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Queen's Bench Division

***Regina (Norfolk County Council) v Secretary of State for the Environment, Food and Rural Affairs**

[2005] EWHC 119 (Admin)

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2004 Dec 13, 14;
2005 Feb 10

Pitchford J

Highway — Right of way — Definitive map — Discrepancy between starting point of footpath as shown on map and as described by accompanying statement — Council ordering modification of map to conform with statement — Inspector requiring cogent evidence that position shown on map incorrect — Inspector refusing to confirm order — Whether position shown on map to prevail over position described by statement — Whether evidential presumption in favour of position shown on map — Wildlife and Countryside Act 1981 (c 69), ss 53(2)(3), 56

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The council's definitive map and statement of public rights of way included a public footpath. The footpath's starting point as described by the statement was some 30 metres to the east of its starting point as shown on the map. The council made an order under section 53(2) and (3)(c) of the Wildlife and Countryside Act 1981¹ modifying the map so that it showed the footpath starting at the point described by the statement. Following objections to the order the Secretary of State appointed an inspector to hold a public inquiry to decide whether the order should be confirmed. The inspector found that her task was to decide whether there was cogent evidence to show on the balance of probabilities that the map was in error and the statement was correct. She concluded that she could not resolve the conflict between the map and the statement, and refused to confirm the order. The council sought judicial review of the inspector's decision.

On the claim—

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Held, (1) that for the purposes of section 56 of the Wildlife and Countryside Act 1981, the definitive map was the primary and source document, and if the accompanying statement could not be read as supplying particulars of the position of the footpath shown on the map then the position as shown on the map prevailed over the position described in the statement; and that, therefore, the definitive map was conclusive evidence unless and until review under section 53(2) (post, paras 38, 73).

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(2) Allowing the claim, that at review under section 53(2) neither the map nor its accompanying statement was conclusive evidence of its contents; that in the case of irreconcilable conflict between the map and the statement, there was no evidential presumption that the map was correct and the statement was not; that each should be accorded the weight which analysis of the documents themselves and the extrinsic evidence, including the situation on the ground on the relevant date, demonstrated was appropriate; that the judgment to be exercised was whether, under section 53(3)(c)(iii), any particulars contained in the map and statement required modification unless it emerged that either a new footpath should be added or the footpath shown on the map, or part of it, should be deleted altogether; that the inspector had wrongly applied a presumption in favour of the map at the expense of the statement and failed to give consideration to the merits, if any, in the particularity with which the terms of the statement were drawn; and that since the inspector's decision might have been different if she had not done so, it would be quashed (post, paras 64, 67, 72–73).

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¹ Wildlife and Countryside Act 1981, s 53: see post, para 14.
S 56: see post, para 16.

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Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] 1 WLR 1264, CA distinguished. A

The following cases are referred to in the judgment:

R v Secretary of State for the Environment, Ex p Burrows [1991] 2 QB 354; [1990] 3 WLR 1070; [1990] 3 All ER 490, CA

R v Secretary of State for the Environment, Ex p Kent County Council (1994) 93 LGR 322 B

R (Leicestershire County Council) v Secretary of State for the Environment, Food and Rural Affairs [2003] EWHC 171 (Admin)

Rubinstein v Secretary of State for the Environment (1987) 57 P & CR 111

Simplex G E (Holdings) v Secretary of State for the Environment (1988) 57 P & CR 306, CA

Suffolk County Council v Mason [1979] AC 705; [1979] 2 WLR 571; [1979] 2 All ER 369, HL(E) C

Todd v Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 1450 (Admin); [2004] 1 WLR 2471; [2004] 4 All ER 497

Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 266; [2001] 1 WLR 1264; [2001] 3 All ER 166, CA

Walwin (L E) & Partners Ltd v West Sussex County Council [1975] 3 All ER 604

No additional cases were cited in argument. D

CLAIM for judicial review

By a claim form issued on 10 May 2004 the claimant, Norfolk County Council, sought judicial review of the decision contained in a letter dated 17 February 2004 of Mrs Erica Eden, an inspector appointed by the Secretary of State for the Environment, Food and Rural Affairs, by which she refused to confirm the Norfolk County Council (Pentney Footpath No 12 (Part)) Modification Order 2003, made by the claimant on 3 March 2003, modifying the claimant's definitive map and statement so that the position of Footpath No 12 as shown on the map was in conformity with its position as described in the statement. E

The facts are stated in the judgment.

George Laurence QC and *Ross Crail* for the claimant council. F

Timothy Morshead for the Secretary of State.

Cur adv vult

10 February 2005. **PITCHFORD J** handed down the following judgment.

1 This is an application for judicial review of the decision of the defendant's inspector of 17 February 2004 refusing to confirm the Norfolk County Council (Pentney Footpath No 12 (Part)) Modification Order 2003. G

2 The claimant is the surveying authority for the county of Norfolk. The definitive map and statement for the county includes a public footpath in the parish of Pentney, known as Pentney Footpath No 12 ("FP12"). Its southern junction is with Back Lane in the village of Pentney. The footpath proceeds in a generally northern direction, through the grounds of a residential property, across fields until, after some 536 metres at its northern extremity, it meets, at a footbridge in the parish of East Winch, Footpath No 11 ("FP11"). FP11 continues also in a generally northern direction until it terminates, after about 804 metres, at a level crossing on the King's Lynn H

A to Swaffham A47 road. The definitive map is drawn to a scale of six inches to one mile. I have converted to metric measurement as did the inspector. The relevant part of the statement accompanying the map reads:

B “Footpath No 12 (Narborough Road to parish boundary). Starts from the Narborough Road by a field gate between Morton’s shop and the King William IV public house and runs northwards to the parish boundary, where it joins East Winch Footpath No 11 at a footbridge.”

