
Fowler v Secretary of State for the Environment and another [1991] Lexis Citation 1946

[1992] JPL 742

COURT OF APPEAL (CIVIL DIVISION)

FARQUHARSON, SCOTT LJJ, SIR JOHN MEGAW

20 NOVEMBER 1991

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The Appellant appeared in person; N Fleming for the Respondents; D Ouseley appeared as Amicus Curiae

Treasury Solicitor

FARQUHARSON LJ

This appeal concerns the nature of the right of way over a path near Uplyme in Devonshire. It runs from Cannington Lane past some cottages called Happy Valley but which were formerly described as Horseman's Hill Cottages. One of these is owned and occupied by the appellant and his wife. The path continues along a private access driveway which has been surfaced with tarmac until it reaches an adopted road called Cuckoo Lane. The path continues over fields until it reaches Gore Lane just south of Uplyme. In the Devonshire County Council's Definitive Map and Statement the path is identified as Footpath No 6 and shown as no more than a footpath.

In 1987 the County Council made a Map Modification Order pursuant to section 53(2)(a) of the Wildlife and Countryside Act 1981 which purported to show 750 metres of the path, namely that part from Cannington Lane to Cuckoo Lane as a bridleway. The order was submitted to the Secretary of State for confirmation but in the light of objections received, he directed that a public inquiry should be held. An Inspector was appointed and a public local inquiry into the order took place at Uplyme Village Hall on 24th October 1988. The order was objected to by the Parish Council and by a number of other persons including the appellant, who would clearly be prejudiced if the order was put into effect. At the outset a solicitor appearing on behalf of one of the objectors took the point that contrary to Schedule 14 paragraph 3(1)(a) of the 1981 Act no member of the relevant committee of the County Council had made the necessary investigation prior to the making of the order, and the committee had left the task to the solicitor to the Council and his staff. This point, as will be demonstrated later in this judgment, was unsound. It was rejected by the Inspector, with the unfortunate and unnecessary consequence that not only did the solicitor withdraw but nearly all the objectors as well. The Inspector was thus deprived of the assistance he might have received from that quarter.

Evidence was put before the Inspector that the path was used regularly by horse riders since at least 1917, but after September 1957 when the Definitive Map was issued the path had been effectively closed for passage by horses. There was also documentary evidence in the form of the Estate Book of a former owner of the land on which the path ran, dated 1st May 1934, which described that part of the path which is the subject of the order as a bridleway.

In the result the Inspector decided to confirm the order. By his decision letter of 22nd December 1988 he held that the fresh evidence pointed inexorably to the legal existence of a public right of way on horseback along this path of very long standing.

Paragraph 12 of the 15th Schedule of the 1981 Act makes provision for a person aggrieved by such an order to challenge its validity. It provides:

"12. -- (1) If any person is aggrieved by an order which has taken effect and desires to question its validity on the ground that it is not within the powers of section 53 or 54 or that any of the requirements of this Schedule have not been complied with in relation to it, he may within 42 days from the date of publication of the notice under paragraph 11 make an application to the High Court under this paragraph.

(2) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.

(3) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever."

Pursuant to those provisions the appellant issued proceedings in the High Court. There were a number of grounds set out to challenge the order, but only one was proceeded with by the experienced counsel who represented the appellant. By that ground counsel contended that the path in question was designated by the County Council Definitive Map as a footpath in accordance with the provisions of the National Parks and Access to the Countryside Act 1949. Counsel contended that the status of the path as a public footpath was thereby conclusively established, and could not be challenged.

Kennedy J rejected that argument and dismissed the application. The appellant now appeals to this court against the judge's decision. While he continues to adopt counsel's argument that the path is now irrevocably designated as a public footpath only, he contends that status can be established by the provisions of the 1981 Act.

In my judgment the appellant is plainly wrong in that contention. While the application for the Modification Order by the County Council is clearly governed by the 1981 Act, the status of the path depends on its appearance in the Definitive Map of 1957 which was published under the provisions of the 1949 Act. It is therefore necessary to consider the purpose and the relevant sections of the earlier Act.

The long title of the Act states its purpose, viz:

". . . to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and to amend the law relating to rights of way . . ."

The relevant sections are contained in Part IV of the Act which is headed:

"Ascertainment of footpaths, bridleways and certain other highways".

Mr Fleming for the Secretary of State submits that the overall purpose of this part of the Act is to record as accurately as possible the existence of public rights of way over land so that they may be preserved. He points to the observations of Lord Denning MR in *R v Secretary of State for the Environment ex parte Hood* [1975] QB 891 at 896:

"The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are . . . it is important that they should be preserved and known, so that those who love the countryside can enjoy it, and take their walks and rides there."

