



July 2026

R (TURNBULL) v SECRETARY OF STATE ENVIRONMENT, FOOD AND RURAL AFFAIRS [2026] EWHC 1884 (ADMIN)

George Laurence KC & Ross Crail

This decision concerns the circumstances in which the court may intervene to prevent the making of a definitive map modification order under section 53 of the Wildlife and Countryside Act 1981.

The Claimant (represented by George Laurence KC and Ross Crail) was granted permission by Mould J to proceed with a judicial review claim for the quashing of a direction given by an inspector on behalf of the Defendant under paragraph 4 of Schedule 14 to the 1981 Act to South Tyneside Council to make an order adding to its definitive map and statement a public footpath crossing the Claimant's property.

The Judge granted permission to proceed on all of the Claimant's grounds of challenge but highlighted three. The inspector had concluded that a right of way over the claimed path could not reasonably be alleged to subsist for the purposes of section 53(3)(c)(i) of the 1981 Act on the basis of deemed dedication under section 31 of the Highways Act 1980, since the maximum period of qualifying use of the entire path (2008-2016) had been less than 20 years. She had, however, concluded that an inference of dedication at common law *could* reasonably be alleged. Among the matters relied upon by the Claimant and accepted by the Council as a reason for rejecting the application for a modification order was that the freehold owner had lacked capacity to dedicate throughout that period due to the existence of leases and mortgages, including a mortgage to Barclays Bank which had appointed receivers in 2014. Without the consent of the third party tenants and mortgagees no dedication could have been made, and there was no evidence of any such consent. Copies of the lease and mortgage documents had been included among the Schedule 14 appeal documents submitted to the Planning Inspectorate (as the Defendant acknowledged), but the inspector had stated in her Order Decision that no copies had been provided, and "*landowners can still dedicate rights of way if they have the agreement of the lender or tenant*".

The Judge held it to be reasonably arguable that the inspector's decision was vitiated by a clear error of law, in that she had based her consideration on a material mistake of fact (as to non-provision of the documents); in consequence, she had not properly considered or evaluated the question whether there was a sustainable basis to infer Barclays' consent to a dedication; and there was insufficient available evidence to support the drawing of that inference.

The Defendant had raised as a preliminary issue the question whether permission to proceed should be refused irrespective of the arguability of the grounds, on the footing that there was a suitable alternative remedy open to the Claimant. He would have the opportunity to raise his objections to confirmation of the order at a public local inquiry and could challenge an adverse decision in the High Court on public law grounds under paragraph 12 of Schedule 15 to the 1981 Act. This line of argument relied heavily on the judgment of Lang J in *R(Monckton) v Staffordshire County Council* [2022] EWHC 3049 (Admin).

It was in light of that preliminary issue that the Judge had directed an oral hearing of the permission application. The conclusion to which he came was that while the enactment of the statutory procedure in Schedule 15 of the 1981 Act for confirmation of a modification order was a clear indication that Parliament intended that any interference by the judicial review court at the order-making stage should be exercised sparingly: *"the greater the prospect that the claim will enable the correction of a clear error of law which, once corrected, may avoid the need to pursue the Schedule 15 procedure, the more likely that the case for intervention now may be justified on Glencore grounds."* That, he said, was the underlying logic of Dyson J's reasoning in *R v Wiltshire County Council ex p Nettlecombe Ltd* [1998] JPL 707, in exercising the court's discretion to intervene during the window between a decision to make a modification order and the ouster clause in paragraph 12(3) of Schedule 15 taking effect upon the order being made. Dyson J had stated that the discretion should be exercised cautiously and only in clear cases where there had been a plain error of law. That cautious approach was consistent with the suitable alternative remedy principle as formulated by Sales LJ in *R (Glencore Energy UK Ltd) v Revenue and Customs Commissioners* [2017] 4 WLR 213 and applied by Lang J in *Monckton*. The Judge held, following that cautious approach, that this was a suitable case for the grant of permission. There was a real prospect that success on the principal grounds of the claim would be dispositive of the modification order application in favour of the Claimant.

The claim will now proceed to a full hearing.



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