C 3 There is no evidence before me (nor was there before the inspector) whether the former name of Back Lane was Narborough Road but Back Lane is one of two routes through Pentney to Narborough. The position on the ground at which FP12 meets Back Lane as depicted in the definitive map is the western edge of the grounds of Bramborne House on the north side of Back Lane (point C: see para 4 below). The junction as described by the definitive statement is some 30 metres to the east, on the same road, at a field gate which used to be situated between the two properties, Morton’s shop and the King William IV public house (point B). On 13 August 2000 Mr and Mrs Osborne, owners of Bramborne House, made a request of the claimant to modify the definitive map in conformity with the definitive statement. Investigations commenced.

D 4 On 3 March 2003 the claimant made the order identified in para 1 under section 53(2)(b) of the Wildlife and Countryside Act 1981. Annexed to the order was the order map. Attached to this judgment is a copy of the order map identifying points A, B and C, with the additional points “Q” and “R” annotated upon it*. Objections to the order were received from E Mr R G Sizeland (since deceased), owner of the King William IV public house, and others. The inspector held a public local inquiry under section 53 of and Schedule 15 to the Wildlife and Countryside Act 1981 on 16 and 17 December 2003. The inspector did not make a decision whether the definitive statement, despite its apparent inconsistency with the definitive map, could be read compatibly with the map as explained below. As she was invited by the parties, she treated the issue as one of incompatibility between F the map and the statement and proceeded to judge between them. Her decision letter refusing to confirm the order was issued on 17 February 2004. The claim was issued on 10 May 2004 and permission to proceed was granted by Sullivan J on 6 July 2004.

G 5 The claimant’s case is that as a matter of law the statement should have been given precedence over the map; alternatively, that the inspector, when judging the cogency of the oral and documentary evidence before her, wrongly failed to accord evidential weight to the statement. Four issues arise for decision. (1) When there is a conflict between the terms of the definitive map and its accompanying statement which should, if either, as a matter of law, prevail? (2) In the event of conflict what evidential weight, if any, should be accorded by the surveying authority and/or the inspector to the H map on the one hand and the statement on the other? (3) Did the inspector err in her approach to the question whether the claimant’s order should be confirmed? (4) If there was an error in the inspector’s approach, should her decision be disturbed?

* Reporter’s note. The order map is not reproduced in this report.

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6 Issues 1 and 2 require an examination of the statutory scheme under which the definitive map and statement were prepared. A

The statutory scheme

7 The definitive map and statement, as they affect FP12, have not been modified since they were issued under Part IV of the National Parks and Access to the Countryside Act 1949 some time after the “relevant date”, 21 November 1956. B

8 Section 27 of the 1949 Act required the claimant to carry out a survey of public rights of way and to prepare a *draft* map of its area showing footpaths and bridleways “wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date”, the relevant date being a date not earlier than six months before notice of preparation of the map was published. The claimant was required to annex to the draft map a statement specifying the relevant date and “such particulars appearing . . . to be reasonably alleged as to the position and width [of any public path or other way shown on the map] . . . as . . . it is expedient to record in the statement”. By section 28 the claimant had an obligation to consult district and parish councils enabling the councils to provide relevant information. C

9 Following publication of the draft map, section 29 enabled any landowner affected by it to require the claimant to identify the documents of which it took account when preparing the draft map. If objection or representation was received, the claimant was required to consider it and notify the landowner of its determination whether, and in what respect, to modify the draft map. There was a right of appeal to the minister, heard by an inspector. D

10 Once the draft map and statement (as/if modified) were complete section 30 required the claimant to prepare a *provisional* map and statement notice of which was to appear in the “London Gazette” and at least one local newspaper. Section 31 gave a right of appeal to any owner, lessee or occupier of land to which the notice related, to quarter sessions, with a further right of appeal to the High Court upon a point of law. E

11 Finally, following all the foregoing procedures, section 32 required the claimant to prepare the *definitive* map and statement with notice to the “London Gazette” and a local newspaper where copies could be inspected. The particulars to be contained were those in the provisional map and statement (as/if modified) and every statement was to contain the relevant date specified in the corresponding provisional statement. The procedure, which culminated in the publication of the definitive map and statement, produced a statutory presumption of the conclusiveness of public rights of way which the map and statement showed. F

12 Thus, by section 32(4) of the 1949 Act:

“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 the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date . . . a footpath as shown on the map . . . and (c) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any G

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A date, as to 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 . . .”

13 Accordingly, the definitive map and statement have stood unmodified since preparation, probably in the early 1960s, as conclusive evidence of FP12.

B 14 Section 33 of the 1949 Act and its later amendment by the Countryside Act 1968 provided for periodical review and, as required, revision of the definitive map and statement in certain circumstances. Those provisions have been replaced by section 53 of the Wildlife and Countryside Act 1981, which provides:

C “(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.

