Claim No.

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

B E T W E E N :

R (on the application of THE BRITISH HORSE SOCIETY)

Claimant

and

CORNWALL COUNCIL

Defendant

CLAIMANT'S STATEMENT OF FACTS AND GROUNDS

PRELIMINARY

References in this Statement of Facts and Grounds are as follows:

- [CB/xx] is a reference to the Claim Bundle where "xx" is a page number

List of essential reading:

- Pleadings [CB/21-39]
- Witness Statement of Will Steel, Head of Access at the British Horse Society [CB/44-49]
- Pre-action correspondence [CB/52-64]
- Claimant's letter of 11 September 2023 [CB/83-87]
- Defendant's email response of 13 October 2023 [CB/50-51]

Time for essential reading: 2 hours

INTRODUCTION

1. This Statement of Facts and Grounds is filed on behalf of the Claimant in support of its judicial review claim which challenges a decision of the Defendant of 13 October 2023 [CB/50-51]. By the decision under challenge, the Defendant unlawfully refused to register applications for definitive map modification orders ("**DMMOs**") made under s.53(5) of the Wildlife and Countryside Act 1981 ("**the 1981 Act**"), as follows:

    a. An application to the Defendant for a DMMO to add a restricted byway to the definitive map and statement ("**DMS**") maintained by the Defendant between two County roads in Altarnun, Bodmin, Cornwall ("**the Application**"); and
    b. Other DMMO applications made to the Defendant by the Claimant and West Penwith Bridleways Association ("**the Other Applications**").

2. In making the decision, the Defendant misdirected itself in law and/or wrongly interpreted the relevant provisions of the 1981 Act and the Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 ("**the 2005 Regulations**"). The Defendant is under a legal duty to register such applications. In refusing to do so it has failed to comply with Reg.3(6) of the 2005 Regulations. The failure has negative practical consequences for the administration of public rights of way, for the Claimant and its members, for current and prospective buyers of land subject to pending applications, as well as for the Defendant itself, as is explained at paras.41-45 below. The Claimant is aggrieved by the decision.

3. The Claimant therefore seeks permission to bring a claim in judicial review and the following relief:

    a. A declaration that the Defendant's failure to register the Altarnun DMMO application and the other DMMO applications referred to in its letter of 11 September 2023 ("**the Applications**") – all made under s.53(5) of the 1981 Act – is unlawful;
    b. An order quashing the Defendant's decision not to register the Applications;

c. A mandatory order that the Defendant registers the Applications; and

d. Costs.

4. The Claim is an Aarhus Convention claim for the purposes of Section IX of CPR 46 and is therefore subject to the provisions on costs set out there – see paras.51-55 below.

THE PARTIES

5. The Claimant is Britain's largest equestrian charity representing more than 122,000 members and is a company limited by guarantee. One of its principal charitable aims is equestrian safety and access to the countryside for horse riders and carriage drivers. This Statement of Facts and Grounds is accompanied by a witness statement provided by Will Steel, the Claimant's Head of Access [CB/44-49]. The Defendant is the surveying authority under the 1981 Act for the area in which the applications to which this claim relates have been made.

FACTUAL BACKGROUND

6. The Application was signed and dated 29 August 2023 and was submitted to the Defendant on 11 September 2023 in the form prescribed by Reg.4 of and Sch.2 to the Wildlife and Countryside (Definitive Map and Statement) Regulations 1993 and accompanied by a map drawn to the prescribed scale and showing the way to which the Application related, as well as copies of documentary evidence in support of the Application [CB/65-82].

7. At the time of making the Application (and still) the Claimant had not served notice stating that the Application had been made on every owner and occupier of the land to which the Application relates.

8. The Application was accompanied by a detailed letter, setting out the Claimant's position that the Application should be registered [CB/83-87]. That letter also included an

Appendix [CB/87] with a list of the Other Applications which had not been registered by the Defendant, where landowner notification has not yet taken place.

