Appendix 27

Maroudas v Secretary of State for Environment Food and Rural Affairs [2010] EWCA Civ 280

Frederick Ian Maroudas v Secretary of State for Environment Food & Rural Affairs


Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
18 March 2010

Case No: C1/2009/0836

High Court of Justice Court of Appeal (Civil Division)

[2010] EWCA Civ 280, 2010 WL 889414

Before : Lord Justice Dyson Lord Justice Richards and Lord Justice Jackson

Date: 18th March 2010

On Appeal from the Administrative Court

HHJ Mackie Q.C.

CO/6286/2008

Hearing date: 4 March

Representation

The Appellant appeared in person.
Philip Coppel Q.C. (instructed by Secretary of State for Environment) for the Respondent.

Judgment

Lord Justice Dyson:

1. This is an appeal against the decision of HH Judge Mackie QC whereby he dismissed the appellant's application under para 12 of Schedule 15 to the Wildlife and Countryside Act 1981 (“the 1981 Act”) for an order quashing the decision of the Secretary of State for Environment, Food and Rural Affairs, acting by his Planning Inspector, Heidi Cruickshank, dated 21 May 2008 confirming as modified The Oxfordshire County Council Shiplake Restricted Byway 1 Modification Order 2007 (“the Modification Order”) made under section 53(2)(b) of the 1981 Act by the Oxfordshire County Council (“the Council”).

2. The effect of the Modification Order , as confirmed and modified by the Inspector, was to modify the definitive map and statement for the area to upgrade Shiplake Restricted Byway 1 (“the Byway”), which had previously been shown as a Road Used as a Public Path (“RUPP”), to a Byway Open to All Traffic (“BOAT”) in the part of the Byway described in Part 1 of the Schedule to the Modification Order . The relevant part of the Byway runs east from Shiplake lock (point A on the map incorporated in the Modification Order) to a railway bridge (point B) and then across Shiplake Meadow to the stone steps at the River Thames (point C).

The legal framework

3. Section 53 of the 1981 Act imposes a duty on a surveying authority to keep a definitive map and statement of the public rights of way in its area under continuous review. So far as material, it provides:

> "(2) As regards every definitive map and statement, the surveying authority shall –
>
> (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
>
> (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
>
> (3) The events referred to in subsection (2) are as follows…(c) the discovery by the authority of evidence which (when considered with all other relevant evidence to them) shows…(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
>
> …
>
> (5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection."

Schedule 14 to the 1981 Act provides:

> "1. An application shall be made in the prescribed form and shall be accompanied by –
>
> (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
>
> (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application."
>
> 2.
>
> (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.
>
> …
>
> (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
>
> (4) Every notice or certificate under this paragraph shall be in the prescribed form.
>
> 3.

(1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall –

(a) investigate the matters stated in the application; and

(b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.

(2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.

(3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

5.

(1) In this Schedule—

"prescribed" means prescribed by regulations made by the Secretary of State."

4. The regulations made by the Secretary of State are the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (S1 1993/12) ("the 1993 Regulations"). Regulation 8(1) of the 1993 Regulations provides:

"(1) An application for a modification order shall be in the form set out in Schedule 7 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case."

5. The form of application prescribed by Schedule 7 to the 1993 Regulations is in these terms:

"(Title of Definitive Map and Statement)

To: (name of authority)

of: (address of authority)

I/We, (name of applicant) of (address of applicant) hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by (deleting the (footpath) (bridleway) (restricted byway) (byway open to all traffic) from…to…)

(adding the (footpath) (bridleway) (restricted byway) (byway open to all traffic) from …to…)

(upgrading) (downgrading) to a (footpath) (bridleway) (restricted byway) (byway open to all traffic) the (footpath) (bridleway) (byway open to all traffic) from…to…)

> ((varying) (adding to) the particulars relating to the (footpath) (bridleway) (restricted byway) (byway open to all traffic) from…to…by providing that…)
>
> and shown on the map accompanying this application.
>
> I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:
>
> List of documents
>
> Date:…19…Signed…"

