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WILKINS V SOSEFRA, THE “BOUNDARY-TO-BOUNDARY” PRINCIPLE IN HIGHWAY DEDICATION

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Back in September 2025, Karen Ridge, sitting as a Deputy High Court Judge, provided important guidance on evidential standards in highway width determinations in deciding the case of Wilkins & Anor v Secretary of State for Environment, Food and Rural Affairs [2025] EWHC 2435 (Admin). At the heart of the decision was the application of the “boundary-to-boundary” principle, particularly in the circumstances where the date of highway dedication was uncertain.

FACTS

At its heart, this is a relatively straightforward case without complex facts. In short, the Claimants brought an application under the Wildlife and Countryside Act 1981 to challenge the Secretary of State for Environment, Food and Rural Affairs’ (“the Defendant”) decision to confirm the Kent County Council (Restricted Byway AB27 at Tenterden) Definitive Map Modification Order 2021 (“the Order”). The Order recorded the width of RB/AB27, the restricted byway at the centre of the dispute. In 1952, RB/1B27 was recorded as a Road Used as a Public Path, which was later reclassified to a restricted byway in 2006 by the relevant legislation. RB/AB27 passed by property and through land owned by the Claimants.

The Claimants instructed a Rights of Way consultant, Mr Robin Carr, who produced a detailed report in September 2019 concluding that historically RB/AB27 was predominantly used by pedestrians and had not been subject to public rights for mechanically propelled vehicles (“the Carr Report”). Following this, the Claimants made a series of Definitive Map Modification Order applications, including one to record the width of RB/AB27. The other applications included one on 14 January 2019 to record the existing gates on RB/AB27 as limitations (“the Historic Limitations Application”), and one on 18 April 2019 to downgrade RB/AB27 to Public Footpath status (“the Downgrade Application”), both of which Kent County Council (“the OMA”) refused to make orders for. These refusals were appealed to the Defendant, who upheld the OMA’s decision.

The Order, as dealing with the width application, was made on 23 September 2021. This was objected to by the Claimants. The OMA referred the matter to the Defendant. On 9 January 2024, Inspector Spencer-Peet issued his Interim Order Decision proposing to confirm the Order with modifications (“the IOD”). Amongst other things, the Inspector found that a specific date of

dedication of public rights over the route could not be proven, but noted that *“the full width between the boundaries has been available for people to use since at least the time of the Tithe Map (1843).”* On 16 October 2024, the Defendant issued the Final Order Decision (“the FOD”), to be read in line with the IOD, confirming the Order and specifying the width of RB/AB27 to be recorded as *“a width as shown on the 25 Inch Third Edition Ordnance Survey map sheet references Kent LXXI.16, Kent LXXIX.4 and Kent LXXIX.3, published in 1908”*.

The Claimants issued the claim to challenge the FOD on three grounds:

1. the Inspector misdirected himself as to the correct legal test in relation to application of the boundary-to-boundary principle, failing to regard the relevant guidance on determining the correct widths for public rights of way;
2. the Inspector departed from the findings of fact of Inspector Small, a previous inspector who had dismissed the appeal against the refusal by the OMA to make orders on the Historic Limitations Application and Downgrade Application, without evidence;
3. and further, or alternatively, that the Inspector erred by applying the boundary-to-boundary principle.

The claim was Defended in its entirety, with the contention that the Carr Report was inadmissible in part given that it was expert opinion and did not comply with the requirements of CPR 35, nor did the issues require expert evidence for determination. Thomas Lewis supported the Defendants as the Second Interested Party, being the neighbouring landowner who resides at the Morghew Park Estate and who participated in the proceedings leading to the making and the confirmation of the Order and the associated applications related to RB/AB27.

LAW

Wildlife and Countryside Act 1981:

- Section 53(2) imposes a duty on the OMA to keep the definitive map and statement under continuous review and make such modifications as appear to be requisite in consequence of any of the events specified in subsection (3);
- The test for a decision-maker when applying Section 53(3)(c)(iii) is whether there is discovered evidence which, when considered with all other relevant evidence available, shows that any particulars contained within the definitive map and statement require modification; and
- Paragraph 12 of Schedule 15 provides that a person aggrieved by any order purporting to have been made pursuant to Section 53 may apply to the High Court to question its validity on the ground that it is “not within the powers of s.53.” If satisfied that the order is not within the powers of Section 53, the High Court may quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.
- Dedication and the boundary-to-boundary principle:

- Dedication may be, and commonly is, inferred from the conduct of the landowner which is such as to lead the public to infer that he was willing for the public to have a right of passage.
- Both dedication and use by the public must occur to create a common law highway: *Fortune v Wiltshire Council* [2013] 1 WLR 808 at [11-14] and *Halsbury's Laws of England* (Vol. 55 – Highways) paragraphs 141, 143 and 149.
- The boundary-to-boundary principle is the presumption that a highway extends over the whole space between its boundaries. The presumption only applies when the boundaries were erected by reference to the highway, as Goff J explained in *Attorney General v Beynon* [1969] 2WLR 1447 [at 12].
- The correct legal approach to the boundary-to-boundary principle is set out by Chadwick LJ in the Court of Appeal case of *Hale v Norfolk County Council* [2001] Ch 717 [at 33]. Specifically noting how it is a question of fact in each case and one must draw appropriate inferences about the intentions of the landowner with regards to dedication of any land from the facts that are known about the circumstances in which the boundary features were erected.

