracts of a document.

    39.2. That there was non-compliance with para. 1 Sch. 14 because more documents / information were supplied later.

40. The TRF submits that the application complied in terms with para. 1 Sch. 14 WCA 1981 (even if there could be a live issue as to this in the face of the declarations of the Supreme Court and Court of Appeal). There is, therefore, no need for the TRF to rely on the *de mimimis* principle (but the TRF does also rely on that).

Extracts

41. The TRF deals with the first point shortly because, as the TRF reads the interim decision, the Inspector correctly rejected it:

    41.1. The relevant part of para. 1 Sch. 14 WCA 1981 reads: '*copies of any documentary evidence… which the applicant wishes to adduce in support of the application*'.

    41.2. An extract from a document is also a document in itself (cf. by analogy e.g. Civil Procedure Rules 31.4 " 'document' means anything in which information of any description is recorded; and 'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly" and cf. CPR PD 57AD "2.2 For the purpose of disclosure, the term "document" includes any record of any description containing information.").

    41.3. Even if, contrary to the above, an extract from a document were not considered to be a document in itself, the wording of the statute uses the phrase 'documentary evidence'. An extract from a document is plainly 'documentary evidence'.

    41.4. The Opinion relied on by Mr Plumbe in fact does not support the point which he seeks to make. Para. 12 of that Opinion is there addressing whether para. 1(b) Sch. 14 may be complied with by a list and/or exposition:

    > 'We are asked whether we think compliance is achieved by the **applicant's writing in place of "List of documents attached" such words as "see report", accompanied by a detailed exposition of evidence sources and what they are said to indicate, but no copy documents**. We do not think **that** can be regarded as the equivalent of providing copy documents, or as substantial compliance with the requirement to supply copies. Selected extracts, or summaries, or interpretations, of documents are very different from copies,

which give the full picture and enable the reader to form his own impressions of the meaning and significance of the documents.' (emphasis added).

The authors of the Opinion were addressing a situation where no documents, even partial copies of documents were provided. The reference to 'Selected extracts' in context is clearly a reference to a hypothetical scenario where the applicant's summary or report e.g. quotes from an original document, without providing a copy or partial copy of it.

41.5. In any event, the Opinion is of no authoritative weight (particularly, an Opinion which has been obtained by the Green Lanes Protection Group for their purposes, i.e. to minimise MPV use on minor public rights of way; the Opinion also predates, for example, Winchester and Maroudas, taking no account of the *de minimis non curat lex* principle which featured importantly there; it also happens that one author of the joint Opinion was Leading Counsel in Trail Riders Fellowship v Dorset CC [2015] UKSC 18 [2015] 1 W.L.R. 1406 whose arguments as to the interpretation of para. 1(a) Sch. 14 WCA 1981 were rejected).

41.6. The suggestion that an applicant must adduce whole documents – for example – a complete enclosure award or maps which may be very large and impracticable to copy / supply – is absurd and contrary to the purpose of the legislation which is to be provide an accessible procedure for members of the public to put into train a process which triggers a fuller investigation by the local authority.

41.7. In the present case, the applicant provided not only (i) copies of the documents (extracts showing the parts relied upon); but also (ii) an explanation of the relevance of the documents. Dorset understood perfectly the applicant's contentions and proceeded to carry out its own investigations (as it was required to do). The further process of confirmation of any order objected to under Sch. 15 allows for a fuller investigation of all the evidence. Even at that more formal stage, it is commonplace for parties, including surveying authorities themselves, to rely on extracts from documents.

Further documents

42. The Inspector's reasoning here is a *non sequitur*. The Inspector reasons that because further documents were submitted later, there was non-compliance with para. 1(b) Schedule 14. But the one does not follow from the other. And, the Inspector misapprehended the factual situation: (i) further evidence was *solicited by Dorset* in the course of consultation; and (ii) the UEFs to which the interim decision refers were *not* provided by the Applicant, who at that stage remained Jonathan Stuart

43. Mr Plumbe relies on the same Opinion at para. 14 **[DDoc6/App2]** (as to which, the TRF repeats the point that the Opinion is not authoritative, and was prepared on GLPG's instructions):