9. By an email dated 13 October 2023, Mr Jon Rowell, the Council's Senior Natural Environment Records Officer, declined to register the Application [CB/50-51]. The email did not engage with the detailed reasons given by the Claimant. Instead, it set out the following:

> "*… registration is a matter entirely for the local authority and it requires the authority to be 'satisfied' that the application has been duly made. Homing in on paragraph 6 in your letter, the key point here is that the Council does not consider the application to be duly made so as to warrant and require the Council to register it.*
>
> *Addressing the relevant legislation in its totality it is the Council's view that it cannot properly register an application because paragraph 2(1)(g) of the Statutory Instrument 2005 No.2461 The Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 requires a 'date set by the surveying authority for the determination of the application'.*"

10. In summary, the Council's position was that an application is not duly made unless notification has been given to landowners as only then is the Council required to investigate the application such that it can set a date for its determination. As set out below, that argument involves a complete misreading of the statute and the statutory duties that apply to the Council.

11. Mr Rowell also explained in the email that the Defendant would not register the Other Applications for the same reason.

12. The above is the Decision challenged by this claim.

13. The Claimant sent pre-action correspondence in accordance with the Pre-action Protocol for Judicial Review to the Defendant on 3 November 2023 ("**the PAP Letter**") [CB/52-57] indicating its intention to challenge the Decision on the basis set out in this Statement of Facts and Grounds. The PAP Letter reiterated and expanded upon the Claimant's position on the correct legal position.

14. The PAP Letter also explained why the Defendant's reason for refusing to register the Application set out in the Defendant's email of 13 October 2023, and quoted at para.9 above, was wrong (see paras.34 below).

15. The Defendant responded by a short letter dated 17 November 2023 ("**the PAP Response**") [CB/58-64]. This again did not engage with the detailed reasons given by the Claimant (although it did not reiterate the point about the duty in Reg.2(1)(g) of the 2005 Regulations). Instead, the Defendant argued that there is no benefit to applicants in registering an application prior to compliance with the notification requirements in para.2 of the 2005 Regulations (nor any penalty in failing to register such an application) and that there would not be any benefit to landowners in registering applications prior to such notification. The Claimant does not agree with that characterisation of the position (see paras.41-45 below). However, it is striking that the Defendant made such points instead of engaging with the legal arguments presented.

Project 2026 and the "*cut-off date*"

16. The Application was made in the context of 'Project 2026', a campaign by the Claimant to research and record public bridleways and byways that are not presently recorded on DMSs or are recorded as footpaths or bridleways notwithstanding they also carry other unrecorded public rights of way [CB/47-48]. Project 2026 was established in 2018 in response to the "*cut-off date*" introduced by the Countryside and Rights of Way Act 2000 ("**the 2000 Act**") discussed at paras.28-29 below. The project took its name from the initial proposed "*cut-off date*" for DMMO applications based on historic evidence of 1

January 2026, which has recently been commenced and extended to 1 January 2031 [CB/46].

17. The project has time-limited funding from Sports England to train and support volunteers across England to research routes that may have unrecorded equestrian rights over them and to make DMMO applications to the relevant authority where sufficient evidence has been identified. The funding agreement expires in 2026 [CB/47].

18. Given the large number of unrecorded rights of way at risk of extinguishment at the cut-off date, as well as the time-limited funding and the expectation that duly made pending applications made prior to the cut-off date will be exempt from extinguishment (as suggested by s.56 of the 2000 Act, summarised below), the Claimant has prioritised the making of DMMO applications to ensure that these are registered prior to the cut-off date. As a matter of general practice, the subsequent step of landowner and occupier notification has been postponed until a later date when the Claimant and its volunteers are under less time pressure. However, there are instances where landowner and occupier notification has taken place, where the volunteer has chosen to do so or where the route has particular importance and so the Claimant has wished for a quicker determination [CB/48].

LEGAL BACKGROUND

19. By s.53(2)(b) of the 1981 Act, a surveying authority has a duty to keep its DMS under continuous review, and to make any requisite amendments to that DMS by order as soon as reasonably practicable after the occurrence of the events specified in s.53(3). Section 53(5) enables any person to apply to the surveying authority for an order modifying the DMS on the occurrence of one or more events falling within s.53(3)(b) or (c). Section 53(5) also provides that Sch.14 to the 1981 has effect for such applications. The precise nature of the events specified in s.53(3) are not relevant for the purposes of this Claim.

