Case Name: *Garland & Anor v Secretary of State for Environment, Food And Rural Affairs* [2021] EWCA Civ 1098 (20 July 2021)

Full case: Click Here

Commentary:
This case concerned an order made by Surrey County Council on 20 July 2016 to modify a Definitive Map and Statement of various legal rights of way and describe a track currently shown as a footpath known as "Muddy Lane" as a bridleway (the "Order"). Cyclists and (less frequently) horses had been using Muddy Lane for a number of years.

With eleven objections lodged against the Order, by paragraph 7 of Schedule 15 of the Wildlife and Countryside Act 1981 (the "WCA") the Order had to be sent to the Secretary of State for confirmation and he appointed an Inspector to conduct a local public inquiry. The Inspector found that there was dedication at common law such that Muddy Lane should be designated as a bridleway. The Inspector rejected submissions that the use of the track as a bridleway constituted a public nuisance such that no dedication could arise (Bakewell Management Ltd v Brandwood [2004] 2 AC 519).

The appellants applied to quash the Order pursuant to paragraph 12 of Schedule 12 to the WCA but all grounds of challenge were rejected. The appellants then appealed to the Court of Appeal on a variety of grounds with the only set of grounds on which permission was granted relating to the Inspector's finding that the route's redesignation as a bridleway would not constitute a public nuisance. The Court of Appeal dismissed the appeal.

The focus of the appellants' argument was on the danger to pedestrians from horses through a subway under the M25 (2.3 metres high and part of Muddy Lane) – this danger to pedestrians constituting a public nuisance. The appellants submitted evidence from individuals about the difficulties of riding a hose in the subway, which would affect riders' abilities to control the horses to the potential prejudice of pedestrians. Against this, there was evidence from the Council's Countryside Access Officer for 16 years who accepted that any rider would have to take care riding through the subway but nonetheless could do so safely and could dismount if necessary. Guidance from the British Horse Society asserted that the ideal height for a subway below a road is 3.7 metres and the absolute minimum is 2 metres save where there was a lower, locally agreed height, in which case riders would normally be expected to dismount.

The Court of Appeal accepted that the Inspector might have said a little more about the evidence than he did but was satisfied that the Inspector was not obliged to do so – a decision-maker is not required to rehearse all the evidence or arguments advanced so long as the reasons for a decision are intelligible and adequate (South Bucks CC v Porter [2004] UKHL 33), which the Court of Appeal found that they were. The Court of Appeal held that the Inspector had properly approached the issue of public nuisance, was entitled to accept the evidence of the Council's experienced Countryside Access Officer that horses could be safely taken through the subway without undue risk to pedestrians and that use of Muddy Lane as

a bridleway would not constitute a public nuisance and accordingly would not preclude the common law dedication: "There will always be individuals who will be unwilling to take any risk of an accident or incident with a horse or bicycle and would only feel comfortable walking on a footpath i.e. a path which is used only by pedestrians. Their reluctance to use a bridleway may be understandable but it does not objectively demonstrate that user as a bridleway constitutes a public nuisance."

Case summary prepared by Nikita Sellers