6. Section 67(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act") provides:

> "(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –
>
> (a) was not shown in a definitive map and statement, or
>
> (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.
>
> But this is subject to subsections (2) to (8)…
>
> (3) Subsection (1) does not apply to an existing public right of way over a way if –
>
> (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
>
> (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or…
>
> (6) For the purposes of subsection (3) , an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

R (on the application of Warden and Fellows of Winchester College v Hampshire County Council [2008] EWCA Civ 431, [2009] 1 WLR 138

7. In the judgment which I delivered in Winchester , with which Ward and Thomas LJJ agreed, I said at [38] that the purpose of section 67(6) of the 1981 Act is to define the moment at which a qualifying application is made. Later, I said:

> "46. In my judgment, as a matter of ordinary language an application is not made in accordance with para 1 unless it satisfies all three requirements of the paragraph. Moreover, there are two particular indications that an application is only made in accordance with para 1 of Schedule 14 if it is made in accordance with all the requirements of the paragraph. First, para 1 is headed 'Form of applications'.

> The word 'form' in the heading is clearly not a reference only to the prescribed form. It is a summary of the content of the whole paragraph. It is a reference to how an application should be made. It must be made in a certain form (or a form substantially to the like effect with such insertions or omissions as are necessary in any particular case). It must also be accompanied by certain documents. The requirement to accompany is one of the rules as to how an application is to be made.
>
> 47. Secondly, Schedule 7 to the 1993 regulations shows that the prescribed form itself requires the route to be shown on the map 'accompanying this application' and the appellant to 'attach' copies of the following documentary evidence (including statements of witnesses) in support of the application. This language reflects the content of sub-paras (a) and (b) of para 1. It is artificial to say that, in order to be made in accordance with para 1, an application must be made in the prescribed form or a form to substantially like effect; but that it need not be accompanied by a map or have attached to it the documentary evidence and witness statements to be adduced even though these are referred to in the body of the prescribed form itself. The language of the form shows that an application is only made in accordance with para 1 if it is made in the prescribed form and is accompanied by a map and the documentary evidence and witness statements to be adduced."

8. At [54], I said:

> "In his analysis of the first issue, the judge did not address the effect of section 67(6) at all. Nor do the submissions of Mr Mould and Mr Litton. In my judgment, section 67(6) requires that, for the purposes of section 67(3), the application must be made strictly in accordance with para 1. That is not to say that there is no scope for the application of the principle that the law is not concerned with very small things (de minimis non curat lex). Indeed this principle is explicitly recognised in regulation 8(1) of the 1993 regulations. Thus minor departures from para 1 will not invalidate an application. But neither the Tilbury application not the Fosberry application was accompanied by any copy documentation at all, although it was clear from the face of the applications that both wished to adduce a substantial quantity of documentary evidence in support of their applications. In these circumstances, I consider that neither application was made in accordance with para 1."

9. Accordingly, the reason why the court held that the applications relied on by the applicant were not in accordance with para 1 of Schedule 14 was that they were not accompanied by any copy documentation, although it was clear from the face of the applications that the applicants wished to adduce a substantial quantity of documentary evidence.

The facts

10. In about February 1997, Mr Robin Drinkwater, who at the time was the owner of the land between points A and B on the map which became incorporated in the Modification Order , submitted an application to the Council under section 53(5) of the 1981 Act. He used an application form which was substantially in the form prescribed by Schedule 7 to the 1993 Regulations. It stated that the modification sought of the definitive map was to upgrade the RUPP to a BOAT from the railway viaduct (point B) to the stone steps (point C). The application form (which I shall refer to as "the February application") was not signed or dated and it was not accompanied by a map showing the route to which it related. The precise date on which the February application was made by Mr Drinkwater is unclear. The received date stamp shows that it was received by the Council on or before 7 February.

11. On 14 January 1997, Mr Drinkwater had sent a certificate to the Council certifying that the requirements of para 2 of Schedule 14 to the 1981 Act had been complied with in that "all owners and occupiers of land affected by the Modification Order application" had been notified of the application. It would seem that, notwithstanding the terms of para 2(1) of Schedule 14 to the 1981 Act, Mr Drinkwater notified the owners and occupiers of his application before it was made. But nothing turns on this, not least because, as will be seen, Mr Drinkwater submitted another certificate pursuant to para 2(1) on 12 November 1997.