20. Schedule 14 to the 1981 Act sets out the procedure for the making and determination of applications made pursuant to s.53(5).

    a. Para.1 of Sch.14 provides that:

    > *"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."*

    b. Para.2(1) of Sch.14 requires the applicant to "*serve a notice stating that **the application has been made** on every owner and occupier of any land to which the application relates*" (emphasis added). By para.2(2), where it has not been possible to ascertain the name or address of a particular owner or occupier, and an authority is satisfied that a reasonable inquiry has been undertaken, it can direct that notice can be given by affixing such notice to a conspicuous object on the land. By para.2(3) the applicant must certify to the surveying authority that the requirements of para.2 have been complied with.

    c. Para.3(1) of Sch.14 imposes a duty on a surveying authority to investigate the matters in the application and determine it "*as soon as reasonably practicable after receiving a certificate under paragraph 2(3)*". By para.3(2) an applicant can request a direction from the Secretary of State directing the surveying authority to determine the application within a specified period, if it has not been determined within 12 months of the certificate being received under para.2(3).

    d. Para.5(1) of Sch.14 defines "*application*" as "*an application made under s.53(5)*".

21. Section 53B of the 1981 Act imposes a duty on every surveying authority to keep a register with respect to applications made under s.53(5). It was inserted into the 1981 Act by para.2 of Sch.5(I) of the 2000 Act. It was introduced by the Minister at the Third Reading of the then Countryside and Rights of Way Bill in the House of Commons. The legislative intention of the provision may be understood by the comments of the Member of Parliament who had promoted it in Standing Committee, Gordon Prentice MP (HC Deb 14 June 2000, vol 294, col 950). Mr Prentice argued that:

> "*the provision of a register* [in respect of modification applications] *would benefit users and landowners alike and would be a useful tool for those who want to check on unrecorded public rights – conveyancing solicitors, for example*." (Minutes of Standing Committee B 9 May 2000, col 573; text in square brackets added for sense). [CB/90]

22. Further provision as to the content and management of the register is made by the 2005 Regulations. In particular, Reg.2(1)(a)-(l) of the 2005 Regulations set out what information must be included in the register. Given the Council's reliance upon Reg.2(1)(g) in particular it is necessary to set out the key parts of Regulation 2:

> *2.— **Information to be contained in the register***
> *(1) The register shall contain with respect to each application under section 53(5) of the Act—*
> *(a) a copy of the application together with a copy of any map submitted with the application;*
> *(b) a description of the intended effect of the application;*
> *(c) a description of the geographical location to which the application relates, which shall be identified by reference to:*
> *(i) an Ordnance Survey six-figure grid reference in respect of each end of the public right of way or proposed public right of way, or, where the public right of way is already recorded on the relevant definitive map, the path number;*

(ii) the address of any property (including its postcode) on which the public right of way or proposed public right of way lies;

(iii) the names of the principal cities, towns and villages nearest to the public right of way or proposed public right of way; and

(iv) the parish, ward or district in which the public right of way or proposed public right of way lies,

and where the application relates to part only of a public right or way, the particulars to be recorded under (ii) to (iv) shall relate to that part only.

(d) subject to paragraph (3), the applicant's name and address, including postcode;

(e) the date the application was received by the surveying authority;

(f) any unique reference allocated by the surveying authority to the application together with the job title of the person at the surveying authority responsible for dealing with the application, the authority's e-mail address and telephone number;

(g) any date set by the surveying authority for the determination of the application;

(h) the terms of any direction by the Secretary of State under paragraph 3(2) of Schedule 14 to the Act (direction to the authority to determine an application within a specified period);

(i) the date on which the application was determined by the surveying authority;

(j) the decision of the surveying authority on the determination of the application;

(k) where the decision was to make an order on determination of the application, details of whether or not the order was confirmed (with or without modifications) in accordance with Schedule 15 to the Act; and

(l) where the surveying authority has refused an application, the outcome of any appeal against that decision under paragraph 4 of Schedule 14 to the Act.