D “(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 available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies . . . (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

E 15 The claimant made its FP12 order under section 53(2) and (3)(c)(i) and (iii), removing the footpath between points A and C on the attached plan and adding a footpath between points A and B.

F 16 It is agreed that for present purposes the effect of section 32(4) of the 1949 Act as to the conclusiveness of the map and statement respectively is the same as under the re-enactment in section 56 of the 1981 Act. Section 56 of the Wildlife and Countryside Act 1981 reads:

G “(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 . . . (e) *where by virtue of the foregoing paragraphs the map is conclusive evidence*, as at any date, as to a highway 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 that date . . .”

H “(4) A document purporting to be certified on behalf of the surveying authority to be a copy of or of any part of a definitive map or statement as modified in accordance with the provisions of this Part shall be receivable

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in evidence and shall be deemed, unless the contrary is shown, to be such a copy.” (My emphasis.)

The inspector’s decision

17 The claimant and the objectors proceeded before the inspector upon the common ground that the terms of the map and the statement were irreconcilable. Thus, at para 7 of her decision letter, the inspector wrote:

“The main issue is therefore whether the evidence discovered by the council, when considered with all other relevant evidence available, shows that, on the balance of probabilities, the definitive map and statement require modification because: there is no public right of way over land shown on the map and statement as a highway of any description or any other particulars require modification; and a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.”

And, at para 8:

“The case for the order rests on an error having been made on the definitive map, that the description in the definitive statement is correct and that the map should be amended accordingly.”

And, at para 9:

“Department of the Environment Circular 2/93, Annex B advises surveying authorities that in the case of deletions the conclusive evidential effect of definitive maps and statements means that the evidence must show that no right of way existed at the relevant date of the definitive map on which the way was first shown. The relevant date in this case is 21 November 1956.”

And finally, at para 10:

“I do not consider that I can look at the events specified in section 53(3)(c)(i) and (iii) in isolation, as they are interdependent. I will consider whether there is cogent evidence to show on the balance of probabilities that the map is in error and the statement is correct.”

It is this evidential presumption applied by the inspector at the expense of the statement which is challenged by the claimant.

18 Having considered the oral and documentary evidence, including Ordnance Survey maps of 1885, 1888/91, 1905 and 1906, parish council minutes of 1901 and 1956 and photographs, and having carried out a site visit with and without the parties, the inspector concluded, at para 81 of her decision letter:

“I have considered if there is cogent evidence as to whether the map is incorrect and therefore there is no public right of way or the statement is correct and therefore the path subsists or is reasonably alleged to subsist. I find that the evidence shows there is no physical path on the line to be deleted and there is no evidence that use has taken place. There is also no evidence of substance that there is no public right of way. The map evidence for the path to be added is tenuous and undermined by the different lines shown by the parish council and others. I am not satisfied,

A on the balance of probabilities, that the parish council descriptions are sufficiently clear when put in the balance against the lack of substantiated use by the public and the obstructions in the 1950s to show that a path subsists or is even reasonably alleged to subsist. I find that on the evidence available to me I cannot resolve the conflict between the map and statement and therefore I am unable to confirm the order.”

B *Issue (1)—the claimant’s case*

19 Mr Laurence submits on behalf of the claimant that, as a matter of statutory construction, the definitive statement takes precedence over the definitive map. Accordingly, in law, the conflict between the two should have been resolved in favour of the statement.

C 20 Mr Laurence’s argument begins with a consideration of section 53. There is no machinery in the statute specifically designed to provide for resolution of a conflict between the map and its statement. There is, as far as counsel are aware, no existing authority upon the means by which and the principles upon which such a conflict is to be resolved by a surveying authority, an inspector or, indeed, a member of the public wishing to know what rights of way exist.

D 21 There are, under section 53, two possibilities: either section 53(3)(c)(i) and (iii) can be applied together to remove one path and insert another, or in the alternative, under paragraph (iii) “any other particulars contained in the map and statement” can be modified: *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354, 389B, per Glidewell LJ. However, neither approach will be effective unless
E “the discovery of evidence” demonstrates the need for modification. What if there is no new evidence (that is evidence discovered since publication of the definitive map and statement) or the evidence provides a stalemate, as in the case of FP12? There ought to be, it is submitted, a means of establishing what is the true route of FP12, if necessary by the imposition of a presumption that one will prevail, in the case of conflict, over the other.

F 22 Since there was, under section 33 of the 1949 Act before amendment in 1968, no means by which a way could be *removed* from the map or particulars amended (as under section 53(3)(c)(iii) of the 1981 Act), it was important that there was a reliable way of resolving conflict so as to identify what the route actually was. Description in words being the more precise medium, it is submitted that Parliament should be taken to have intended the statement to prevail. It is highly improbable that Parliament intended
G thereafter to reverse the precedence between the map and the statement.

H 23 The claimant argues that in any event the words of section 56(1)(e) of the 1981 Act provide the answer. If the statement purports to contain particulars of the footpath, then those particulars must prevail since “any particulars contained in the statement as to the position . . . thereof shall be conclusive”. The statement does purport to contain particulars of FP12. It says so. It matters not, the claimant submits, whether the way shown on the map is in conflict with the terms of the statement as to the footpath’s position provided that the map and statement identify the same footpath, as is the case with FP12. Once that requirement is satisfied the particulars in the statement prevail by reason of the terms of paragraph (e). The general in paragraph (a) yields to the particular in paragraph (e).