12. The senior Rights of Way Officer of the Council responded to the February application by a letter dated 25 March 1997 which stated:

> "I refer to your application to reclassify C.R.B. No 1 Shiplake as a Public Byway Open to All Traffic on the Definitive Map of Public Rights of Way.
>
> Enclosed is a summary and plan of the application. This is intended to be used in consultation with interested parties. In order to proceed with this next stage, I would be grateful if you could confirm in writing that the enclosed details are an accurate representation of your application. In particular you will see from these details that I have shown the entire length of C.R.B. 1 as being part of your application. To commence the reclassification from the railway bridge would leave an anomaly of a section of the route as remaining C.R.B. I trust therefore that it was your intention to include the entire route within your application, although I would appreciate your clarification on this point.
>
> I look forward to hearing from you."

13. We have not seen a copy of the summary or the plan that were enclosed with the Council's letter, but it is clear that they showed that the subject of Mr Drinkwater's application was the entire length of the route from point A to point C. Mr Drinkwater replied by a signed letter dated 22 April 1997 saying:

> "I cannot foresee a problem through co-operating with the plan to incorporate the whole road into the application, so please do that if you will.
>
> Many thanks."

14. On 12 November 1997, Mr Drinkwater sent a further certificate to the Council which was in the same terms as the earlier certificate of 14 January.

The judgment of HH Judge Mackie QC

15. The central part of the judge's reasoning is contained in para 25 of his judgment:

> "I also accept, of course the guidance given by the Court of Appeal, that the approach to these applications is one requiring strict compliance. I am also of the view that, to the extent to which the Inspector was saying that the application form itself, without a signature or a date, or [with] other particular defects, was a minor departure, excusable under the considerations set out in Winchester , she was mistaken. I accept the submission from Mr Maroudas that the absence of a signature in an official document is a matter of substance and not a minor departure. But, just as compliance has to be strict, one is entitled, it seems to me to look at the substance of the matter, which is that by the time the letter of 22nd April 1997 was written it was perfectly clear what the application related to. There was a map, as one sees from "enclosed is a summary plan of the application" in the letter of 25th March 1997, and a signature and a date. No one would, or could, have been misled about what happened after that. Mr Maroudas rightly had to accept that he would have no grounds at all for his application if, instead of the exchange of letters, the Council had gone through the bureaucratic, or some would say necessary, step of returning the form to Mr Drinkwater to sign and amend, rather than resolving the matter on an exchange of correspondence. That seems to me to move proper strictness into unnecessary bureaucracy. In my judgement, the matter has to be looked at as a whole. When one does look at it as a whole, all the requirements of what should have been on the original form were met. For those reasons, while I have considerable sympathy for the position of Mr Maroudas and other people who are disappointed that mechanically propelled vehicles should be able to go down this stretch of territory, it seems to me that the Inspector was right, overall, in treating the documents and maps as a whole as being the application."

The submissions of Mr Maroudas

16. Mr Maroudas submits that the judge conflated two distinct arguments put forward on behalf of the Secretary of State, both of which are wrong. The first is that the subject of the February application (when read with the correspondence in March and April 1997) was quite clear. Nobody could have been misled by the defects in the February application. To require Mr Drinkwater to amend and sign the form would have constituted unnecessary bureaucracy. The second is that the Inspector was right to treat the application as comprising the application form, the Council's letter of 25 March and Mr Drinkwater's reply of 22 April, when read together.

17. He says that the first of these arguments is inconsistent with the reasoning in Winchester . If the application was not in accordance with para 1 of Schedule 14 , then it is irrelevant that nobody could have been misled by the defects.