(2) A surveying authority may record on the register such additional information as it considers appropriate.

…

(4) The particulars included in the register under paragraphs (1) and (2) shall be retained on the register in respect of each application under section 53(5) of the Act, regardless of the outcome of the application.

(5) Every register shall include an index that can be used to assist any person to trace any entry in the register and, in the case of the electronic version of the register, a search facility, which, as a minimum, shall allow postcode and keyword searches to be made."

23. The critical provision for the present claim is Reg.3(6) of the 2005 Regulations:

> "***An entry in the register*** *covering the matters set out in sub-paragraphs (a) to (f) of regulation 2(1)* ***shall be made*** *by the later of:*
> *(a) the date falling 28 days from the date such application is received by a surveying authority; and*
> *(b) the relevant date,*
> *and the register shall be updated as soon as reasonably practicable (but in any event not before the relevant date) to take into account any of the matters set out in sub-paragraphs (g) to (l) of regulation 2(1)*" (emphasis added).

24. The "*relevant date*" is defined in Reg.1(2) of the 2005 Regulations as "*31 December 2005*". The applicable date by which an entry needed to be made for the Application was therefore on or around 11 October 2023 (assuming receipt of the Application on 13 September 2023).

25. The information which must be entered in the register within 28 days of the date that the application is received is set out at Reg.2(1)(a)-(f), and includes "*a copy of the application together with a copy of any map submitted with the application*" (Reg.2(1)(a)) and "*the date the application was received by the authority*" (Reg.2(1)(e)). The information which

should be included in any updates to the register as soon as reasonably practicable is set out at Reg.2(1)(g)-(l).

26. There is no mention in either half of Reg.2(1) of recording landowner notification or certification pursuant to para.2(3) of Sch.14 to the 1981 Act. However, that may be something that a surveying authority voluntarily registers under Reg.2(2).

27. Section 26 of the Deregulation Act 2015, when commenced, will make a number of significant changes to the procedure for determining DMMO applications, set out in a new Schedule 13A to the 1981 Act. These include the provision in para.2(4)(b) of Sch.13A of a duty on surveying authorities to notify affected owners and occupiers of DMMO applications, rather than the applicants themselves. Such notification must only be made if the surveying authority considers there is a reasonable basis for the applicant's belief that the DMS should be modified.

28. As noted above, sections 53 and 56 of the 2000 Act together impose a "*cut-off date*" of 1 January 2031 for the addition of certain unrecorded rights of way, including bridleways, to the DMS. Those provisions were commenced in relation to England on 25 October 2023 by Art.2 of the Countryside and Rights of Way Act 2000 (Commencement No. 16) Order 2023. By Reg.2 of the Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023 the "*cut-off date*" specified in s.56(1) was amended from 1 January 2026 to 1 January 2031 with effect from 17 November 2023.

29. Section 56(2) of the 2000 Act includes a power for the Secretary of State to make regulations in connection with the operation of ss.53 and 56, including in particular their operation in relation to rights of way where "*on the cut-off date an application for an order under section 53(2) of the 1981 Act is pending*".

GROUND OF CHALLENGE

Introduction

30. The Claimant's ground of challenge is that the Defendant acted unlawfully and/or misinterpreted the relevant legal provisions in refusing to register the Application and the Other Applications on the basis that the Claimant had not yet served notice on owners and occupiers of the land to which the Applications related pursuant to para.2 of Sch.14 to the 1981 Act.

31. That, in the Claimant's submission, was clearly contrary to the Defendant's statutory duty to register DMMO applications, which is triggered by the receipt of an application that complies with para.1 of Sch.14. Para.3(6)(a) of the 2005 Regulations requires the surveying authority to enter the application into the register within 28 days of receipt. Notification of owners and occupiers under para.2 of Sch.14 is irrelevant to the performance of the obligation in Reg.3(6).

32. The argument is essentially one of statutory language, but the Claimant's interpretation is also supported by wider material and, contrary to the Defendant's position, has real benefits. These matters are discussed in turn.