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24 This construction, so it is submitted, makes practical good sense. The map and statement must be read together: see *L E Walwin & Partners Ltd v West Sussex County Council* [1975] 3 All ER 604, 608J. It is not necessary to pore over the map, which may have been prepared on a small scale and without attention to detail, to see whether it describes the same route as the statement. In the *Walwin* case the map and statement when read together demonstrated that the right of way extended to the foreshore. It is necessary for the interested member of the public only to establish that the map in general shows a path which the statement purports to particularise.

Issue (1)—the defendant's case

25 It is the defendant's case that where irreconcilable conflict exists the map prevails. The map was prepared under a statutory duty (section 27(1) of the 1949 Act) to mark upon it any, and every, footpath which, in the opinion of the claimant, subsisted or was reasonably alleged to have subsisted on 11 November 1956. There was a duty (section 27(4)) to identify the relevant date in the definitive statement ("shall annex thereto a statement specifying the relevant date") but no duty, only a discretion, to include particulars of the position of any footpath ("as in the opinion of the authority it is expedient to record in the statement").

26 The primacy of the map was recognised by the words used in section 29(2) of the 1949 Act giving any owner of land "to which the draft map and statement relate" the right to identification and inspection of the "documents (if any) creating or modifying any of the rights of way shown on the *draft map*". Furthermore, the landowner would not have been entitled to challenge at quarter sessions a footpath described in the statement, only a footpath marked on the map, since section 31(1) applied to any owner of land shown on the map to which the notice of the provisional map related, "being land on which the *map* shows a public path . . ." Objection could be taken under section 31(1)(a)–(d) only in respect of a way shown on the map.

27 Mr Morshead argues that under section 56(1)(a) and (e) of the 1981 Act the particulars in the statement could only be conclusive evidence of that of which the map itself is conclusive, namely the position of the footpath "as shown on the map" and could not be conclusive of a footpath which was not shown on the map. In the case of a conflict between the two the particulars in the statement could not prevail since if they did, the condition upon which the conclusiveness of the statement depended (viz the conclusiveness of the map under paragraph (a)) would be deprived of effect.

28 The defendant does not agree that words of description provide a more precise form of identification than a map. They may or may not, depending upon the precision of the words used and the quality of the markings on the map. The claimed precision of words should not form any aid to construction of the section.

29 My attention was drawn to guidance issued by the minister on 17 February 1950 to county councils and others for the approach to the surveying task under sections 27 and 28 of the 1949 Act. Both parties relied upon it, the claimant to demonstrate the particularity with which the statement was concerned, and the defendant to demonstrate that the statement depended for its existence upon the identification of rights of way already shown on the map. The minister informed councils that the paper *Surveys and Maps of Public Rights of Way* published by the Commons,

A Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association contained methods “approved as suitable for the purpose by the department”. It was advised that the map should be drawn and that the ways marked should be walked. Long paths should be divided and separately numbered. At para (h) of section 3 the pamphlet read:

B “The number of each path should be placed on the map as closely as possible to its starting point, this being clearly described at the beginning of the entry, referring to that path in the schedule.”

At para (j) it continued:

C “It is advisable to show on the maps with the appropriate symbol suggested in section 4 below, the position of every stile, gate, or other means of passage . . .”

The symbol for a field gate was “FG”. The commencement of FP12 from Back Lane was marked on the definitive map with “FG”.

30 At section 5, “The schedule”, the pamphlet advised:

D “This will accompany the maps and will form part of the survey. It will be the basis for the ‘statement’ which the Act requires that every surveying authority should prepare . . . Entries in the schedule should be concise but should contain all the detailed information about each path which cannot be conveniently recorded on the maps but is necessary for the purposes of the survey, or is likely to be helpful to the highway authority in respect of its duty to maintain all public paths.”

At para (b):

E “Entries in the schedule should be numbered to correspond with each path separately numbered on the map. Directly after the number give the symbol distinguishing the status of the path . . . and if considered helpful, the name of the path or its ultimate destination; *next describe its starting point* and then give concise information about such features occurring on the path, including symbols shown on the map, which require further explanation . . .” (Original emphasis.)

F 31 Mr Morshead submitted that the purpose of the guidance and of the statutory procedure was to create simplicity and clarity for ramblers and others who would not be expected to examine the minutiae of the statement. He relied upon the opinion of Lord Diplock expressed in *Suffolk County Council v Mason* [1979] AC 705, 715:

G “The way in which ramblers . . . are to be benefited is by providing them with an easy and conclusive way of proving their rights to walk . . . on particular routes.”

H 32 Thus, Mr Morshead submits, the map comes first and it is upon the map that the statement depends for any effect it may have. The correct approach to interpretation of the definitive map and statement is to examine them together and to decide whether, as a matter of fact and degree, the particulars in the statement can properly be regarded as describing the position of the footpath shown on the map. He tests this approach by posing the hypothetical question, what if the particulars purport to be describing FP12 but in fact describe the route along Chancery Lane between Strand and

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Holborn? It would be obvious that the statement was not doing what it purported to do and would have to be ignored. Whether the statement could be read consistently with the map would depend upon a number of factors but, unless it could be read consistently with the map, the map must prevail until new evidence permitted adjustment by modification order upheld, if necessary, by the inspector.

