Appendix 1

R (Trail Riders Fellowship) v Dorset CC [2012] EWHC 2634 (Admin) [2013] PTSR 302

Queen's Bench Division

Regina (Trail Riders' Fellowship and another) *v* Dorset County Council

[2012] EWHC 2634 (Admin)

2012 June 26, 27; Oct 2

Supperstone J

Highway — Right of way — Definitive map — Applications to modify definitive map to upgrade rights of way to byways open to all traffic — Applications accompanied by computer generated enlargements of Ordnance Survey maps drawn to 1:50,000 scale — Local authority rejecting applications as maps not drawn to prescribed scale of no less than 1:25,000 — Whether applications defective — Whether non-compliance de minimis — Wildlife and Countryside Act 1981 (c 69), s 53(5), Sch 14, para 1 — Natural Environment and Rural Communities Act 2006 (c 16), s 67(3)(6) — Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993/12), regs 2, 8

The claimants lodged five applications with the surveying authority, under section 53(5) of and Schedule 14 to the Wildlife and Countryside Act 1981[1], seeking modification orders in respect of the definitive map and statement ("DMS") in relation to five routes over which the claimants maintained that the public enjoyed vehicular rights of way not recorded on the DMS. Accompanying each application was a map of the route in question. Each map had been taken from computer software with digitally encoded mapping "sourced from the Ordnance Survey". Each had originally been drawn to a scale of 1:50,000 and then printed at an enlarged scale of at least 1:25,000. The authority rejected the applications on the basis that the maps had not been drawn to a scale of not less than 1:25,000 as required by the 1981 Act, as applied by section 67(6) of the Natural Environment and Rural Communities Act 2006[2], and the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993[3].

On the claimants' claim for judicial review—

Held, dismissing the claim, that an application to amend the definitive map and statement made pursuant to section 53(5) of and Schedule 14 to the 1981 Act as applied by section 67(6) of the 2006 Act had to be made strictly in accordance with the terms of paragraph 1 of Schedule 14 to the 1981 Act; that, therefore, the accompanying maps had to have been drawn to a scale of not less than 1:25,000, pursuant to the requirement prescribed by regulation 2 of the 1993 Regulations; that the map "showing the way to which the application relates", in the words of paragraph 1 of Schedule 14 of the 1981 Act, had to be originally and properly drawn to that scale, whether by a professional or lay person and whether drawn by computer or hand drawn, with an accuracy and precision relative to that scale to enable the surveying authority to ascertain, as a minimum, the route of the claimed way; that Parliament had prescribed a scale of not less than 1;25,000 in the knowledge that OS maps were used to prepare the DMS and in the reasonable expectation that applicants would accompany their applications with OS maps drawn to the required scale thereby including a sufficient level of physical detail; that the maps submitted by the claimants, drawn to a scale of 1:50,000 and then printed to a scale of not less than 1:25,000, had not been drawn to the prescribed scale so that the application had not

[1] Wildlife and Countryside Act 1981, S 53(5): see post, para 5.
[2] Natural Environment and Rural Communities Act 2006, s 67(6): see post, para 9.
[3] Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, regs 2, 8: see post, para 8.

A been made strictly in accordance with the requirements of the 1981 Act; and that, accordingly, that non-compliance being more than merely de minimis, the authority had been right to refuse the applications (post, paras 22, 27, 31, 33, 34–36, 44, 45).

The following cases are referred to in the judgment:

Maroudas v Secretary of State for the Environment, Food and Rural Affairs [2010] EWCA Civ 280, CA

B *R (Warden and Fellows of Winchester College) v Hampshire County Council* [2008] EWCA Civ 431; [2009] 1 WLR 138; [2008] 3 All ER 717; [2008] RTR 301, CA

No additional case was cited in argument of referred to in the skeleton arguments.