Statutory language

33. The duty to register a DMMO application which complies with para.1 of Sch.14 (regardless of whether notification has taken place under para.2) clearly follows from the statutory language.

34. Reg.3(6) of the 2005 Regulations draws a distinction between the matters in sub-paras.(a)-(f) of reg.2(1), which all follow from the receipt of the application and must be entered in the register within 28 days of such receipt, and the later steps in sub-paras.(g)-(l). Those later steps only arise once the duty to investigate the application is triggered by

the receipt by the surveying authority of the certificate pursuant to para.2(3) of Sch.14, and can therefore be entered into the register later. The information in sub-paras.(g)-(l) is also described as being added by way of an "*update*" to the register, again distinct from the initial entry of information on receipt of the application. For this reason, the justification given by Mr Rowell (as set out at para.9 above) for the failure to register itself is obviously wrong: the requirement to update the register with "*any date set by the surveying authority for the determination of the application*" only arises later. (The requirement also only arises if the authority decides to set a date for the determination of the application; they are under no obligation to do so, hence *"any date"*.)

35. Moreover, para.2 of Sch.14 to the 1981 Act requires notice to be given to owners and occupiers of an application that "*has been made*". Necessarily, this requires an application to have been made – and therefore to be registrable under Reg.3(6) – prior to it being notified to owners and occupiers. The statutory scheme sets out a sequence of steps. The consequence of notification is that the surveying authority has a duty to investigate the application under para.3(1) of Sch.14, but lack of notification does not preclude registration.

36. The Claimant's interpretation is consistent with the Supreme Court's decision in R (Trail Riders' Fellowship) v Dorset CC [2015] UKSC 18; [2015] 1 WLR 1406, where Lords Carnwath and Neuberger both separately noted with emphasis that para.2 of Sch.14 only applies after an application has been made. In Lord Neuberger's words at para.101:

> "*It seems to me impossible to give section 67(6)* [of the Natural Environment and Rural Communities Act 2006] *any meaning if it does not have the effect for which Mr Laurence contends. The ingenious notion that it was intended to make it clear that only paragraph 1, and not paragraph 2, of Schedule 14* [to the 1981 Act] *had to be complied with is wholly unconvincing, because, as Lord Carnwath JSC says in para 77, it is clear from the wording of paragraph 2 itself that it only applies after an application has been made.*" (text in square brackets added for sense)

Wider materials

37. Given the clear words of the legislation and the obvious interpretation, there is no need for the Claimant to rely on any further arguments in support of its ground of challenge. However, other relevant material is consistent with the Claimant's position that the statutory scheme does not require landowner notification prior to the receipt and registration of applications, and further demonstrates why the Claimant's interpretation of the legislative scheme is correct. Three points are made in this regard.

38. First, DEFRA's guidance to accompany the 2005 Regulations explained that the obligation to include an entry in the register "*is independent of the receipt of certification that paragraph 2 of Schedule 14 WCA 1981 has been complied with*" (*Register of definitive map modification order applications: guidance for English surveying authorities to accompany Statutory Instrument 2005 No 2461* (21 December 2005), footnote 2) [CB/97].

39. Second, a subsequent legislative amendment to require compliance with both paras.1 and 2 of Sch.14 before an application could be made was considered in connection with the Natural Environment and Rural Communities Act 2006 (Third Reading of the Natural Environment and Rural Communities Bill (HL Deb, 20 March 2006, vol 680, cols 108-109) [CB/101-102]. It would not have been necessary to consider the amendment if the statutory scheme already made that provision.

40. Third, a pending amendment to s.53B of the 1981 Act contemplates regulations that will prevent the registration of applications by surveying authorities *unless* the authority (not the applicant) has served notice on landowners and occupiers (see Deregulation Act 2015, Sch.7, para.4, inserting new s.53B(4A)-(4B)) [CB/116]. Again, this change would not be necessary if the legislation already made that provision. The provisions of pending Sch.13A, set out at para.26 above, also maintain the distinction set in Sch.14 between the making of a (valid) application and subsequent notification of the application to owners/occupiers, albeit that the duty to notify once those provisions are commenced will be on the surveying authority, not the applicant [CB/119]. The Defendant suggests in its PAP Response that these changes do not in fact amend the law but are rather "*a*

necessary clarification of what was intended by the legislation all along" [CB/61]. That submission is not borne out by the wording of the pending amendments, which clearly indicate a change to the previous procedure.