18. The second is wrong because the signature and dating of a document are key elements which evidence the maker's intentions, his commitment to its accuracy and his willingness to be bound by all of its contents. If a cheque or tax return or an application to the court is unsigned or undated, it will be returned to the maker or applicant to be signed and dated (as the case may be). Where an official document is required to be signed and dated, the absence of the signature and date from the document is a matter of substance which goes to its validity. It cannot be cured by some other document which supplies the missing signature and date. Where the law requires a document to be strictly in a particular form, the failure to comply with the strict requirement renders the document invalid.

19. In this case, the February application failed to comply with the strict requirements of para 1 of Schedule 14 in that it was not signed or dated and was not accompanied by "a map drawn to the prescribed scale and showing the way or ways to which the application relates" (para 1(a) of Schedule 14). In fact, it was not accompanied by any map at all. The primary submission of Mr Maroudas is that these defects could only be cured by a fresh application made strictly in accordance with para 1 of the

Schedule 14 . That, he says, was decided in Winchester . He draws attention to section 67(6) of the 2006 Act ("is made when it is made in accordance with paragraph 1 of Schedule 14 "); para 1 of Schedule 14 to the 1981 Act ("an application *shall* be made in the prescribed form and *shall* be accompanied by…" (emphasis added); and regulation 8(1) of the 1993 Regulations ("an application for a modification order *shall* be in the form set out in Schedule 7 …" (emphasis added).

20. Alternatively, Mr Maroudas submits that, if it is possible to cure defects in an application by amending or adding to a defective application, this can only be done to the extent that the principle *de minimis non curat lex* allows. By this he means that it may be possible to cure a defect if that is done within a very short time of the making of the defective application. He would probably also concede that a defect may be cured some time after the making of the defective application if the defect is trivial.

21. Mr Maroudas submits, however, that if either of his submissions is correct, this appeal must be allowed. He says that Mr Drinkwater's letter of 22 April 1997 did not cure the defects in the application. It was sent some 10 weeks after the February application had been made. The letter made no reference to the accuracy or completeness of the original application form. Nor did it purport to correct the defects in that form. On the contrary, the letter made clear that Mr Drinkwater was unable to confirm that the summary and plan prepared by the Council, which added the line of the route between points A and B, reflected the intention of his original application. That is for the very good reason that Mr Drinkwater had not intended to include that part of the route in his application because, as a landowner with access as of right, he had no need to do so. Mr Maroudas submits that all that can be derived from the letter of 22 April is that Mr Drinkwater was prepared to co-operate with the Council's plan to add the western section of the route, which had never been his own intention. Finally, there was nothing in the exchange of correspondence between Mr Drinkwater and the Council which identified the accompanying map as required by para 1 of Schedule 14 .

The submissions of Mr Coppel QC

22. Mr Coppel submits that the decision in Winchester does not support the case advanced by Mr Maroudas. He relies on what I said at [46] and submits that what matters is that the information prescribed in the form set out in Schedule 7 to the 1993 Regulations is forthcoming from the applicant. The reason why the applicants failed in Winchester was that they failed to supply copies of the documentation on which they wished to rely. An applicant is not required to use the form that appears in Schedule 7 as a template. Provided that all the information sought to be elicited by the Schedule 7 form is contained within the application (together with any accompanying material) and nothing inconsistent is added, then the application is valid.

23. Nor is there anything in the 1993 Regulations which requires an applicant to produce all the material in his application at the same time. The accompanying material may be extensive, since it must include copies of any documentary evidence which the applicant wishes to adduce. It is unrealistic and unnecessary to read para 1 of Schedule 14 as requiring that all this material must be lodged simultaneously by the applicant. Mr Coppel draws our attention to the New Shorter Oxford English Dictionary definition of "accompany". Among its meanings are "join or unite a thing with, supplement with" He submits that, as a matter of ordinary language, simultaneity is not necessarily required. He relies on the decision of the New South Wales Court of Appeal in Botany Bay Council v Remath Investment No 6 Pty Ltd (2000) 50 NSWLR 312 in support of his submission that there is no requirement that "accompanying" documents should be lodged at the same time as the application form itself. In that case, the relevant statutory provision was that "A development application shall …(b) be made in the prescribed form and manner;…and (d) …be accompanied by an environmental impact statement in the prescribed form…". The application and the environmental impact statement were both submitted, but not at the same time. It was said by the court that "substantial compliance" with the statutory provisions would be satisfied even where the statement is lodged later than the application itself: see per Stein JA at [14] and Fitzgerald JA at [50].