Issue (1)—conclusion

33 Having examined the terms of sections 29 and 31 of the 1949 Act, I consider that they are of limited assistance in a construction of section 32 and its modern equivalent, section 56 of the 1981 Act. Section 29(3) enabled the council, by its appointed person, to consider “any representation or objection . . . as to anything contained in or omitted from the *draft map*” who “shall determine what (if any) modification of the particulars contained in the *draft map and statement* appears . . . to be requisite in consequence thereof”.

34 Section 31(1)(c) enabled the applicant to quarter sessions to challenge the position of the public right of way “as indicated in the provisional *map and statement*”. Section 31(4) enabled quarter sessions, when declaring that it was not proved there was a public right of way over the applicant’s land as shown on the *map*, to make a further declaration in an appropriate case (where others interested had been given the opportunity to be heard), that there existed a right of way over other land and it was *that* “right of way which the surveying authority had in view when they showed on the map the disputed public path . . .” By subsection (5), where the landowner disputed the position or width of a right of way shown on the *map*, quarter sessions was empowered to make a declaration of the true position or width of the right of way “(being different both from that specified in the application and from that indicated in the provisional *map and statement*)”, provided that “every owner, lessee and occupier of any land which would be affected by the declaration” had an opportunity of appearing.

35 While it is right to say that qualification to make an application depended upon ownership of land shown on the map over which a right of way was marked, where there was a reasonable possibility of a finding either (1) that the right of way in fact existed over land owned by others, or (2) that the position of the right of way was other than that contained in the map or in the application, those interested should have been heard. Accordingly, the machinery existed for hearings to be held for the purpose of resolving the disputed route of FP12, at which both the owners of both the King William IV public house and the predecessors in title to the land now known as Bramborne House could have taken part. I find it distinctly unlikely that the owner of land over which a disputed public path was described in the statement would have been shut out simply because the map did not appear to show the same path.

36 I do not derive much assistance from the minister’s guidance since, it seems to me, the chances of error in the map, on the one hand, and the statement, on the other, were about equal. Neither one nor the other was more likely to be right in the absence of examination of features on the ground. Such an examination might or might not have been able to resolve the conflict. The fact the map was prepared first did not make it more likely

A that it was accurate and particulars in the statement inaccurate. All these considerations beg the question whether the map was to take precedence in the event of conflict.

B 37 I also agree with submissions made to me in writing in reply that while there was a statutory duty to prepare a map and a discretion what particulars, if any, to include in the statement, the fact the discretion was exercised itself demonstrates the importance which the surveying authority attached to those particulars. In the *Walwin* case [1975] 3 All ER 604 the definitive map was inconclusive whether the path reached the foreshore while the statement was specific. The definitive statement (which was also consistent with the provisional map and statement) provided particulars missing from the map.

C 38 I am, however, persuaded that the correct approach to interpretation of the definitive map and statement must be a practical one. They should be examined together with a view to resolving the question whether they are truly in conflict or the statement can properly be read as describing the position of the right of way. If they are in conflict, then the map must take precedence since the discretionary particulars depend for their existence upon the conclusiveness of the obligatory map. Unless the statement can properly be interpreted as describing the same footpath as that shown on the map, then the statement cannot be regarded as conclusive evidence of the position of the footpath shown on the map. The question whether the statement does describe the position of a footpath shown on the map is, I accept, a matter of fact and degree. That the statement purports, by reference to the same footpath designation number, to specify the position of a footpath similarly designated on the map is some but, in my view, inconclusive evidence that it in fact does so.

E 39 Had it been my task to make a judgment whether the particulars of FP12 contained in the statement should properly be regarded as describing the same right of way as that depicted on the map, I would have regarded the argument that they did as at least respectable.

F 40 I reach this view after a consideration of section 31 of the 1949 Act. Section 31(1)(c) enabled a landowner to assert at quarter sessions that “the position . . . of that part of the land over which the public right of way subsisted . . . was as specified in the application, and not as indicated in the provisional map and statement” (my emphasis). Section 31(3) and (5) gave power to quarter sessions to refuse the application or to make a declaration that the *position* of the right of way was as stated in the application or, if different from that shown in the application and in the map and statement, the true *position* as proved by the evidence. However, section 31(5) required that before the latter declaration could be made, those interested in “any land which would be affected by the declaration” rather than simply “the land” should be given the opportunity to be heard. This requirement implies that Parliament recognised the possibility of an error in the “position” of the right of way marked on a map of such magnitude that the true position of the same right of way was in fact across land owned by a person other than the section 31 applicant. Since the purpose of the discretionary particulars was to provide detail and clarity as to the position of a right of way shown on the map, it seems to me probable that it was Parliament’s intention, by this means, to facilitate certainty where possible rather than to set up obstacles to certainty.

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41 During argument Mr Morshead accepted that if in a *Leicestershire County Council* situation (see paras 43 and 51 below) the map had a path immediately to one side of the boundary, while the statement described a way across the land immediately on the other side of the boundary (therefore in different occupation or ownership) the statement could reasonably be held to be describing the position of the footpath marked on the map. In my view, this was an appropriate concession. It seems to me the judgment whether the statement was describing the position of the footpath marked on the map need not require the precision of a slide-rule.