> "(1) The criterion for inclusion of documents in the list and set of copies to accompany the application is that they be *"any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application"*. The time at which the applicant's wish to adduce a particular document falls to be tested is at latest the date when he submits his list and set of copies and perfects his application.
>
> (2) If he subsequently discovers other documents or witness evidence which he would like to draw to the surveying authority's attention, that can have no effect on the question whether he complied with paragraph 1 of Schedule 14 when submitting his original batch of documentary evidence.
>
> (3) If after having submitted his original batch of documents he for the first time forms a wish to rely on a document or documents of which he was previously aware, but which he either overlooked or chose not to include for reasons which he has since reconsidered, the submission of that extra material cannot retrospectively undo his compliance with paragraph 1.
>
> (4) However, "*any* documentary evidence" must in the context of paragraph 1 be read as equivalent to "*all* documentary evidence"; so if the applicant deliberately keeps some material back when submitting his original batch, or does not defer his application until he has finished researching and collating material, he is not complying with the requirements of paragraph 1. (There may of course be evidential difficulties in establishing that to be the case, unless it is patent on the face of his application form or list that he has other documents in mind. See further paragraph 17 below).".

44. Propositions (1) to (3) are correct as a matter of legal reasoning, although the TRF would submit if necessary this is evidently an overly technical approach to what is supposed to be a straightforward and accessible procedure. The important point is, as per (1), that para. 1(b) Sch. 14 is expressed in subjective terms: "*…documentary evidence … which the applicant wishes to adduce…*" rather than requiring any particular threshold of evidence.

This is unsurprising: it is not in the nature of a "hurdle" which an applicant must surmount; the applicant deploys the evidence which he wants to deploy; he does so running the risk that those documents will be insufficient to persuade the authority to determine the question in his favour and/or that the authority may decline to consider further material (although again that would be unusual, given the investigatory function of the authority).

45. Proposition (4) addresses two scenarios: (a) where the applicant deliberately keeps some material back when submitting his original batch; (b) where the applicant '*does not defer his application until he has finished researching and collating material*'. Proposition (4)(a) is correct to the extent that if an applicant has formed the view that he wishes to rely on a particular document but deliberately does not include a copy of that, holding it back to rely upon later, then that would probably constitute non-compliance with para. 1(b) Sch. 14 (but that would be a highly unusual scenario, and is qualified by Proposition (3)). Proposition (4)(b) is incorrect: in that scenario, the applicant has made his application with the documents upon which he then wishes to rely.

46. As Dorset rightly reasoned, even if further documents are submitted during the course of its investigation that does not invalidate the original application (any more than if, as will very often be the case, the order-making authority itself alights on further evidence, or obtains such evidence from persons other than the applicant), except, possibly, if it were satisfied that the applicant had deliberately held back documents upon which he wished to rely. It was not so satisfied. Rightly so, given the absence of any evidence of such an unusual scenario.

47. The reasoning in **[IOD¶17, 22-23]** does not reflect the structure and purpose of Schedule 14 WCA 1981. The application (with its evidence) triggers an investigative process: see para. 1 Sch. 14 WCA 1981 for the application and then para. 3 Sch. 14 WCA 1981 for the order-making authority's investigation: "the authority shall [para. 3(1)(a)] … investigate the matters stated in the application; and [para. 3(1)(b)] … decide whether to make or not to make the order…". Cf. R (TRF) v Dorset CC [2015] UKSC 18 [2015] 1 WLR 1406 at [39] per Lord Toulson "*As Maurice Kay LJ pointed out, the application for a modification order triggers an investigation. It is the start of a process*" (cf. Lord Carnwarth at [71], *obiter*, on the Winchester issue); R (Trail Riders Fellowship) v Dorset CC [2013] EWCA Civ 553 [2013] PTSR 987 at [15] per Maurice Kay LJ "*Ultimately, it is for the surveying authority to investigate the matters stated in the application… The application triggers an*

investigation.": see paragraph 3(1)(a) of Schedule 14. It will very often be the case that the evidence after the authority's investigation will be more extensive than that which accompanied the application: that is a main purpose of the authority's investigation. And, at the confirmation stage, the evidence may well, and typically does, range wider still: there is no bar to any person submitting further evidence either in support of the application (whether that is the applicant or any other person) or against the application. **[IOD¶17]** is wrong in suggesting that the purpose of the requirement to provide documents in para. 1(b) Sch. 14 is "*to enable those affected by an application to know the strength of the case they have to meet*" and **[IOD¶23]** is also wrong in suggesting that the effect of the NERCA 2006 is to circumscribe the evidence which may be adduced at any later stage, by any party, including the applicant, in the course of the determination of the application or at the confirmation stage (it is inconsistent even with proposition (2) of para. 14 of the Opinion relied on by Mr Plumbe).