Returning to the 1949 Act, section 27 makes provision for County Councils to prepare draft maps showing the

footpaths and bridleways in their area wherever in their opinion such a right subsisted. These ways were defined in subsection (6):

"[footpath] means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;

[bridleway] means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse . . ."

Section 29 provided for objections to be made to the draft map and its supporting statements, to the process by which they were considered, and for the map to be modified, where the objections are made out. Thereafter provisional maps and statements were to be prepared, and finally the definitive maps and statements (section 32(1)).

The effect of these provisions is set out in section 32(4):

"A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say --

(a) where a map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map;

(b) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; and

(c) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any date, as to a public path, or road used as a public path, shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date."

Finally section 33 provides for periodical reviews of the map.

"33. -- (1) The authority by whom a definitive map and statement have been prepared under the last foregoing section shall from time to time review the particulars contained therein having regard to events which have occurred at any time between the relevant date specified in the definitive statement and such date as may be determined by the authority for the purposes of the review (in this and the next following section referred to as [the date of review]):

Provided that in the case of a map and statement which have previously been reviewed under this subsection, the foregoing provisions of this subsection shall have effect with the substitution, for the reference to the relevant date specified in the statement, of a reference to the last preceding date of review.

(2) The events so occurring as aforesaid to which an authority shall have regard in carrying out a review under the last foregoing subsection shall include the following events, that is to say --

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) the discovery by the authority of new evidence such that, if the authority were then preparing a draft map under the foregoing provisions of this Part of this Act, they would be required by those provisions to show on the map, as a highway of a particular description, a way not so shown on the definitive map, or on the revised map last prepared in accordance with the following provisions of this section, as the case may be.

(3) A review under subsection (1) of this section shall be carried out at such time as the authority carrying out the review may consider appropriate, so however that the date of review shall not in any case be a date later than the expiration of five years after the relevant date, or the last preceding date of review, whichever is the later:

Provided that nothing in this subsection shall affect the validity of any review carried out under the said subsection (1) or of any document prepared or thing done in consequence of such a review."

It was in the light of these statutory provisions that counsel for the appellant contended that the application of the County Council in the present case was ill-founded. He argued that where a highway was recorded in the definitive map as a footpath only by virtue of section 32(4)(a) its status was preserved for all time. Where a document was directed to be conclusive evidence of some fact by the terms of a statute then that fact could not thereafter be challenged.

For my part I cannot see how such a construction can stand in the light of the provision for five-yearly reviews, or indeed any subsequent review. Section 33(2)(e) does not constrict the new evidence referred to in that subparagraph to the period since the preparation of the first definitive maps but comprehends new evidence relating to the existence of earlier rights of way not recorded in the first definitive map.

The matter was put beyond doubt by the decision of the House of Lords in *Suffolk County Council v Mason* [1979] AC 705. The majority held that the showing of a right of way as a footpath on the definitive map was conclusive that at the relevant date there was a right of way on foot and that there was not any more extensive right. Lord Diplock went on to explain that the map was not conclusive in any permanent sense when he said at page 714 C-E:

"The entry on the definitive map does not necessarily remain conclusive evidence for ever. Section 33 makes provision for quinquennial revisions -- though these do not appear in practice to have been carried out punctually. On a revision, entries on the definitive map which require modification as a result of events that have occurred since the date of the last revision may be modified accordingly. Among the subsequent events which call for a modification of an entry is the discovery by the county council of new evidence which, if it had been known to them at the time of the last revision, would have resulted in their being required to enter it on the definitive map as a highway of a different description. So an entry made by mistake because of lack of historical knowledge would, if the Act were administered in accordance with its terms, endure for a maximum of five years after the error was discovered. These provisions for revision have since been amended by the Countryside Act 1968; but this cannot affect the construction of the Act of 1949 as it was originally enacted."

For my part I cannot see how the appellant's argument before Kennedy J can survive that decision, and indeed the judge so held. He accepted the respondent's submission that the key word in section 32(4)(a) is "evidence". While the relevant entry subsists on the definitive map it is conclusive evidence of the nature of the highway there recorded. Non constat that where fresh evidence is later discovered which demonstrates that the record is inaccurate the right of way cannot be altered accordingly.

This approach by the learned judge is supported by other authorities, notably *R v Secretary of State for the*

Environment ex parte Hood [1975] QB 891(see the remarks of Lord Denning MR at page 898) and R v Secretary of State for the Environment ex parte Stewart [1978] P & CR 279.