CLAIM for judicial review

By a claim form the claimants, Trail Riders' Fellowship and David C Tilbury, sought judicial review of the decision of the defendant surveying authority, Dorset County Council, to reject five applications made under section 53(5) of and Schedule 14 to the Wildlife and Countryside Act 1981 for modification orders to the definitive map and statement for the area. The grounds of claim were: (1) that (a) the authority had been wrong to find that the requirements of paragraph 1 of Schedule 14 to the 1981 Act were D not exactly complied with and (b) the authority's rejection of the applications proceeded on a mistaken understanding of the process by which the maps were produced; and (2) that any non-compliance with paragraph 1 of Schedule 14 to the 1981 Act was de minimis.

The Secretary of State for Environment, Food and Rural Affairs was originally joined as second defendant to the proceedings but, by agreement, later served as the first interested party. Philip Graham Plumbe, representing E the interests of the Green Lanes Protection Group and affected landowners, was served as the second interested party.

The facts are stated in the judgment.

Adrian Pay (instructed by *Brain Chase Coles, Basingstoke*) for the claimants.

George Laurence QC (instructed by *Head of Legal and Democratic* F *Services, Dorset County Council, Dorchester*) for the surveying authority.

Claire Staddon (instructed by *Thomas Eggar, Solicitors*) for the second interested party.

The Secretary of State did not appear and was not represented.

The court took time for consideration.

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2 October 2012. **SUPPERSTONE J** handed down the following judgment.

Introduction

1 The claimants challenge the decision of the local authority, Dorset County Council, to reject five applications made under section 53(5) of and H Schedule 14 to the Wildlife and Countryside Act 1981 for modification orders to the definitive map and statement ("the DMS"). The claim concerns five routes over which the claimants maintain the public enjoy vehicular public rights of way (including with mechanically-propelled vehicles) which were not recorded on the DMS.

2 The claimants contend that the effect of the decisions made by the local authority is that public rights of way for mechanically-propelled vehicles have been extinguished.

3 The principal issue in this case is whether for the purposes of paragraph 1 of Schedule 14 to the 1981 Act as applied by section 67(6) of the Natural Environment and Rural Communities Act 2006 a map which accompanies an application made under section 53(5) of the 1981 Act is drawn to the prescribed scale only if it is derived from a map originally so drawn without being enlarged or reduced in any way.

4 Mr Stuart, a member of the Friends of Dorset's Rights of Way ("FoDRoW") submitted the applications. The first claimant is an organisation that took over the conduct of the applications from FoDRoW in October 2010. Mr Tilbury, the second claimant, is a member of FoDRoW. The local authority is the surveying authority, as defined in section 66(1) of the 1981 Act, for the area in which the proposed "byway[s] open to all traffic" are located. The Secretary of State for Environment, Food and Rural Affairs, the first interested party, was originally joined to the proceedings as a defendant; subsequently by agreement the Secretary of State was removed as a defendant and joined as an interested party. Mr Plumbe, the second interested party, represents the interests of the Green Lanes Protection Group and affected landowners.

The legal framework

5 Section 53 of the 1981 Act imposes a duty on a surveying authority to keep a DMS of the public rights of way in its area under continuous review. So far as material, it provides:

> "(2) As regards every definitive map and statement, the surveying authority shall— (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
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> "(3) The events referred to in subsection (2) are as follows . . . (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows . . . (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies; (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification."
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> "(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events

A falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection."

6 There are three categories of public highway: footpath, bridleway, and "byway open to all traffic" ("BOAT"). Section 66 of the 1981 Act defines a BOAT as:

B "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".

7 Schedule 14 to the 1981 Act provides:

"1 *Form of applications*

C "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.

"2 *Notice of applications*

D "(1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates."

"(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

"(4) Every notice or certificate under this paragraph shall be in the E prescribed form.

"3 *Determination by authority*

"(1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall— (a) investigate the matters stated in the application; and (b) after consulting with every local authority whose area includes the land to which the application relates, F decide whether to make or not to make the order to which the application relates."

"5 *Interpretation*

"(1) In this Schedule . . . 'prescribed' means prescribed by regulations made by the Secretary of State."

G 8 The material regulations made by the Secretary of State are the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. The 1993 Regulations provide:

"2 *Scale of definitive maps*

"A definitive map shall be on a scale of not less than 1/25,000 but where the surveying authority wishes to show on a larger scale any H particulars required to be shown on the map, in addition, an inset map may be used for that purpose."

