Dorset T338

APPX 3

DC request for an amendment + supplementary submission by GLPG

From: Helen Harrington
Sent: 19 February 2019 [I think that is not the date when it was sent]
To: registry@supremecourt.ukp.crowtherPdorsetcc.gov.uk
Cc: Philip Crowther <p.crowther@dorsetcc.gov.uk>
Subject: [Official-Sensitive]R (Trail Riders' Fellowship) v Dorset County Council [2015] UK SC 18
Importance: High
Sensitivity: Confidential

Sent on behalf of Phil Crowther

Dear Registrar

1. The County Council is now in the process of determining the five applications made to it and which were the subject of these proceedings. It is hoping to determine them within the next few weeks. As part of the consultation undertaken by the County Council, issues relating to the validity of the applications have been raised by the respondents (Trail Riders' Fellowship) and the Intervenor (Graham Plumbe). These validity issues relate to whether the applications complied with all of the provisions of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981 ("WCA") such that Section 67(3), as interpreted in accordance with Section 67(6) of the Natural Environment and Rural Communities Act 2006 **("NERCA")** are engaged.

2. The first issue before the Supreme Court is set-out at paragraph 2 of the Court's judgement. In short, it was whether the maps submitted with the applications were made in accordance with paragraph 1 of Schedule 14 to the WCA; the specific requirements for such maps being set-out in paragraph 1(a).

3. Paragraph 1(b) of Schedule 14 to the WCA sets-out further requirements for these applications and the issue which has arisen relates to paragraph 1(b). The difficulty faced by the County Council is that in the Court's Order of 13 April 2015, the Court declared at paragraph 4:

4. "The five applications ... were made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981."

5. Thus whilst the issue before the Court related only to paragraph 1(a), the Order states that the applications were made in accordance with paragraph **1,** le paragraph 1(a) and (b).

6. The County Council's position is that it is bound by the term of the Order on its face that the five applications were made in accordance with all of the requirements of paragraph 1. Further, the County Council's understanding is that it is now too late for the Order to be corrected under the "slip rule".

7. The second issue before the Court, which was discussed by several of the Justices, but due to the decision on the first issue, was not decided by the Court. That second issue involved consideration of decisions by the Court of Appeal in the "Winchester" and "Maroudas" cases.

8. The Officers at the County Council dealing with the five applications were not involved in the Supreme Court proceedings (those Officers now having left the Authority) and had written to the Respondent and the Intervenor stating that three of the applications were made in accordance with paragraph 1 but that two of the applications were not made in accordance with paragraph 1(b). The County Council is therefore in a position where it is bound by the Supreme Court's Order. However, that Order on its face appears to conflict with the line of authority from the Court of Appeal in the Winchester and Maroudas cases (and subsequent High Court decisions) which were not determined by the Supreme Court.

9. In light of this, I would be grateful if you could confirm whether the Court's Order can or should be clarified or amended so that it refers to paragraph 1(a) of Schedule 14 rather than to paragraph 1 as a whole. If that is not possible, is the Court able to offer any guidance or assistance to the Council on how it should treat any of the five applications which the Council concludes were not made in accordance with paragraph 1(b). I will copy this e-mail to Solicitors for the Respondent and an affected Landowner and also to the Intervenor.

Yours sincerely

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R (o.a.o. Trail Riders Fellowship and another) (Respondents) v Dorset County Council (Appellant) [2015] UKSC 18 Re Supreme Court Declaration issued 13 April 2015

Submission to the Supreme Court by Graham Plumbe on behalf of GLPG, supplementary to the application by Dorset Council for an amendment. **15 June 2019**

Issues

1. The 'principal issue' before the High Court is identified at para 3, and it remained as such through to the Supreme Court. It is simply as to the correct construction of 'a map drawn to the prescribed scale' - ie the first limb of Para 1(a) Sch 14, WCA 1981.

2. There seems to be confusion as to what the 2nd issue in the Supreme Court was. The 'de minimis' argument was considered and dismissed in the High Court (see the last sentence in para 3) and there are references in the Supreme Court to its rejection. The Council suggests in para 5 that this was the 2nd issue - clearly incorrectly as was clear from judgment paras 53-56 (Lord Carnwath), and in apparent conflict with the Council's own paras 9, 10 and 16.

3. As Intervener, I confirm that the true 2nd issue in the Supreme Court was whether Winchester had been correctly decided as to the need for strict compliance as a generality, having noted the correct construction of 'drawn to the prescribed scale'. This is in fact endorsed in the Council's application at paras 9, 10 and 16.

4. It is hypocritical in the extreme for the TRF to argue that the SC judges' findings on this were obiter, as the TRF asked the court to address the 2nd issue in the full knowledge that it was not a pleaded issue, and that the findings would necessarily therefore be obiter.

Order or Declaration?

5. The Council vacillates between referring to the SC document on 13.4.15 as a Declaration and as an Order. I make the point that that the task of the Registrar is simply to record what the court ordered - hence the words 'THE COURT ORDERED THAT'. What follows is simply an enlargement of what dismissal of the appeal specifically referred to, clearly headed 'IT IS DECLARED that'.

6. Although colloquially referred to as an 'Order', the document issued on 13.4.15 was no more than a Declaration by the Registrar of what the court had ordered. For the TRF to rely on this as an Order entitling it to ignore the law is disgraceful. Although the findings by the judges as to the Winchester judgment are confusing, the indisputable fact is that the findings as to the need for strict compliance as held by the Court of Appeal were in no way overturned (subject to the map scale matter) and remain good law. For the TRF to argue that the Registrar has the power to overturn Appeal Court law by virtue of an ambiguity in the wording of the Declaration is not only wholly unacceptable - it is frankly ridiculous.

The facts as to compliance

7. The Council's application correctly sets out the parties' positions in para 20-24. What the application does not say, and which is of major importance, is the fact that all three remaining applications under consideration are being challenged as to compliance, not

only as to documentary evidence but also as to 'showing the way' - ie the 2nd limb of para 1(a). Hence my request for specific wording as recorded at para 22. Not only does the TRF invention seek to ignore the law as determined in the Court of Appeal but if allowed will also serve to overrule the Council's existing position (reported to the parties on 18 Jan 2019) that 2 of the 5 claims failed the compliance test.

Graham Plumbe