

**Case Name:** *Wilkins & Anor v Secretary of State for Environment, Food and Rural Affairs & Ors* [2025] EWHC 2435 (Admin)

**Full case:** [Read Here](#)

**Commentary:** This case concerned a statutory challenge made under the powers of Paragraph 12 of Schedule 15 of the Wildlife and Countryside Act 1981 ("the WCA 1981") against the decision maker responsible for confirming an order which recorded the width of the Restricted Byway AB27 ("RB/AB27") and modified the Definitive Map and Statement by adopting the width found in the Order plan and described in the Order schedule.

The court considered the admissibility of evidence in "the Carr Report" which investigated the history of the RB/AB27. Karen Ridge J opined that crucial parts of the Carr Report trespassed over the line from factual evidence for critical context into inadmissible expert opinion, contravening the well-established principle that in public law challenges, the courts are precluded from stepping into the shoes of the decision maker and undertaking merits review. The evidence within the relevant paragraphs of the Carr Report was excluded from her analysis.

Karen Ridge J went on to dismiss all three grounds of challenge, tackling the issues of the precision of Ordinance Survey Maps ("OS Maps") in a digital age, the powers of the Inspector to depart from the decisions of other inspectors where private rights are concerned, and the mapping of the bounds of restricted byways in the face of historic cartographical uncertainty.

#### The Admissibility of the Carr Report

Paragraphs 1-17 of the Carr Report were uncontentious as they only presented to the court a chronology of events. Paragraphs 18-19 only lay the factual foundation of the conclusions drawn later on in the Carr Report. Those paragraphs were admitted into evidence.

Paragraphs 20-28 of the Carr Report ("the Paragraphs") are "more problematic" according to Karen Ridge J.

Paragraph 20 overtly disagrees with the final decision confirming the Order plan ("the FOD Decision"). Paragraphs 21-28 critique the FOD Decision further.

The court considered ***Kirkman v Euro Exide Corporation*** [2007] EWCA Civ 66 and applied both Leggatt LJ at paragraph 36 in ***R (Law Society) v Lord Chancellor*** [2019] 1 WLR 1649 and paragraphs 22-30 of ***R (Public and Commercial Services Union) v Secretary of State for Home Department*** [2022] EWHC 517 (Admin).

***Kirkman*** drew the distinction between professional advisors providing factual evidence, and statements providing expert opinions. In coming to her conclusion on the appropriateness of the evidence within the Paragraphs, Karen Ridge J thought of four

issues. First, that the Paragraphs were “argumentative”. Second, that the evidence within them did not appear before the original decision maker. Third, that the paragraphs came from the Claimant’s expert advisor and crossed the line into expert opinion. Fourth, applying both the **Law Society** and **Public and Commercial Services Union** cases, the evidence itself was not reasonably required to determine the issues which arose. Accordingly, Karen Ridge J excluded the evidence in the Paragraphs from her analysis.

### The Grounds of Challenge

The Claimants challenged the FOD Decision on three grounds, namely:

1. The Inspector misdirected himself as to the correct legal test when applying the boundary-to-boundary principle, and he did not have due regard to the relevant guidance on determining the correct widths for public rights of way;
2. Without evidence, the Inspector departed from the findings of fact made by Planning Inspector Martin Small who dismissed the first appeal; and, or alternatively
3. The Inspector erred by applying the boundary-to-boundary principle.

### Ground 1: Misdirection in Law

The central issue to the first ground of challenge is whether the Inspector erred in determining the extent of the highway. In that determination, the submissions by the parties concerned the application of the boundary-to-boundary principle. The boundary-to-boundary principle is the presumption that the highway extends over the entire space between its boundaries where those boundaries are erected with reference to the highway “to separate the adjoining closes from the highway or for some other reason”, applying Goff J at paragraph 12 in **Attorney General v Beynon** [1969] 2 WLR 1447.

Where it is impossible to establish the purpose behind the erection of boundaries besides a highway, Karen Ridge J referred to Chadwick LJ in **Hale v Norfolk County Council** [2001] Ch 717, who noted at paragraph 33 that it may be fair to say that, following Vaughan Williams LJ in **Neeld v Hendon Urban District Council** (189) 81 LT 405, 409, that fences which lie either side of a highway may prima facie suggest that they were erected for the purpose of separating land from that highway. Importantly, Chadwick LJ thought that it would be wrong to treat **Neeld** as authority for a presumption of law which suggests that the mere existence of fences which follow a highway were erected for that purpose.

In short, Karen Ridge J noted that the Inspector in the interim decision examined the historical maps for the width of boundaries and the extent to which they were consistent. Upon that detailed analysis, the Inspector rationally concluded that it was reasonable to “scale up” from OS Maps using computer generated composites, and as such did not consider it necessary to apply a reasonable width – the option open to him where historic boundaries cannot, with sufficient certainty, be clearly and authoritatively determined.

Karen Ridge J thought that the Inspector correctly applied the test for dedication, finding that the public used the entire width between the bounds of the path. As such, Karen Ridge J dismissed the first ground of challenge.

#### Ground 2: Departure from Previous Findings

The Claimants proposed that ***R v Cardiff CC, ex p. Sears Group Properties Ltd*** [1998] PLCR 262 provided that where a decision affecting a particular issue of private rights has been made by a competent authority, then that decision will bind other future authorities unless circumstances change in such a way that undermines the logic of the original decision. The Claimants pointed to the conclusions of Inspector Small, that “public rights for the majority of the route AB27 did not exist prior to 1910 and for the sections D-C prior to 1929” and that the conclusions of the Inspector at the Interim and Final Order Decisions were made “irrespective” of those findings made by Inspector Small.

Karen Ridge J noted first that the two Inspectors deliberated over materially different applications, and the decisions were made pursuant to different questions and different issues. She also noted that the findings of Inspector Small “do not settle upon a specific date of dedication” which factually would have assisted in the determination of the bounds of RB/A27 when applying the doctrine of dedication to determine when the route became a highway.

Karen Ridge J also thought that the Inspector in the FOD Decision did not make a finding contrary to Inspector Small by analysing the consistency of the best maps of the past and the present and coming to a conclusion that people have historically been able to use the width between the boundaries, at least since the Tithe Map.

Accordingly, Karen Ridge J concluded that there was neither disagreement nor inconsistency, but in any event Inspector Small’s decision was not binding. Therefore, Karen Ridge J dismissed the second ground of challenge.

#### Ground 3: Irrationality by Applying the Boundary-to-Boundary Presumption

The Claimants contended that the Inspector erred when he applied the boundary-to-boundary presumption in the Interim Order Decision and relied upon the application of that principle in the FOD Decision. However, by this stage, Karen Ridge J had already concluded that the Inspector’s findings in the FOD were not made in reliance upon the boundary-to-boundary presumption. It was not referenced in the FOD Decision.

The Claimants alleged that the scaling up from OS Maps produced absurd results. Karen Ridge J thought that the Inspector cogently analysed the cartographical evidence and

came to a conclusion which was open to him, namely that the 3rd Ed OS Map provided the best evidence of the width of the route, and that scaling up from that map was reasonable. He came to that conclusion having considered the reputation of OS Maps and other evidence before him in this particular case.

Accordingly, the third ground of challenge was rejected, and the claim for statutory review was dismissed.

*Case summary prepared by Adam Choudhury*