"6 *Provisions supplementary to regulations 4 and 5*

"Regulations 2 and 3 above shall apply to the map contained in a modification or reclassification order as they apply to a definitive map."

"8 *Application for a modification order*

"(1) An application for a modification order shall be in the form set out in Schedule 7 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.

"(2) Regulation 2 above shall apply to the map which accompanies such an application as it applies to the map contained in a modification or reclassification order."

9 Section 67 of the Natural Environment and Rural Communities Act 2006 provides:

"*Ending of certain existing unrecorded public rights of way*

"(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement— (a) was not shown in a definitive map and statement, or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsections (2) to (8)."

"(3) Subsection (1) does not apply to an existing public right of way over a way if— (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic, (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically-propelled vehicles— (i) was reasonably necessary to enable that person to obtain access to the land, or (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

"(4) 'The relevant date' means— (a) in relation to England, 20 January 2005 . . ."

"(6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

10 Section 130(1) of the Highways Act 1980 provides:

"It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it."

The factual background

11 Between 14 July 2004 and 21 December 2004 Mr Stuart submitted five applications under section 53(5) of the 1981 Act to modify the definitive map to upgrade existing rights of way to BOAT status and/or to cause lengths of path to be shown as BOATs. The applications relate to routes (1) at Bailey Drove (T338); (2) from Doles Hill Plantation East to Chebbard Gate in Cheselbourne/Dewlish (T339); (3) in Tarrant Gunville/Chettle (T350); (4) in Meerhay Lane from Meerhay to Beaminster Down,

A Beaminster (T353); and (5) in Crabbs Barn Lane (T354). Accompanying each application was a map showing the route in question. Mr Stuart describes at para 6 of his witness statement the method by which the maps were produced. In summary the method was: (1) the maps were generated using software installed on his personal computer. The software is called "Anquet" and the relevant version number was V1. (2) The software was
B designed for the viewing and printing of digitally encoded maps. The digitally encoded maps from which the applications maps were generated were purchased by him and were supplied on a CD-ROM. The packaging on the CD-ROM describes the map as "Anquet Maps: the South Coast". The packaging refers to 1:50,000 and states: "mapping sourced from Ordnance Survey". (3) The printing function on the software allows maps to be printed to a range of scales. In relation to the maps in
C question, the software allowed maps to be printed to scales ranging from 1:10,000 to 1:1,000,000. He selected a scale that best fitted the claimed route on A4 paper but it was always 1:25,000 or larger. He then printed the maps on a laser printer. (4) The maps, he says, which were produced are "to a scale of at least 1:25,000: that is to say, eg, a measurement of one centimetre on the printed map corresponds to a measurement of 250 metres
D or less on the ground".

12 Each of the applications was acknowledged by the local authority by early 2005. There was no intimation that the applications were defective before 2009.

13 The minutes of the meeting of the local authority's Roads and Rights of Way Committee ("the committee") held on 7 October 2010 at which the five applications were considered record, at minute 125.6:

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> "The Head of Legal and Democratic Services referred members to the requirement for an application to be accompanied by a map drawn to a scale of not less than 1:25,000 . . . The Head of Service[s] advised that he did not believe the maps which accompanied the applications to have been drawn to a scale of not less than 1:25,000. Members were referred to letters [dated 19 March 2009 and 10 December 2009] provided by the
F Ordnance Survey setting out their comments and in particular to their description of an application map as a facsimile copy of an enlarged image taken from the Ordnance Survey digital raster mapping originally produced at a 1:50,000 scale."

The committee resolved to refuse all five applications. Under the heading "Reasons for Recommendation", the following was recorded:

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> "1. For the transitional provisions in the Natural Environment and Rural Communities Act 2006 to apply so that public rights of way for mechanically propelled vehicles are not extinguished the relevant application must have been made before 20 January 2005 and must have been made in strict compliance with the requirements of Schedule 14 to the Wildlife and Countryside Act 1981. The applications in question
H were accompanied by computer generated enlargements of Ordnance Survey maps and not by maps drawn to a scale of not less than 1:25,000. In each case none of the other exemptions in the 2006 Act are seen to apply and so the applications should be refused."

