

Case Name: *Garland & Anor v The Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1814 (Admin) (10 July 2020)

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Commentary:

This was a claim made under paragraph 12 of schedule 15 to the Wildlife and Countryside Act 1981 (the "WCA") to quash the Surrey County Council Footpath No. 129 Byfleet, 3 Wisley (Part) and 566 (Wisley) Definitive Map Modification Order 2016 (the "Order"). The claim was dismissed.

The Order changes the status of sections of highway (known as "Muddy Lane") from footpath to bridleway. The Order was made on 20 July 2016. 11 objections were made to the Order. In accordance with paragraph 7 of schedule 15 to the WCA, the Order was submitted to the Secretary of State for Environment, Food and Rural Affairs (the "SoS") for confirmation. Following a public inquiry, the inspector reached the conclusion that the Order should be confirmed and the SoS gave notice of confirmation of the Order on 9 August 2019.

The claimants' grounds of challenge fell under three overarching criticisms of the validity of the inspector's decision:

- (1) That the inspector failed to recognise that Muddy Lane was incapable in law of being dedicated as a bridleway, by virtue of the severe physical limitations to its use by horse riders;
- (2) That the inspector failed to approach the question whether the land owner had taken steps to disabuse horse riders and cyclists using Muddy Lane on the belief that it had been dedicated as a bridleway on the correct, objective basis approved by the House of Lords in *R (Godmanchester Town Council) v SoS* [2008] 1 AC 221; and
- (3) That the inspector had failed properly to evaluate the oral and written evidence of use of the Order Route by horse riders and cyclists, and to take proper account of written representations from those persons.

In light of evidence from the SoS' Countryside Access Officer, the published guidance and advice of the British Horse Society, and the inspector having visited Muddy Lane and viewed its physical limitations, the court found that the inspector's conclusion that the route would accommodate the different types of bridleway user was lawful.

The court also found that the inspector was reasonable to conclude that the asserted risks to pedestrians, horse riders and cyclists of shared use did not affect the fulfilment by Highways England of its statutory duties as highway authority in respect the public highway for which it has responsibility, namely the M25. There was no evidence to support the assertion that use of the underpass by horse riders and cyclists gave rise to any material impact on the safe and efficient operation of the M25 Motorway.

The claimants sought to resort to the Human Rights Act 1998 to argue that the statutory procedures under the WCA in this case resulted in a failure to give effect to article 2 (the right to life). The court held that insofar as it is said that dedication of bridleway rights may give rise to future safety concerns, such as might arise as a result of intensification of shared use of Muddy Lane, those concerns are able to be addressed by the traffic authority under powers conferred by the Road

Traffic Regulation Acts.

In short, the court held that the inspector made findings that were “plainly open to him” on the evidence that was before him and ground 1 was rejected.

In *Godmanchester*, Lord Hoffmann said that in section 31(1) of the Highways Act 1980, “intention” means “what the relevant audience, namely the users of the way, would have reasonably understood the landowner’s intention to be”. The court concluded that the inspector had approached the question of lack of intention on an appropriate, objective basis and dismissed ground 2.

In relation to ground 3, the court was satisfied that any alleged failures of the inspector to inquire into or to investigate objections at the order making stage was remedied through the statutory confirmation process.

All three grounds failed and the claim was dismissed.

Case summary prepared by Nikita Sellers