42 The measurement on the definitive map between points B and C is 1 to 2 millimetres, represented on the ground by a distance of 30 metres. It seems to me that this is within the tolerance permitting a conclusion that the statement was indeed providing particulars of the public right of way marked on the map. This is not, however, a judgment the inspector was called upon to make because the case was presented to her as one of conflict. As to the means of resolution of the issue what is the right of way in the absence of discovery of evidence, it is my view that the appropriate course would be an application for a declaration.

Issue (2)—authority

43 My attention was drawn to two first instance decisions: *R v Secretary of State for the Environment, Ex p Kent County Council* (1994) 93 LGR 322 and *R (Leicestershire County Council) v Secretary of State for the Environment, Food and Rural Affairs* [2003] EWHC 171 (Admin). Neither was concerned with a conflict between the definitive map and its statement. Both were concerned with competing routes. In the *Kent County Council* case 93 LGR 322 it was common ground between those before the inspector that there was a right of way between points A and B on the map and also common ground that there was no right of way between points B and C. The county council was seeking to delete the whole length of the right of way between points A (B2067 road) and C (footpath FP AE588). At a first public inquiry the inspector proposed that route B–C be removed and B–D added so as to maintain a footpath from the B2067 road at point A to FP AE588 at point D via point B. At a second inquiry the evidence persuaded the inspector there was no public right of way between points B–D. He declined to delete any part of the footpath A–C on the grounds that, despite the common ground between the parties, section 56(1)(a) of the 1981 Act rendered conclusive the evidence of the map and statement. There was a public right of way but its route was uncertain. He could not use powers available under section 53(3)(c)(iii) to delete the whole length of the footpath. The council should consider using its powers under sections 118 and 119 of the Highways Act 1980, as amended, to stop up or divert highways.

44 The decision was criticised by the county council on the ground that “having decided that part of the line shown on the definitive map and statement did not represent a right of way and that the precise location of the original right of way was uncertain and unidentifiable the inspector should have confirmed” the deletion of the whole. Turner J found, at p 331:

“It seems inherently improbable that what was contemplated by section 53 was the deletion in its entirety of a footpath . . . of a kind

A mentioned in section 56 of the 1981 Act, the existence, but not the route, of which was never in doubt.”

45 The Secretary of State submitted that section 53(3)(c)(iii) could only be called into play where, on the evidence, it was shown that there was *no* right of way, not merely a question of its route over the ground. Had the inspector acceded to the order, part of a footpath known to exist would have
B been deleted. Turner J accepted the Secretary of State’s argument.

46 Mr Laurence argues that the *Kent County Council* case was wrongly decided. It was common ground that no right of way existed between points B and C. At the least the inspector should have exercised his power under section 53(3)(c)(iii) to delete the path between those points, since paragraph (iii) enabled the removal of *a* right of way over land shown on the map and statement, or the modification of any other particulars shown on the map
C and statement. I do not understand Mr Morshead to dispute that section 53 did in fact give the inspector power to delete part of the footpath provided he was satisfied it was “requisite in consequence of the occurrence” of the paragraph (iii) event. He explains the decision by reference to the position taken by the county council on the application for review. It was still seeking the removal of the whole footpath and, on any view, that would not have
D been appropriate. I agree.

47 Before turning to the *Leicestershire County Council* case I should consider the decision of the Court of Appeal in *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] 1 WLR 1264 upon the status of the definitive map. Again it should be noted that there was no conflict between the map and statement. The terms of the statement did not feature in Lord Phillips of Worth Matravers MR’s judgment. Information
E gathered during the survey prepared under section 27 of the National Parks and Access to the Countryside Act 1949 led a rural district council to record the existence of a bridleway 3 miles in length. The bridleway became bridleway 8 in the definitive map and statement. Later inquiries led the county council to believe that there was a public right of way but on foot, not on horseback. Eventually the inspector concluded that there was no
F right of way of any description along bridleway 8 save for a short stretch along a highway called Sawley Lodge Drive.

48 I need not rehearse the arguments for and against the inspector’s decision, which was upheld. What is relevant for present purposes are the observations of Lord Phillips MR upon the effect of the statutory scheme. Lord Phillips MR said, at para 38:

G “Where the . . . inspector . . . has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence
H has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult

will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

49 Lord Phillips MR noted with approval, at para 39, that it was in consequence of the decision of the Court of Appeal in *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354 that the Secretaries of State for the Environment and Wales issued guidance in Circulars 18/90 and 45/90 emphasising the importance of the definitive map as a source of evidence:

“The evidence needed to remove a public right from such an authoritative record, will need to be cogent. The procedures for identifying and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years, without being questioned earlier.”

50 It is notable that the inspector’s decision to remove the bridleway had the effect of creating culs-de-sac for footpaths which, before its removal, had joined it. None the less the court held that the inspector was entitled to reach the decision he did on the evidence.

51 In the *Leicestershire County Council* case [2003] EWHC 171 (Admin) it was common ground that there was a right of way along FP B19 to a main road. The issue was whether the right of way entered and crossed the land of Glebe Cottage or the land of Manor Cottage (which adjoined each other) to emerge on to that main road. The map showed the path traversing land within the curtilage of Glebe Cottage and the inspector declined to modify the map. There were no relevant particulars of the footpath in the statement. Collins J was considering an oral application for leave which was, if appropriate, to be treated as the substantive application after full argument. The application was dismissed. Collins J held that the burden of disproving the particulars on the map in favour of an alternative route was similar to that which applied to remove a footpath from the map altogether. He said, at para 28:

“If he [the inspector] is in doubt and if he is not persuaded that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive . . .”