In 1968 Parliament passed the Countryside Act. One of its provisions was to include a special review procedure as County Councils had fallen behind in their task of preparing definitive maps and supporting statements. Another provision (section 9) was to reclassify roads used as public paths as either:

- (a) a byway open to all traffic or
- (b) a bridleway or
- (c) a footpath.

The 1968 Act, it is agreed, does not influence the issues in the present case.

This brings us to the 1981 Act which, as already observed, is the statute under which the present proceedings are brought. The relevant sections are in Part III and a duty was imposed on the surveying authority to keep the definitive map and statement under continuous review. The following sections are relevant:

"53. -- (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 --

(a) . . .

(b) . . .

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows --

(i) . . .

(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 . . .

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to --

- (a) the position and width of any public path or byway open to all traffic which is or is to be shown on the map; and
- (b) any limitations or conditions affecting the public right of way thereover.

(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 the occurrence 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."

Section 55 provides that there shall be no further reviews under the 1949 Act. Section 56(1):

"A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely --

(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right."

It will be seen that although these sections replace the corresponding provisions of the 1949 Act they are not in identical terms. In particular section 56(1)(a) just cited brings the position of footpaths into line with those relating to other rights of way by saying that the conclusive evidence of the existence of a footpath by being included in the map is without prejudice to the existence of any other public right. Accordingly the 1981 Act, so far from preserving the existence of a footpath in the sense that it could not be enlarged into a greater right, or alternatively deleted, specifically contemplates the possibility of it being altered in the light of fresh evidence obtained. Such evidence must be fresh in the sense that it was not available at the date of the existing definitive map, and such fresh evidence should be identified by an inspector whenever he decides that it exists. There are no other provisions of the 1981 Act which relate to this issue. The general thrust of the 1981 Act is to ensure that the definitive maps are accurate and that the need for continuity does not prevent it. In that respect it reverses the decision in *Suffolk County Council v Mason* (supra). A reconciliation of the provisions of the 1981 Act was explained in the recent decision of *R v Secretary of State for the Environment ex parte Burrows and Simms* [1990] 3 WLR 1070. Purchas LJ said at page 1095:

"There is no difficulty in reconciling sections 53 and 56 of the Act of 1981 once the comparatively restricted purpose of the legislation as a whole is understood, namely the preparation and maintenance of an authoritative record in the form of a definitive map and statement showing those highways over which the public have rights of way whether as 'ramblers' only or as 'ramblers and riders'. As Lord Diplock commented, the drivers of vehicles or drovers of cattle or other users play only a minor part when after 1968 Parliament decided to rationalise the classification of RUPPs. Once prepared, however, and until subsequently revised, the map and statement is to be conclusive evidence in rights of way disputes between landowners and the various categories of persons exercising rights of way. Parliament never removed the duty to revise and keep the record up to date so that not only changes of status caused by supervening events, eg the stopping up of a highway under statute or otherwise; or the creation of prescriptive rights, but also changes in the original status of highways or even their existence resulting from recent research or discovery of evidence should all be taken into account in order to produce the most reliable map and statement that could be achieved."

At page 1097G Glidewell LJ observed:

"On the other hand, section 53(3)(c) differs from the preceding sub-paragraphs in that use of the word 'discovery' suggests the finding of some information which was previously unknown, and which may result in a previously mistaken decision being corrected. This information will normally, if not always, relate to a fact or situation which already existed at the time when the definitive map was prepared. In this way, paragraph (c) is to be distinguished from its predecessors.

If I am right in my view that paragraph (c) is concerned with the correction of mistakes as the result of newly discovered information, in order to be comprehensive, the power of correction must cover three different situations: (i) the addition of a right of way not shown on the definitive map: paragraph (c)(i) achieves this; (ii) the upgrading or

downgrading of rights of way shown on the map, but so shown in a wrong category: sub-paragraph (c)(ii) covers both these situations; (iii) the deletion of a right of way which the latest information proves should not have appeared on the map at all: sub-paragraph (c)(iii) by its terms achieves this."

Finally at page 1102 Russell LJ:

"Having regard to the very comprehensive and closely reasoned judgments of Purchas and Glidewell LJJ, which I have read and with which I respectfully agree, there is very little that I can usefully add. I would, however, wish to emphasise that subsections (2) and (3) of section 53 of the Wildlife and Countryside Act 1981 do provide scope for the modification of the map and statement to keep pace with the reality of changing circumstances. In particular I am satisfied that section 53(3)(c), with its use of the word 'discovery', embraces the situation where a mistaken decision has been made and its correction becomes possible because of the discovery of information which may or may not have existed at the date of the definitive map."

It is clear from this examination of the interplay between section 53 and section 56 that on the sole point argued before Kennedy J the appellant's case fails as it does in its amended form before this court.