24. Mr Coppel submits that what section 53(5) and para 1 of Schedule 14 require is that the application should have within it all the material (including the map to the prescribed scale) that is specified in those provisions. The application is only

made from the date when the applicant completes it. It is open to a surveying authority to treat an application as having been completed in the prescribed form when the applicant submits all the information specified in Schedule 7 to the 1993 Regulations.

25. As regards the facts in the present case, Mr Coppel accepts that the February application was defective at the time when it was sent, since it was neither signed nor dated nor accompanied by a map. He submits, however, that the February application, the Council's letter of 25 March and Mr Drinkwater's letter of 22 April must all be read together. By saying "please do that" in his letter, Mr Drinkwater was confirming that the summary and plan of the application which the Council had enclosed with their letter to him was an accurate representation of his application. The three documents, if read together, contained all the information specified in Schedule 7 to the 1993 Regulations and the "accompanying" map was the plan enclosed with the Council's letter.

Discussion

26. I cannot accept the primary submission advanced by Mr Maroudas. It is true that, for the purposes of section 67(3) of the 2006 Act and subject to the *de minimis* principle, an application must strictly comply with para 1 of Schedule 14 : see Winchester . But that does not mean that a valid application must be contained in a single document, namely the prescribed form (I leave aside the map and documentary evidence referred to in para 1 of Schedule 14 for the moment). Minor departures from the requirements of para 1 do not invalidate an application. In my judgment, there are circumstances in which a valid application may be contained in the application form when read with another document.

27. Let us suppose that an application form, like the February application, is submitted but it is not signed or dated. Shortly after lodging the application, the applicant realises that he has not signed or dated the form and he writes a letter to the surveying authority (which he dates and signs), referring to the application and asking the authority to treat it as bearing the date of the letter and as now bearing his signature. I would regard the supply of the date and signature shortly after the submission of the application form as a minor departure from para 1 . In the example I have given, therefore, the application is comprised in the original application form supplemented by the date and signature provided by the letter and is a valid application.

28. To take another example, let us suppose that the application form contains a minor error in the description of the route or its width or length. If the applicant discovers the error shortly after he has submitted the application and writes to the authority correcting it, it seems to me that the application is contained in the original application form as corrected. In my judgment, such an amended application would be in accordance with para 1 of Schedule 14 .

29. At least on the basis of his alternative submission, Mr Maroudas accepted that, for the purposes of section 67(3) , a valid application may be made where supplementary information is provided to make good an error or omission in the application, at any rate if the information is provided within a very short time of the submission of the application form.

30. I do not find it necessary to define the limits of permissible departures from the strict requirements of para 1 of Schedule 14 . In particular, I do not find it necessary to decide whether para 1 of Schedule 14 requires that the map, which should accompany the prescribed form, must be sent at the same time as the form. It seems to me that the map and copies of the documentary evidence referred to in the form are required to be treated in the same way. That is what para 1 of Schedule 14 says: the application shall be "accompanied" by both a map and copies of any documentary evidence which the applicant wishes to adduce. It is true that the prescribed form itself provides that copies of the documentary evidence referred to in the form are required to be "attached" to the form. That would appear to mean that the copies of any documentary evidence are required to be sent at the same time as the form. It would be surprising if the map were to be treated differently in this respect from the documentary evidence. But it is not necessary to decide whether submitting the map and documentary evidence, say,

later the same day on which the application form itself was lodged or even a few days later, is to be regarded as a departure from the strict requirements of para 1 sufficient to invalidate the entire application even for the purposes of section 67(3) . I take note of the decision in Botany Bay . But that is a decision on a different statute in a different jurisdiction and both Steyn JA and Fitzgerald JA made it clear that they were concerned with whether there had been "substantial compliance" with the statutory requirement.