48. Dorset has *determined* the application, as it was bound to do by the mandatory order in the Court of Appeal, upheld by the Supreme Court. Quite apart from the declaration, the mandatory order is premised on an effective application having been made. Again, quite apart from the declaration, Dorset has (rightly and necessarily) treated the application as valid. It is not open to the Secretary of State, or the objectors, to go behind that and it is too late to do so. There has been no challenge to Dorset's decision to determine the applications, treating them as effective: contrast R (Wardens and Fellows of Winchester College and anr) v Hampshire CC [2009] 1 WLR 138 **[TRFDoc/13]**, which was a claim to *judicially review* Hampshire CC's refusal to reconsider its *decision to make a modification order* (see at [1] per Dyson LJ). Maroudas v SoS for Environment [2010] EWCA Civ 280 was a successful appeal under para. 12 Sch. 15 WCA 1981 against a decision of the Secretary of State to confirm an order which was premised on the order-making authority having treated an application as valid, which the Court of Appeal considered to be valid, but no point appears to have been taken that any challenge to the order-making authority's proceeding to determine the application should have been made by judicial review of that decision. R (TRF) v Dorset CC [2015] UKSC 18 [2015] 1 WLR 1406 was the converse situation to R (Wardens and Fellows of Winchester College and anr) v Hampshire CC [2009] 1 WLR 138 (and thus also tends to confirm that a challenge to an authority's decision to treat an application as valid or invalid should be by way of judicial review of that decision): Dorset had decided that the applications were invalid and the TRF judicially

reviewed that decision. Trail Riders Fellowship v Secretary of State for Environment, Food and Rural Affairs [2016] EWHC 2083 (Admin) originated as an appeal under para. 4(1) Sch. 14 WCA 1981 to refuse an application (see [11]).

49. Moreover, the Inspector has misunderstood the factual scenario: the further material referred to was *solicited by Dorset* in the context of *consultation* as part of its *investigation* under para. 3 Sch. 14. It was not submitted by the applicant by way of expanding his application. In fact, it was not submitted by the applicant at all: the applicant was Jonathan Stuart. Only on 4 October 2010 did the TRF take over the application. Members of the TRF submitted user evidence forms responding to a consultation by Dorset to the public at large. See the explanation of Dorset in a recent email 14.05pm 19/7/23 **[TRFDoc/17]**:

'…With regard to the user evidence forms, Dorset County Council (as it was then) undertook a consultation process inviting the public and various interested parties (including the TRF) to submit evidence in January 2006 and also in September 2009. The user evidence forms were submitted to us in Feb/Mar 2010 in response to these consultations and as part of our investigation. They cannot be considered to have been submitted as part of the application by the applicant, as the applicant at that time was still FoDRoW/ Jonathan Stuart. As you know, the TRF did not take over the application until 4 October 2010.'.

CONCLUSION

50. The Order as modified should not be confirmed. The original Order adding a BOAT should be confirmed.

DOCUMENTS

1. Claim Form N461 in R (Trail Riders Fellowship) v Dorset CC
2. R (Trail Riders Fellowship) v Dorset CC [2012] EWHC 2634 (Admin) [2013] PTSR 302
3. Appeal Notice of the TRF in R (Trail Riders Fellowship) v Dorset CC
4. R (Trail Riders Fellowship) v Dorset CC [2013] EWCA Civ 553 [2013] PTSR 987
5. Order of Court of Appeal 20 May 2013
6. Email correspondence agreeing the Order of Court of Appeal May 2013
7. R (Trail Riders Fellowship) v Dorset CC [2015] UKSC 18 [2015] 1 WLR 1406
8. Order of Supreme Court 13 April 2015
9. Email correspondence agreeing the Order of the Supreme Court March 2015
10. Email from Registrar of the Supreme Court 5 November 2019, conveying Lord Carnwath's response to a proposed application to vary the order of the Supreme Court
11. Brain Chase Coles (for the TRF) letter to the Planning Inspectorate 16 December 2019
12. Planning Inspectorate decision 31 July 2020 (Appeal Ref: FPS/C1245/14A/10) (Beaminster Bridleway No. 14)
13. R (Winchester College) v Hampshire CC [2008] EWCA Civ 431 [2009] 1 W.L.R. 138
14. Maroudas v Secretary of State for the Environment, Food and Rural Affairs [2010] EWCA Civ 280
15. Trail Riders Fellowship v Secretary of State for Environment, Food and Rural Affairs [2016] EWHC 2083 (Admin)
16. Craig v HM Advocate [2022] UKSC 6 [2022] 1 WLR 1270
17. Email from Dorset CC to TRF 14.05pm 19 July 23