That decision was notified in writing to the claimants on 2 November 2010.

The parties' submissions

14 Mr Pay, for the claimants, submits that the local authority was wrong to find that the requirements of paragraph 1 of Schedule 14 to the 1981 Act were not exactly complied with. The maps were drawn to a scale of no less than 1:25,000 and plainly showed the routes in question. The legislative requirements do not address themselves to the way in which such a map is derived, only to the end result. "Drawn to the prescribed scale" must, he submits, refer to the scale of what is produced to the authority: ground 1(a). It is common ground that the applications were accompanied by a map; and that the map was to a scale of no less than 1:25,000 in the sense that measurements on the map corresponded to measurements on the ground by a fixed ratio whereby a measurement of one centimetre on the map corresponds to a measurement of no more than 250 metres on the ground.

15 Further Mr Pay submits that the local authority's rejection of the applications proceeded on a mistaken understanding of the process by which the maps were produced: ground 1(b). He so submits by reference to the second claimant's evidence, at para 18.3 of his witness statement dated 30 January 2011:

> "Although a digital map might be said to have a level of accuracy in that the location of particular features will be stored to a particular resolution, it is misleading to talk of it having a scale until it is printed (or viewed). Such a map may be printed or viewed at any particular scale . . ."

In their detailed statement of grounds in support of their application for judicial review the claimants indicated that they wished to call expert evidence on this issue.

16 If paragraph 1 of Schedule 14 to the 1981 Act was not exactly complied with, Mr Pay submits that any departure was "de minimis": ground 2. The maps which accompanied the applications enabled the local authority to identify the routes in relation to which the applications were made; and were of a greater practical use than many examples of maps which, on the local authority's analysis, would have complied exactly with the legislative requirements, such as, for example, a hand drawn map or a poorly photocopied 1:25,000 map.

17 Mr George Laurence QC, for the local authority, submits that on the proper construction of paragraph 1 of Schedule 14 to the 1981 Act as applied by section 67(6) of the 2006 Act, a map which accompanies an application made under section 53(5) of the 1981 Act is drawn to not less than the prescribed scale only if it is originally so drawn (i e created or produced) and is thereafter reproduced for use by the applicant when making his application without being enlarged or reduced in any way: ground 1(a).

18 Further Mr Laurence submits the local authority was entitled to rely on the views expressed by the Ordnance Survey ("OS") (on whose maps the applications maps were based). The OS stated in letters dated 19 March 2009 and 10 December 2009 that the application maps were an enlargement of the 1:50,000 map: ground 1(b).

19 Mr Laurence submits that if a map accompanying an application must be a replica, neither enlarged nor reduced, of a map drawn to a scale of

A not less than 1:25,000, it is wrong to treat a map that has been enlarged to 1:25,000 or less from a 1:50,000 map as compliant with the legislation on the basis of de minimis merely because, on the facts of a particular case, it could be said that it was possible to identify the routes in relation to which the application was made: ground 2.

20 Miss Staddon, for the second interested party, supports the local B authority's position. She submits that the claimants' failure to comply with paragraph 1 of Schedule 14 is not a mere "technical" point, as the claimants suggest. The objection is not that 1:25,000 scale maps happen to have been produced in an incorrect way; the objection is that the applications were not accompanied by 1:25,000 scale maps at all: ground 1.

21 Further Miss Staddon submits paragraph 1 of Schedule 14 requires that the application maps satisfy both of two elements: first, "drawn to the C prescribed scale", and second, "showing the way". The fact that a map to the wrong scale shows the way at that wrong scale is not a good reason, she submits, for saying that the use of the wrong scale is de minimis: ground 2.

Discussion

The first issue: whether there was compliance with paragraph 1 of D *Schedule 14*

22 In *R (Warden and Fellows of Winchester College) v Hampshire County Council* [2009] 1 WLR 138 the Court of Appeal considered what is meant by an application made in accordance with paragraph 1 of Schedule 14 to the 1981 Act within the meaning of section 67(6) of the 2006 Act. Dyson LJ said, at para 54:

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> "In my judgment, section 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). Indeed this principle is explicitly recognised in regulation 8(1) of the 1993 Regulations. Thus minor departures from F paragraph 1 will not invalidate an application."