31. I can now return to the facts of the present case. Mr Coppel rightly concedes that the February application was invalid at the time when it was sent, because it was neither dated nor signed nor accompanied by a map showing the way to which it related. The central question that arises on this appeal is whether these shortcomings in the application were made good by the exchange of correspondence between the Council and Mr Drinkwater. The Council's letter of 25 March enclosed a summary and "plan". We have not seen either document. The argument before us proceeded on the basis that the "plan" was the map which was eventually incorporated in the Modification Order .

32. A number of points need to be made about the exchange of correspondence. First, the Council's letter was a clear reference to the February application. So too was Mr Drinkwater's reply: "incorporate the whole road into the application". Secondly, Mr Drinkwater's letter of 22 April 1997 was written approximately 10 weeks after he had lodged his application form. Thirdly, Mr Drinkwater's letter was dated and signed by him. Fourthly, the Council's letter asked for confirmation in writing that it was Mr Drinkwater's intention to include the entire length of the route (as shown on the enclosed plan) in his application. Fifthly, Mr Drinkwater replied saying: "I cannot foresee a problem through cooperating with the plan to incorporate the whole road into the application, so please do that if you will." Sixthly, Mr Drinkwater did not send the plan back to the Council under cover of his letter of 22 April or at all.

33. In my view, the departures from the requirements of para 1 of Schedule 14 were substantial and were not such as could be saved by the *de minimis non curat lex* principle. As I have said, the lack of a date and signature in the application form can in principle be cured by a dated and signed letter sent *shortly* after the submission of the form, where the omissions are pointed out and the Council is asked to treat the application as bearing the date of the letter and the signature of the author of the letter. But the lack of a date and, in particular, the lack of a signature are important omissions. The signature is necessary to prove that the application is indeed that of the person by whom it is purportedly made. If the application form remains unsigned for a substantial period of time, I would not regard that as a minor departure from the statutory requirement that it should be signed. The fact that the application was unsigned for some 10 weeks in this case is of itself a strong reason for holding that there was a substantial departure from the strict requirements of para 1 of Schedule 14 .

34. The next question is whether Mr Drinkwater's letter made it clear that he was now applying for the entire route from point A to point C to be upgraded to a BOAT. As Mr Maroudas points out, Mr Drinkwater had no interest in the length between A and B because he owned that land. His omission of that length of the route from the February application was not an oversight on his part. It was quite deliberate. In my view, what Mr Drinkwater was saying in his letter of 22 April was that he was content for the Council to treat his application as extending to the length between A and B, but he was indifferent as to whether it should be so extended. That is why he said that he could not "foresee a problem" in his "co-operating" with what he saw as the Council's plan to incorporate the whole road in the application. It is also why he said that the Council should do that "if you will". In other words, left to himself, Mr Drinkwater would not have wished to extend the scope of the application, but he was willing to allow the Council to do so if that is what it wished to do. I accept that it remained Mr Drinkwater's application. But this is far from the case of an applicant who realises that he has made a slip in the description of the route which he is applying to upgrade and notifies the surveying authority that he wishes to correct the error.

35. The final point is that the plan enclosed with the Council's letter of 25 March was not sent back by Mr Drinkwater with his letter of 22 April. Mr Drinkwater never sent an accompanying map. The absence of an accompanying map is an important omission just as is the absence of documentary evidence on which an applicant wishes to rely (as Winchester demonstrates). Mr Coppel's case is that the plan which was enclosed with the Council's letter of 25 March was the accompanying map and

that by his letter Mr Drinkwater was agreeing with the Council that it should so treat it. But Mr Drinkwater's letter says nothing about the enclosed plan. There is nothing to indicate that he even looked at it. In view of his indifference to what the Council was asking, it seems unlikely that he would have had any interest in the plan at all.

36. For these reasons, I would hold that the February application, even when it is considered together with the exchange of correspondence, did not comply with the strict requirements of para 1 of Schedule 14 of the 1981 Act.

Conclusion

37. I would, therefore, allow this appeal.

Lord Justice Richards:

I agree

Lord Justice Jackson:

I also agree