The appellant has advanced a number of other grounds in his notice of appeal to attack the decision of the Secretary of State. Counsel for the latter has not objected to these grounds being argued. The main ground developed before us was of a geographical nature. The appellant contends that when the footpath (No 6) reached Cuckoo Lane Cottages it continued over the stile (formerly footpath No 9) which was of course impassable to horses. Riders would therefore be obliged to turn to their right into Cuckoo Lane by passing in front of the cottages and the garage. The appellant contends that between the track of the footpath and Cuckoo Lane (an adopted highway) there is an area of land over which there is no public right of passage. Accordingly any riders who took their horses over that area were trespassers. The appellant supports this argument by a large number of documents relating to the maintenance of Cuckoo Lane in the past. This material he suggests supports his claim that there was an area in front of the cottages and garage which was not maintained by the County Council. The appellant refers specifically to extracts from the Books of the Axminster District Council relating to the matter as well as other records.

This point, for the reasons explained, was never taken before Kennedy J. Furthermore none of the material was placed before the Inspector. The appellant tells us that the material was not available at the time of the Inquiry. This may well be so but the issue was never drawn to the attention of the Inspector. It was well in the minds of the objectors. The appellant says he himself has obtained an easement of passage over the "private" area from the owner of the cottages. Also it seems that at some stage a gate was erected to prevent anyone riding through. The reason for the Inspector not being apprised of it was of course that the objectors foolishly walked out of the Inquiry, but that does not justify the point first being raised in this court. The correct course for the appellant to follow if he wishes to take this point is that set out in section 53(3)(c)(iii). Furthermore the definitive map shows or (in deference to the appellant) purports to show four footpaths converging at a point to the west of Cuckoo Lane Cottages and one of these, No 7, appears to cross over the disputed ground. The appellant does not accept this, but it is the definitive map which he relies on to claim that Footpath No 6 is no more than a footpath. I would reject this ground of appeal.

The next point taken by the appellant is that the County Council failed to comply with Schedule 14 of the 1981 Act.

Paragraph 3(1) of that schedule requires the authority as soon as possible after receiving the relevant certificate from an applicant to investigate the matters stated in the application. The appellant complains that the Councillors themselves did not carry out the task of investigation but delegated it to the County Council solicitor and his staff. A report was prepared by the solicitor and submitted to the Council for its consideration and if accepted, his approval. It is quite plain that there was no delegation of his power or function by the Council. The decision was reserved to the members of the Council. The duties required of the solicitor were to obtain and collate the relevant material. In those circumstances there is no room for the application of the maxim "Delegatus non potest delegare" as the

appellant suggests. In any case the authority could rely on the provision of section 101(1)(a) of the Local Government Act 1972.

Another complaint is that the Inspector was not legally qualified, and received any legal instruction from lawyers within the department of the Secretary of State. The short answer is that paragraph 10(1) of the 15th Schedule of the 1981 Act does not require the Inspector to be legally qualified. In the present context he would perhaps be more usefully qualified as a surveyor.

The appellant further contends that section 72(11) of the 1981 Act -- an amending section -- excludes reliance on the 20-year presumption of dedication contained in section 31 of the Highways Act 1980. The amended subsection is (10), which states:

"Nothing in this section or section 32 below affects section 56(1) of the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement) . . ."

Section 56(1) of the 1981 Act has already been set out in this judgment. The effect of the amendment is not to exclude reliance upon the 20-year presumption of dedication. The entry of a footpath on the definitive map is specifically stated to be "without prejudice to any question whether the public had any right of way other than that right". The subsection does not prevent the proving of additional rights of way other than the rights recorded in the plan, such as for example presumed dedication of a right of way following public user for twenty years.

The last ground to be dealt with concerns an allegation that there was no evidence before the Inspector that the provisions of schedule 15 had been complied with in regard to objections and notice. In this appeal it remained no more than an allegation. Unless there is specific evidence to the contrary the presumption of regularity applies.

No point has been taken that those several grounds of appeal are not within the terms of Schedule 15 paragraph 12 of the 1981 Act, which sets out the matters which may be challenged by a person aggrieved.

I would dismiss the appeal.

SCOTT LJ

I agree with the judgment of Farquharson LJ. Before this court the appellant raised a point not mentioned in his notice of appeal to this court.

The point is, as Farquharson LJ has described it, of a geographical nature. The appellant contends that footpath No 6 is separated from Cuckoo Lane by a rectangular area of ground over which there are no public rights of way. So, he contends, the upgrading of footpath No 6 to the status of bridleway cannot give any right to those on horseback to go from the bridleway to Cuckoo Lane.