23 Mr Pay submits that there was strict compliance with paragraph 1 of Schedule 14. He observes that the sole basis on which the applications were rejected was that the map which accompanied each application was derived by enlarging a 1:50,000 map. As to the legislative requirement for a map to a scale of no less than 1:25,000 he makes five points. First, it does not G specify that an OS map must be used (or indeed any other specific type of map). Second, it does not require that any particular physical details be given on the map other than the way itself; third, it places no relevance on the fact that, for example, OS 1:25,000 maps as compared to OS 1:50,000 maps by convention show differing land details. Fourth, it contemplates that a hand drawn map would suffice. Fifth, it does not specify particular accuracy with which a map must be drawn.

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24 Further, Mr Pay emphasises the purpose of an application map. It is provided at the first stage in an application for a modification order. As such it triggers an obligation on the surveying authority to investigate. The surveying authority may then propose a modification order, as a result of which the surveying authority may themselves produce a map. A change

to the definitive map is not effective until confirmed, which may involve a public inquiry at which any person may give evidence as to the route to be adopted. The Secretary of State may then decide not to confirm the order proposed, but rather propose a different order.

25 In a letter dated 5 June 2009 the Department for Environment, Food and Rural Affairs ("DEFRA") expressed the view that an application that was accompanied by a map that has been photographically enlarged could be a "qualifying" application under the de minimis principle. Mr Pay prays in aid two of the reasons given for that conclusion in support of his primary submission that there was strict compliance with paragraph 1 of Schedule 14. First, as DEFRA noted, the legislation does not specify that maps accompanying an application are to be either professionally prepared or based on OS maps, so there is nothing to say that an applicant cannot "draw" his own map. Provided it was to a scale of 1:25,000 or greater, such a map would meet the terms of the legislation, but could be considerably less clear, accurate and detailed than a map photographically enlarged from a 1:50,000 OS map. Second, one can take this argument one stage further and envisage a scenario where an applicant takes a 1:50,000 OS map, photographically enlarges it to 1:25,000, then traces that map onto blank paper and submits that tracing as the map accompanying the application, now "drawn" as prescribed to 1:25,000. Such a map would meet the terms of the legislation, even if (almost inevitably) the traced version would have lost something of the detail contained in the original OS map from which it was taken and therefore be less fit for purpose than a map photographically enlarged from a 1:50,000 OS map.

26 Mr Pay suggests this illustrates the absurdity of the local authority's argument that the focus of the legislative requirements is on the map as it is originally drawn and not, as the claimants contend, on the map as it is produced to the authority. Similarly Mr Pay submits, if the map was hand drawn to the prescribed scale, it being mechanically produced from another map, it would, he suggests, be impossible to tell the scale from which it had been drawn, yet on the local authority's construction if the hand drawn map was an enlargement or reduction of the source map it would not be compliant. However as Mr Laurence points out, if a map is drawn by an applicant from, say, two sources, so long as what is produced can properly be described as a map to the prescribed scale, it would comply with the statutory requirements. That being so, Mr Laurence suggests that Mr Pay's example does not advance his submission. The onus is on the applicant to show that the map is produced to the prescribed scale.

27 In my judgment, none of these matters alter the fact that the applications were accompanied by a map that was not a 1:25,000 scale map. A document headed "Ordnance Survey response to questions posed by the parties to the case" dated 18 May 2012, provides what has been treated by the parties as expert evidence from the OS. In Part I of the document, under the heading "The implications for computer based technologies on the presentation of mapping", the OS state, inter alia:

> "26. For the purposes of this response, Ordnance Survey will focus solely on raster data since the digital versions of the mapping from Ordnance Survey at issue are both held by Ordnance Survey and published in raster data format. (i) Since the raster image is in lay terms a

A 'digital picture' of the map, it follows that once the raster has been created only the content of the source graphic map is contained within the data . . .

"27. It also follows that, disregarding the capabilities of a computer screen or printer/plotter to reproduce a specific map image, the process of outputting from raster data, a map published at one scale, at a larger or smaller output scale simply magnifies or reduces the image of the map, but cannot change the content or appearance of the source map/source data . . ."