Practical benefit of immediate registration of applications

41. There is also no basis for the Defendant's assertion, set out in the PAP Response, that registration prior to notification of landowners and occupiers would be of no benefit to either applicants or landowners. The purpose of notifying landowners and occupiers is so that they are aware of an application and may assist the authority by submitting any information in objection (or otherwise). That however has no bearing on the validity of the application or whether it has been made in compliance with the requirements in para.1 of Sch.14. Failing to register applications within the 28 day period, notwithstanding there may not have been landowner notification, has practical consequences, some of which are described below.

42. For those making or interested in making DMMO applications, registering applications prior to landowner notification enables a surveying authority to give a view as to the validity of an application before notice of that application is served on owners/occupiers, avoiding wasted effort if the surveying authority find that the application was not made in compliance with para.1 of Sch.14. As indicated by Lord Neuberger in Trail Riders Fellowship, applicants should be given an opportunity to remedy any defects in any DMMO application before validation and entry into the register. An application which is invalid on submission may be capable of being made valid by the provision of further information (see paras.92 and 96 of the judgment). Furthermore, having such applications published in the surveying authority's register and available for inspection avoids duplication of work where multiple individuals or groups may be interested in recording the same right of way, but where owner/occupier notification has not yet taken place.

43. In the light of the recent commencement of the 2031 cut-off date for the recording of unrecorded rights of way, there is now an added urgency for making DMMO applications.

Understandably, user groups wish to focus their efforts in the short-term on registering applications, and only proceed with notifying owners and occupiers when there is less time pressure [CB/47-48]. This approach is supported by a proposal in a report commissioned for Natural England in 2011, *Stepping Forward – The Stakeholder Working Group on Unrecorded Public Rights of Way* (Report NECR035) which advises that "*provision should be made for rights covered by registered applications to be saved from the effect of the cut-off until the case is substantively determined*" [CB/104].

44. For owners and occupiers, there is a clear interest in having a public record of pending applications, even if such applications have not yet been formally notified to them. A prospective buyer of land would likely wish to know if there were pending applications for the recording of public rights of way over that land, notwithstanding the duty to investigate such applications has not (yet) been triggered. The suggestion in the PAP Response that it would be better for prospective buyers to remain unaware of such pending applications until such date as the applications were notified, potentially after any purchase has taken place [CB/61], is not credible. Similarly, registration of applications on receipt (rather than following owner/occupier notification) benefits a surveying authority who may be liable in tort to those who might rely on the register in conveyancing transactions if it does not record pending transactions (see Chesterton Commercial (Oxon) Ltd v Oxfordshire County Council [2015] EWHC 2020 (Ch); [2015] EGLR 62).

45. For above reasons, the Defendant's suggestion that "*there is no benefit to registering an application before it is compliant with para.2 of Sch.14*" is wrong [CB/60]. In any event the argument is of limited relevance to the question of whether, as a matter of law, the Defendant is required to register a DMMO application that it has received, even before certification under para.2(3) of Sch.14.

Response to other points in the PAP Response

46. The Defendant does not offer any argument in the PAP Response engaging with the Claimant's legal analysis or setting out why its interpretation is of the legislation is correct as a matter of law. Instead, it relies on an alleged lack of prejudicial effect on applicants and landowners. For the reasons given above (paras.41-45) that reliance is wrong and misplaced.

47. Two further points are made in response to the PAP Response.

48. First, the Defendant appears to claim in the PAP Response that until notification has taken place it has no control over the handling of a DMMO application, or that an application cannot be dealt with until notification has taken place. This ignores the fact that the Defendant has an independent duty under s.53(2)(b) to keep the DMS under continuous review and update it as soon as reasonably practicable on the occurrence of the events specified in s.53(3). Section 53(5) permits members of the public to make applications to modify the DMS but does not prevent the Defendant from updating the DMS on its own initiative. The only matters that are triggered by compliance with para.2 of Sch.14 to the 1981 Act are the duty to determine the application "*as soon as reasonably practicable*", and the ability of an applicant to seek a direction where determination has not taken place within 12 months.