DECISION

SUMMARY

The claim for statutory review was dismissed, with all three grounds being rejected. The FOD was upheld, in that the width of RB/AB27 should be recorded as derived from the Third Edition Ordnance Survey maps.

It was successfully argued by the Defendant and the Second Interested Party that the Inspector had rightly relied on physical and historical evidence, not a presumption, to conclude that the full width between boundary features had been dedicated as highway. The Court agreed, with reference to established case law such as *Hale*, dismissing the challenge and reaffirming the Inspector's findings, who had not departed from Inspector Small's decision.

THE CARR REPORT

The Carr Report and Mr Carr's letter of 19 March 2024, which objected to the making of the Order, were before the Inspector and were in evidence.

The Court admitted paragraphs 1-19, being the chronology and an uncontentious background, but paragraphs 20-28 were described by Karen Ridge J as more problematic, and ultimately excluded for being argumentative, a critique of the FOD and crossing the line into expert opinion. She held that it would be unfair to admit paragraphs 20-28; their contents were not reasonably required to determine the public law issues arising, and they essentially sought to justify and reinforce Mr Carr's earlier expert opinion.

GROUND ONE: MISDIRECTION IN LAW

The Claimants contended that the Inspector erred as to the correct legal test, being the boundary-to-boundary principle, and its application, because a specific date for dedication could not be proven and there had not been the prior finding that relevant boundary features were laid out by reference to the highway.

This was defended by arguments that the boundary-to-boundary principle was not relied upon by the Inspector in the FOD; rather, the full width was dedicated as a result of the intention to make the full width available to public use by bypass gates adjacent to the cattle grids and statutory declarations describing the use of the verges historically. It was noted how the highway between the fences has historically existed since the date of the Tithe Map and that finding of fact was not subject to challenge, and the route had been unchanged in layout since the mid nineteenth century. Relying on *Hale*, it was suggested that where matters are lost in the mists of time, where there are longstanding boundary features and dedication, the primary position will be that the width of the dedicated highway was the width between the longstanding boundary features. That, however, is not a presumption in law; the legal presumption in the boundary-to-boundary principle arises where the highway already exists, and there is a finding that the landowner has fenced up to it.

In reading the FOD and the IOD, Karen Ridge J found that the FOD did not rely on an unqualified application of the boundary-to-boundary principle, as the Inspector came to a reasoned and rational conclusion as to his ability to determine the width of the highway, making findings consistent with historic use and mapping features from the Tithe Map. As such, he conducted a factual inquiry, emphasising how the boundary-to-boundary principle is a question of fact, and he did not depart from the guidance which advocates that a width should be determined with regard to the evidence in the first instance and only if there is insufficient evidence should one resort to a 'reasonable width' judgment.

Ground One failed.

GROUND TWO: DEPARTURE FROM PREVIOUS FINDINGS

In addressing the Historic Limitations Application and the Downgrade Application, Inspector Small made a finding that *"public rights for the majority of the route AB27 did not exist prior to 1910 and for the section D-C prior to 1929"*, a finding the Claimants argued should be binding as a decision affecting private rights made by a competent authority, relying on *R v Cardiff CC, ex p. Sears Group Properties Ltd* [1998] PLCR 262, but Inspector Small was wrongly not followed because in his IOD and FOD the Order Inspector concluded that *"irrespective"* of Inspector Small's finding, *"the full width between the boundaries has been available for people to use since at least the time of the Tithe Map (1843)"*.

Karen Ridge J found that the two Inspectors were making decisions in relation to different applications, and as such they made the findings necessary to reach a conclusion on the particular

issues before them. The Order Inspector had the benefit of statutory declarations, submissions to the relevant question, and a site visit. Prior findings were not binding given the reasonable explanation for any differing outcome.

But in any event, there was no disagreement or inconsistency with the conclusions because the Inspector came to the simple conclusion that the boundary locations had not changed since the Tithe Map and in particular between 1929 and 1960; at some point the highway had been dedicated but throughout the likely period of dedication the boundaries had been the same and the full width had been in actual use.

Ground Two was rejected.

GROUND THREE: IRRATIONALITY

The Claimants argued that the IOD's conclusion that the boundary-to-boundary principle applied and was relied upon in the FOD, and that the decision to scale off from the Ordnance Survey Maps was irrational. The latter point was defended with reasoning that the Ordnance Survey Maps have a reputation for excellence; with DEFRA guidance providing they can be an appropriate way to identify highway widths, and that the Inspector had the benefit of expert mapping evidence from a chartered land surveyor.

By this point, Karen Ridge J had already concluded that the boundary-to-boundary principle had not been relied upon by the Inspector in the FOD. Further, she concluded that since the Inspector had already addressed the Claimants' accuracy arguments, and set out his reasons for preferring the scaling of the Third Edition Ordnance Survey Maps, his conclusion was based on reasoned factual judgment, not simply just relying on the reputation of Ordnance Survey Maps, and was one he was entitled to come to.

Ground Three was rejected.

TAKEAWAY COMMENT

Though no new legal principle or change in the law was established from this case, it is important to remember that where it is appropriate, the Court will aim to respect the Inspector's decision, noting their expertise and by reading a decision fairly in its entirety. This was particularly seen in this case where Karen Ridge J was prepared to look behind the strict wording at points in the FOD, stating how she agreed that the Inspector's analysis in his FOD might have been more clearly expressed but that she reminded herself that the final decision must be read fairly and as a whole, without an unduly legalistic approach and that it is written to address the arguments of the principal parties who are familiar with the arguments and issues.

EDITOR'S NOTE

Wilkins was not granted leave to appeal.



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