28 Questions asked by the local authority and answers provided by OS include the following:

"(1) Question 1 (first part) where: 1.1 digital raster mapping is originally produced by the OS at 1:50,000 scale ('the original product'); 1.2 an image is taken from the original product and enlarged to a 1:25,000 scale; and 1.3 a facsimile copy of that enlarged image is produced in printed form ('the map') is the map properly to be regarded as being at a scale of 1:50,000 or 1:25,000?"

"Answer: As described in the question the map would be properly to be regarded as a 1:50,000 scale Ordnance Survey map enlarged to a 1:25,000 scale."

"(2) Question 1 (second part): If not properly regarded as being at a scale of 1:25,000 is the map regarded as equivalent to a map produced at 1:25,000 by the Ordnance Survey?"

"Answer: It is not regarded by Ordnance Survey as equivalent to a map published by Ordnance Survey at 1:25,000 scale, since it does not conform to the standard cartographic style and content used by Ordnance Survey for national series maps and data products published at the 1:25,000 scale."

"Question 6: What are the differences between an OS 1:25,000 map and an enlarged (by the method described by the claimants) 1:50,000 product?"

"Answer: The differences are those already expressed as the differences between the specifications of the two data sets published by Ordnance Survey. They are most apparent visually in the different levels of content simplification, generalisation, symbology and conventions of depiction of the two map series.

"These include, for example, the inclusion of land enclosure boundaries, separate depiction of a greater number of individual buildings, and depiction of various roads widths for certain categories of road within the 1:25,000 scale OS Explorer Map and 1:25,000 scale colour raster, compared with the more heavily simplified and generalised content of the 1:50,000 scale OS Landranger Map and 1:50,000 scale colour raster which has standardised road width depictions, far fewer individual buildings identified and minimal land enclosure boundary information."

29 Mr Laurence and Miss Staddon submit that the construction of paragraph 1 of Schedule 14 that they put forward is consistent with the approach taken in the decisions of two inspectors; first, that of Mr Beckett of 10 June 2009 in a case involving Buckinghamshire County Council.

The application map used in that case was a photocopy extract from an OS 1:50,000 scale map which had been enlarged photographically to a scale of 1:25,000. The inspector decided that the map remained a map which had been drawn at a scale of 1:50,000, so the exemption in section 67(3) of the 2006 Act did not apply.

30 Second, there was the decision of Mr Millman made on 15 July 2011 in a case involving Dorset County Council which included applications made by the claimants as part of a series of applications, which include the five applications in issue in the present proceedings, all of which use the same kind of application maps. Exactly the same questions arose in that case as in the instant case. Mr Millman had regard to DEFRA's advice letter of 3 July 2009 and concluded that as there was no distinction between the appearance of a map produced by photographic enlargement and one printed from digital data, there can be no sensible justification for not applying DEFRA's advice on photographic enlargement to a computer generated image of an identical product. He found that the applications in question did not comply with the requirements of Schedule 14 to the 1981 Act for the purposes of section 67(6) of the 2006 Act.

31 In my judgment it does not follow from the fact that Parliament has not specified that an OS map must be used that by selecting as the minimum prescribed scale 1:25,000 Parliament did not have in mind that at that scale it is possible to provide detail which at lesser scales it becomes increasingly difficult to provide. I accept Mr Laurence's submission that Parliament required a map at a prescribed scale of 1:25,000 to accompany applications under section 53(5) of the 1981 Act in the knowledge that OS maps were used to prepare the DMS itself and in the reasonable expectation many persons who apply to modify the DMS would choose to accompany their applications with OS maps. Accordingly it made sense to prescribe that the accompanying map should be at a scale enabling applicants who choose to use an OS map to include a level of detail sufficient to ensure that in most cases physical features, bounding tracks on the ground or separating one parcel of land from another would appear on an OS map drawn to that scale.