49. Second, the Defendant argues that requiring applicants to carry out notification in compliance with para.2 of Sch.14 before registration "*enables the surveying authority to process those claims of rights immediately, rather than simply allowing them to languish*". However, the Claimant's understanding is that there may be as many as in excess of 200 applications on the Defendant's register which have not yet been determined [CB/49]. The prospect of any further applications being determined immediately therefore appears remote.

50. Overall, it is clear that notification of landowners and occupiers of land affected by a DMMO application is not required prior to the initial registration of such an application under reg.3(6) of the 2005 Regulations. The Defendant has misdirected itself in law and

acted in breach of its statutory duty under reg.3(6) by adopting an approach to the contrary.

AARHUS CONVENTION CLAIM

51. This claim falls within the definition of an Aarhus Convention claim pursuant to CPR 46.24 as it challenges an omission by the Defendant which contravenes a provision of national law relating to the environment (CPR 46.24(2)(a) and Art.9(3) of the Aarhus Convention). In the PAP Response, the Defendant argues that the claim is not an Aarhus Convention claim because it "*has nothing to do with access to environmental information or environmental justice*". That statement fails to grapple with the definition of Aarhus Convention claim as provided by the CPR. It is wrong for the following reasons.

52. Laws governing public access to land, to the countryside and to the environment, in the 1981 Act and the 2005 Regulations, are national law relating to the environment. Public rights of way are the most important way in which members of the public have access to the countryside and can interact with the natural environment. "*[E]njoyment of the natural environment*" is recognised as one of the objects of environmental targets in the Environment Act 2021 (s.1(1)(a)) and "*enhancing beauty, heritage and engagement with the natural environment*" is one of the goals in the Government's Environmental Improvement Plan 2023.

53. There is no definition of "*national laws relating to the environment*" in the Aarhus Convention, but a broad definition of "*environmental information*" is set out at Art.2 of the Convention, which includes legislation which is likely to affect the state of elements of the environment, including land and landscape (see art.2(3)(a) and (c)). Legislation governing public rights of way, especially in rural areas, is likely to affect land and landscape, by virtue of permitting or forbidding the use of such land in particular ways. The Information Commissioner's view (accepted by the First-tier Tribunal) is that information on DMMO applications is "*environmental information*" (see, for example, Dunlop v Information Commissioner [2022] UKFTT 00469 (GRC); Murray v Information

Commissioner EA/2017/0257). The corollary of that is that the law governing DMMO applications is environmental law.

54. This is further supported by the decision of the Court of Appeal in Venn v Secretary of State for Communities and Local Government [2014] EWCA Civ 1539; [2015] 1 WLR 2328 which confirmed that the description of "*environmental information*" in Art.2(3) of the Aarhus Convention "*was an indication of the intended ambit of the term 'environmental' in the Convention*". The Court of Appeal also noted that "*environmental information"* (and by extension, the term "*environmental*") is given a broad definition in the Convention (per Sullivan LJ at paras.10-11).

55. The Claimant has provided a Schedule of Financial Resources in accordance with CPR 45.25(1)(b).

CONCLUSION

56. For the above reasons, the Defendant's decision not to register the Application was unlawful. The Defendant is in breach of Reg.3(6) of the 2005 Regulations as it failed to register the Application and the Other Applications within the requisite period. The Claimant has drawn the matter to the Defendant's attention in detail prior to this litigation but did not receive an adequate response, or the registration of the Applications. The Claimant is therefore left with no choice but to bring this claim. It seeks the relief set out at para.3 above, including a declaration that the Defendant acted unlawfully and a mandatory order that it register the Applications forthwith.

NED WESTAWAY

ESTHER DRABKIN-REITER

14 DECEMBER 2023

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