Issue (2)—the claimant’s case

52 Mr Laurence submits that the presumption that the definitive map and statement are, when they are consistent, correct means that the statement of itself must be accorded weight. The conclusion in *Trevelyan’s* case [2001] 1 WLR 1264 that the statutory procedure under the 1949 Act gives rise to a presumption that evidence existed at the time the map was prepared, applies as much to the statement as it does to the map. Accordingly, where they are in conflict with one another and new evidence is

A being considered it is not permissible to start from the point that the map is correct unless outweighed by the extrinsic evidence.

53 There were three approaches which, it is submitted, the inspector could have adopted: (1) the statement should have prevailed as a matter of law (see issue (1) above); (2) in the event that neither the map nor the statement prevailed as a matter of law, the statement, by reason of its particularity, should have outweighed the map as a source of evidence; or
B (3) neither the statement nor the map gave rise to any presumption but the cogency of each should have been judged together with the relevant extrinsic evidence to decide which, if either, described the correct route.

54 The claimant's case is that the inspector fell into error by adopting none of these approaches. Instead, she started from the presumption that the map was correct and required cogent evidence to demonstrate that the map
C was wrong and the statement was correct. She should at least, it is submitted, have regarded the words used in the statement as some evidence of the existence of the order right of way. They were compiled under the same statutory scheme as the map and deserved the same careful consideration as the map. The reference in the statement to the precise position of the field gate appears to have been afforded no weight, when on
D any view, it must have been a detail which required close examination. In the absence of a presumption of law in favour of the statement as contended, the real test on the facts of this case was, in the light of the extrinsic evidence in support of the map and the statement respectively, which was, on a balance of probability, correct.

55 I was invited to pay regard to the opinion of Purchas LJ in *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354, 380:

E "It would, in my judgment, be strange if the detailed and extensive provisions of section 53 were to be inhibited in important or material respects from achieving an accurate, up-to-date record. This would be particularly so if, notwithstanding the discovery of new evidence, an error which had been detected on the definitive map or in the statement would nevertheless be perpetuated."

F *Issue (2)—the defendant's case*

56 Mr Morshead submitted that once the inspector was presented with a conflict between the map and the statement she had no alternative but to apply the *Trevelyan* presumption to the map. The statement had been put aside because it did not provide particulars of the way shown on the map.
G Therefore, it had no evidential status. The only inference which the statement could support was that an error in the preparation of the map and statement had occurred. It did not assist the judgment whether the error was in the map or the statement. By reason of the primacy of the definitive map, evidence on a balance of probability was required to displace it. That could be achieved by adducing evidence of the manner in which the error had occurred (of which there was none) or evidence that the only public right of
H way was that depicted in the order map (which was insufficient).

Issue (2)—conclusion

57 I have already accepted Mr Morshead's submission that, subject to modification, the definitive map must be regarded as authoritative. It does

not, in my view, follow that there must be a presumption in favour of the map at the expense of the statement during the process of review. It is necessary to consider the statutory provisions under which modification of the definitive map and statement is achieved.

58 By section 53(2)(b) and (3)(c) of the Wildlife and Countryside Act 1981 (see para 14 above) the surveying authority is required to make such order modifying the map and statement as appears to them requisite upon the discovery of evidence which (when considered with all other relevant evidence) shows that (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist; or (ii) a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description; or (iii) there is no public right of way over land shown in the map and statement; or any other particulars contained in the map and statement require modification.

59 By subsection (4) the modifications which may be made under subsection (2) shall include the addition to the statement of particulars as to the position of any public path which is or is to be shown on the map.

60 Throughout the relevant sections of the Act the map and statement are treated as complementary. That is not surprising since the object of the surveying exercise under the 1949 Act was to achieve certainty and, therefore, compatibility. Save for the second qualifying clause of subsection (3)(c)(iii) ("or any . . . particulars contained in the map and statement require modification") section 53(3)(c) does not appear to contemplate any modification required in consequence of a conflict between the definitive map and its statement.

61 In the event that the order is opposed and a local inquiry held, the Secretary of State's inspector is required to make a judgment whether on a balance of probability each modification ordered should be confirmed. In *Todd v Secretary of State for the Environment, Food and Rural Affairs* [2004] 1 WLR 2471, Evans-Lombe J, in a wide-ranging and closely considered review held that the standard of proof to be applied by the inspector to the determination of the order modification was the civil standard. While the lower standard "reasonably alleged to subsist" was sufficient under section 53(3)(c)(i) to produce a modification order adding a public right of way, the local public inquiry is held to resolve the competing evidence. At that stage the inspector is deciding what will be entered in the definitive map as, under section 56, conclusive evidence. It cannot have been Parliament's intention to require a lower standard of proof to change the map in order to add a right of way (section 53(3)(c)(i)) than to change the map in order to delete a right of way (section 53(3)(c)(iii)). I find the reasoning (at pp 2493–2496) and the conclusion compelling.