32 Such a construction of paragraph 1 of Schedule 14 is supported by reference to paragraph 3 of Schedule 14. A compliant application engages the provisions of paragraph 3 of Schedule 14 by requiring the authority to investigate the matters stated in it. The requirement for the accompanying map to be at the prescribed scale avoids or diminishes the burden on the authority of inspecting the land and then trying to construe the application in order to ascertain, for example, whether the way claimed passes between hedges, not shown on the map, or on which side of a boundary feature, also not shown on the map, the way claimed runs. Where, for example, a question arises as to which side of a field boundary the route applied for runs, the 1:25,000 map will inform the surveying authority that there is, physically, such a boundary whereas that information may often not appear on a 1:50,000 map at all: see the witness statement of Ms Meggs on behalf of the local authority, at paras 8–14.

33 Mr Laurence submits that the words in paragraph 1 of Schedule 14 "showing the way to which the application relates" appear to have been carefully chosen. Whilst, even on a map at a scale of 1:25,000 it would not be reasonable to expect the applicant to depict exactly the area of land said

A to qualify say as a BOAT, a document needs to contain a certain amount of appropriate detail before it can qualify as a map at all. The requirement for it to be drawn to scale of not less that 1:25,000 suggests, Mr Laurence contends, that a good deal of accurate detail must be included in order that the document put forward may qualify as a "map" as required by paragraph 1 (as opposed to being a mere, even if accurate, sketch map). Moreover, where, as in the present case, an OS map is used the position of B the way claimed can be shown with greater accuracy if a 1:25,000 map as opposed to a 1:50,000 map is used owing to the inclusion on the former of important physical features which are not shown on the latter. For example, OS 1:50,000 mapping convention is to show roads of generalised standard widths rather than at their true scale width, unlike OS 1:25,000 mapping for certain categories of roads. So an OS 1:50,000 would not be able to show C the route of the claimed way by reference to the alignment of such a road to the same degree of accuracy and precision as the OS 1:25,000 version.

34 I accept Miss Staddon's submission that in order to "show the way" a qualifying map needs to show sufficient physical features to enable the surveying authority to ascertain, at least, the route of the claimed way, within the constraints of the prescribed scale. Separately from the need to D show the claimed way though, Miss Staddon submits, the overarching requirement that the application map be a map to a scale of not less than 1:25,000 imports the requirement that the map be properly drawn to that scale, whether by a professional or lay person and whether drawn by computer or hand drawn, with an accuracy and precision relative to that scale.

35 The claim at ground 1(b) is refuted by the OS evidence. It was the E claimants' understanding that the scale of the OS raster data used by the claimants was in effect flexible in their hands within the scope of the Anquet product and that the "nominal" scale on the product (1:50,000) in fact meant nothing in terms of "true" scale. The claimants understood that the raster data had no inherent scale but allowed a selection of scales and that they had duly selected, printed and supplied to the local authority F application maps at the scale of 1:25,000. However it is clear from the OS evidence that is not correct: see paras 27 and 28 above.

Conclusion on first issue

36 In my judgment there was no strict compliance with the requirements of paragraph 1 of Schedule 14 to the 1981 Act. The maps G which accompanied the applications were not drawn to a scale of no less than 1:25,000: ground 1(a). I reject the claimants' submission that the local authority's analysis of the facts was premised upon a fundamental misunderstanding of the process of reproducing a map by digital means. It is clear from the evidence from OS that the misunderstanding was that of the claimants, not the local authority: ground 1(b).

H *The second issue: the application of the de minimis principle*

37 In the *Winchester College* case [2009] 1 WLR 138 the Court of Appeal accepted, at para 54, that "minor departures from paragraph 1 will not invalidate an application". Indeed, as Dyson LJ observed, this principle is explicitly recognised in regulation 8(1) of the 1993 Regulations. Examples

of departures from the requirements of paragraph 1 of Schedule 14 which may fall within the de minimis rule appear from the later decision of the Court of Appeal in *Maroudas v Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 280. In that case Dyson LJ accepted that the lack of a date and signature in an application form can in principle be cured by a dated and signed letter sent shortly after the submission of the form, where the omissions are pointed out and the council is asked to treat the application as bearing the date of the letter and the signature of the author of the letter: paras 27 and 36. Similarly, if the application form contains a minor error in the description of the route or its width or length, and the applicant discovers the error shortly after he has submitted the application and writes to the authority correcting it, the application would be contained in the original application form as corrected. Such an amended application would be in accordance with paragraph 1 of Schedule 14: para 28.