The answer to this point is to be found, in my judgment, in the contents of the Definitive Statement relating to footpath No 6.

The original Statement is headed "Concise Description of Path to include Width, Nature of Surface, Means of Access, Obstructions, etc".

The contents of the Footpath No 6 Statement are as follows:

"From: Cannington Lane

To: Gore Lane

Description: The path is a Footpath. It starts at Unclassified County Road, Cannington Lane, by Loomhouse and proceeds first south-eastwards then north-eastwards past the western side of Horseman's Hill Cottages following Horseman's Hill to Cuckoo Lane and Footpath No 8, thence across the railway and fields and a short length of Private Accommodation Road (not repairable by the inhabitants at large) to join the County Road C 183, Gore Lane by Hook Farm."

This description of Footpath No 6 includes what was originally Footpath No 9. The important point for present purposes is that the footpath is described as leading "to Cuckoo Lane and Footpath No 8."

It is clear from this description that access could be obtained from Footpath No 6 either to Footpath No 8 or to Cuckoo Lane. The appellant's proposition that access could not be obtained from Footpath No 6 to Cuckoo Lane is inconsistent with the contents of the Statement.

The Statement relating to Footpath No 6 that I have just read was made pursuant to Section 32(4) of the 1949 Act. Section 32(4) provides, *inter alia*, that

"A definitive map and statement . . shall be conclusive as to the particulars contained therein . . . to the following extent, that is to say --

(a) . . .

(b) . . .

(c) . . . any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date . . ."

Section 33 of the 1949 Act provided for periodical reviews.

If a statement showed incorrectly the position of a footpath or bridleway, the error could be corrected on a review. These provisions have been repeated in the 1981 Act (see section 56(1)(a) and (e)).

The Definitive Map Modification Order 1987, which is being challenged by the appellant in these proceedings, was made by the Devon County Council on 18th November 1987. It substituted the following Definitive Statement for the original Statement:

"Path No 6: This path is a bridleway for part of its length and a footpath for the remainder. It begins as a bridleway at the Unclassified County Road known as Cannington Lane at GA SY 31689231 and enters a field OS No 7624 by the property shown as Loomhouse on the plan annexed to the Order. It travels southeastwards for a short distance before turning northeastwards across a field, then past the western side of Horseman's Hill Cottages, following Horseman's Hill along a metalled road until it reaches the western end of the Unclassified County Road known as Cuckoo Lane by the property shown as Cuckoo Hill Cottages on the plan annexed to this Order. This is at point GR SY 32139276. The path then continues as a footpath . . ." etc.

So this Statement, too, describes the route taken by Path No 6 as leading to Cuckoo Lane.

The Modification Order was confirmed by the Inspector in his Decision letter dated 22nd December 1988. In para 8 of the letter the Inspector describes the route of the path by saying this:

"On reaching a bend to the right in front of Cuckoo Hill Cottage the driveway becomes an adopted lane called Cuckoo Lane . . ."

The appellant appealed to the High Court under para 12 of Schedule 15 to the 1981 Act. In his grounds of appeal the appellant stated that:

"The Definitive Map and Statement show that Footpath No 6 Uplyme runs well clear of the end of the adopted highway Cuckoo Lane. The Inspector notes this in point 8 of his 22nd December 1988 Public Inquiry Report".

The Definitive Statement is to the reverse effect, as is paragraph 8 of the 22nd December 1988 Decision letter.

In my judgment, the appellant's geographical point is one that it was not open to him to take in the High Court and that he cannot take before us.

Once the original Definitive Statement had stated that the route of the footpath No 6 went "to Cuckoo Lane", the route was thereby fixed until such time as it became varied by an appropriate Modification Order. The 1987 Modification Order confirmed that route. It did not purport to vary it. It also upgraded the path from footway to bridleway. If the appellant had succeeded either before the Inspector or in the High Court, in having the Modification Order set aside, that success would not have altered the route. The route would have remained as stated in the original Definitive Statement. Foot users would have been entitled to go from path No 6 to Cuckoo Lane.

If the route as stated in 1957 and confirmed in 1987 is, as the appellant contends, incorrect, the appellant must endeavour to persuade the County Council to make a Modification Order correcting the error. This point is not a relevant objection to the 1987 Modification Order whereby the status of the path was upgraded to bridleway but the position of the path was not altered.

I would dismiss this appeal for the reasons given by Farquharson LJ.

SIR JOHN MEGAW

I agree that the appeal should be dismissed for the reasons given in judgments of Farquharson and Scott LJJ.

Appeal dismissed with costs; application for leave to appeal to the House of Lords refused.