

Case Name: *Trail Riders Fellowship v Hampshire County Council* [2019] EWCA Civ 1275 (18 July 2019)

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Commentary: Commentary: The Court of Appeal dismissed Trail Riders Fellowship's (TRF) appeal, upholding the High Court's decision that Hampshire County Council as a highway and traffic authority lawfully made on 14 June 2018 a road traffic regulation order (TRO) under sections 1 and 122 of the Road Traffic Regulation Act 1984, being the "Hampshire (Various Roads, Warnford) (Prohibition of Driving) (Except for Access) Order 2018" (the Order).

TRF are a national organisation aiming to preserve the full status of vehicular rural "green lanes" and the rights of motorcyclists to use them. The Order relates to three linked green lanes near Warnford in Hampshire's Meon Valley, all non-tarmacked unclassified roads. Following local complaints of misuse of the three lanes by "off-roaders" (including motorcycles and four-wheeled vehicles which damaged the lanes' earth surfaces, used the lanes to trespass on private land, posed a danger to the lanes' equestrian users and were connected to anti-social behaviour), the Council proposed, consulted on and made a permanent TRO in the Order which prohibits the use of the lanes by mechanically propelled or motor vehicles.

TRF's claim seeking to quash the Order rested on two grounds. Firstly, that the Council, in making the Order under section 1, failed to fulfil its duty under section 122(1) to secure the expeditious, convenient and safe movement of vehicular and other traffic including pedestrians, as qualified by a requirement under section 122(2) to have regard to other matters such as effects on local amenity. Secondly, that the Council failed under para. 20 of Schedule 9 (of the 1984 Act) to have regard to the consultation response on the Order of the Hampshire Constabulary Roads Policing Unit (RPU), such that the Order was not made lawfully.

The Court of Appeal held on the first ground that the Council had performed the substance of its duty under section 122(1) as qualified by section 122(2), and this was sufficient for making the Order lawfully; and on the second ground that although the Council's decision-maker on the Order omitted to consider the RPU's consultation response, the RPU's response was "wrong and muddle-headed" because of its "startling assertions on behalf of a police force" (which implied that the RPU might decline to enforce the Order because of limited resources), and therefore the decision to make the Order was not substantially prejudiced by the omission – thereby not making out the requirements of para. of Schedule 9 (of the 1984 Act) for the Court to quash a TRO.

Accordingly, the Court of Appeal upheld the High Court's decision that the Council had lawfully made the Order. At para. 40 of its judgment, the Court of Appeal usefully sets out the correct approach for local authorities to take in making a TRO.

Case summary prepared by George Morton Jack