38 In *Maroudas's* case Dyson LJ did not find it necessary to define the limits of permissible departures from the strict requirements of paragraph 1 of Schedule 14: para 30. In particular he did not find it necessary to decide whether paragraph 1 of Schedule 14 requires that the map, which should accompany the prescribed form, must be sent at the same time as the form: para 30. In that case the application form was not signed or dated and it was not accompanied by a map showing the route to which it related. The court held that the departures from the requirements of paragraph 1 of Schedule 14 were substantial and were not such as could be saved by the de minimis principle, even when the application was considered together with the subsequent exchange of correspondence.

39 Mr Pay submits that there can be no suggestion but that the maps which accompanied the applications enabled the local authority to identify the routes in relation to which the applications were made; and even if there were any uncertainty about the application routes, any such uncertainty could be very easily rectified. Further, he submits, the maps which accompanied the applications were of, at least, as great a practical use as maps which exactly complied with the legislative requirement, on the local authority's analysis; indeed, he submits, they were of greater practical use than many examples of maps which would on the local authority's analysis exactly comply with the legislative requirements, such as a hand drawn map or a poorly photocopied 1:25,000 map.

40 In the circumstances Mr Pay submits that the only departure from the requirements of paragraph 1 of Schedule 14 was de minimis.

41 I do not accept that the maps which accompanied the applications were of equal practical use as the maps which should have been submitted. Mr Laurence and Miss Staddon in their oral submissions showed by reference to the maps in evidence before the court why this is not so: see for example Mr Plumbe's first witness statement dated 25 February 2011, at paras 6 and 7, in relation to a similar application by the claimants (T323); Mr Plumbe's third witness statement dated 24 April 2012, at paras 13–17, in relation to application T338; and maps (exhibited to Mr Plumbe's fourth witness statement dated 19 June 2012) using OS 1:25,000 scale mapping, to show OS 1:25,000 scale versions of the application maps, for comparison with the application maps in applications T339, T350, T353 and T354. It is plain that there are material differences between the presentation of the

claimed ways on the application maps and their presentation on a 1:25,000 scale map.

42 Further I reject Mr Pay's submission that any departure from the strict requirements of paragraph 1 of Schedule 14 was of less consequence than a number of illustrations of the scope of the de minimis rule as illustrated in the *Winchester College* case [2009] 1 WLR 138 and *Maroudas's* case [2010] EWCA Civ 280. The de minimis principle, as Miss Staddon submits, is not such as to excuse a failure to use application maps to the prescribed scale. It is clear from the evidence that a map to a scale of 1:50,000 is very different from a map to a scale of 1:25,000, in particular, in terms of the detail relevant to the routes of the claimed ways and their impact relative to surrounding features. It cannot follow from the fact that the maps which accompanied the applications enabled the local authority to identify the routes in relation to which the applications were made that the departure from the requirements of paragraph 1 of Schedule 14 was de minimis. I accept Mr Laurence's submission that for the doctrine of de minimis to apply in these circumstances would mean that each application accompanied by a non-compliant enlarged map would have to be scrutinised on a case-by-case basis, leading to expense and uncertainty.

43 It is not suggested by the claimants that it was impossible for them to submit applications with maps drawn to the prescribed scale: see the *Winchester College* case [2009] 1 WLR 138, para 50. This is not a case like *Maroudas's* case [2010] EWCA Civ 280 where the issue was whether the applicant had remedied the defects in question soon enough for them to be treated as de minimis. The claimants do not recognise that there was no qualifying map. Mr Laurence accepts that, if a compliant map is photocopied, without being enlarged or reduced in size, and it became distorted in the copy, the de minimis principle should apply; however that is not this case.

Conclusion on second issue

44 In my judgment the de minimis principle has no application in the present case.

Conclusion

45 For the reasons I have given this claim fails.

Claim dismissed.

BENJAMIN WEAVER ESQ, Barrister