62 In the usual case the inspector will commence with the *Trevelyan* evidential presumption that the map is correct. However, it is apparent that the Court of Appeal in *Trevelyan's* case [2001] 1 WLR 1264 did not have in mind the possibility of a conflict between the map and the statement when identifying and explaining the reasons for the presumption in favour of a public right of way shown on the map. The reason for the presumption is encapsulated in two sentences in the quotation from para 38 of Lord Phillips MR's judgment set out at para 48 above:

"If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map.

- A In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed.”

The very fact that the map and statement are in conflict tends to demonstrate that an error occurred in the preparation either of the map or the statement or possibly both. It does not seem to me that in circumstances such as these the factual assumption of regularity in the preparation of the map but irregularity in the preparation of the statement can be justified.

- B 63 I cannot agree with Mr Morshead’s argument that once the primacy of the map under section 56 is acknowledged the contents of the statement are of no value in a consideration of the evidence by the inspector; nor do I accept that in a case of conflict the *Trevelyan* presumption applies in favour of the map at the expense of the statement. It is important to distinguish between two forms of “presumption”. Section 56 renders the map
C conclusive evidence. As Glidewell LJ observed in *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354, 388–389:

- “There are two alternative ways in which the deletion and downgrading provisions in section 53(3) may be reconciled with the provisions of section 56. The first is that adopted by Taylor J in
D *Rubinstein v Secretary of State for the Environment* (1987) 57 P & CR 111, namely by treating section 56 as pre-eminent and as limiting the operation of section 53(3). The alternative course is to interpret section 56 as not applying to the review process in section 53 at all so that the review starts from what is shown in the definitive map, but does not for its purposes treat the definitive map as conclusive. For all other purposes within the limits laid down by section 56(1) the definitive map is
E conclusive. In particular it is conclusive evidence in any dispute that may arise between a landowner . . . and . . . [users] . . .”

Rubinstein v Secretary of State for the Environment 57 P & CR 111 was overruled by the court in *Burrows*’s case. The only presumption capable of applying at the review stage is thus the evidential presumption identified by the court in *Trevelyan*’s case.

- F 64 Where the map and statement conflict as to the position of a public right of way I can see no basis for the application of an evidential presumption in favour of one at the expense of the other. As Mr Laurence rightly observes, the fact-finder starts from the position that both the map and the statement were prepared following the correct procedures. Save perhaps in the case of demonstrably false particulars in the statement, the natural inference is that the surveying authority was at least attempting
G conscientiously to record the position of the footpath shown on the map. What is required at review is, in my judgment, simply a consideration which (or which other) route, on a balance of probability, is correct, if any, in the light of all the relevant evidence, including the terms of the map and statement. The judgment being exercised in a case such as this is whether, under section 53(3)(c)(iii), any particulars in the map and statement require
H modification unless it emerges that either a new footpath should be added or the footpath shown on the map, or part of it, should be deleted altogether. It may, by an examination of the documents together and an inspection on the ground, be a straightforward task to identify the mistake or inaccuracy in the preparation of the documents. It would be inappropriate in such an exercise to impose what would be an artificial presumption in favour of one

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document or the other simply because, until modification, it is treated as the primary document. For example, the precision of terms used in the statement may, by reference to features on the ground, provide a compelling case, subject to extrinsic evidence, that an error was made in the marking of the way on the map. On the other hand, the terms of the statement may be so at odds with natural features on the ground that it demonstrably cannot be relied upon for any purpose.

Issue (3)—the inspector's approach

65 At para 7 of her decision letter (see para 17 above) the inspector identified the issue with which she was faced as “whether the evidence discovered . . . when considered with all other relevant evidence available shows that, on the balance of probabilities, the definitive map and statement require modification . . .” This statement is, as it stands, an accurate representation of the issue before the inspector. However, at paras 9 and 10 the inspector introduced an evidential presumption in favour of the map. At para 9 she referred to Department of the Environment Circular 2/93, Annex B, the successor of Circular 18/90 approved by the court in *Trevelyan's* case [2001] 1 WLR 1264, and interpreted the effect of the circular as

“in the case of deletions the conclusive evidential effect of definitive maps and statements means that the evidence must show that no right of way existed at the relevant date of the definitive map on which the way was first shown.”

At para 10 she further interpreted her task as a consideration “whether there is cogent evidence to show on the balance of probabilities that the map is in error and the statement is correct”.

66 In her conclusions (see para 18 above) the inspector first posed the question whether “there is cogent evidence as to whether the map is incorrect”. While finding that there was no evidence of the path on any map other than the definitive map, no evidence of use and no physical path to be seen, the inspector also found there was no evidence of substance that there was no public right of way. She then concluded that the evidence in favour of the footpath as described in the order modification was “tenuous and undermined by the different lines shown by the parish council and others”. Finally, the inspector found that she could not “resolve the conflict between the map and statement” and could not, therefore, confirm the order.

67 Had there been a realistic possibility either that there was no public right of way between FP11 and Back Lane or that the position of FP12 was different from that shown both on the definitive map and the order map, the inspector was at liberty to make separate decisions under section 53(3)(c)(i) and (iii) and, subject to a further inquiry if necessary, to have proposed a different position altogether. However, as she wrote at para 10 of her decision letter, she regarded the paragraph (i) and paragraph (iii) considerations as interdependent and proceeded to make a choice between the definitive map and statement. When she did so she applied the *Trevelyan* evidential presumption in favour of the position shown on the map. In my judgment, for the reasons I have given in paras 57–64, the application of that presumption on the facts of this case was not warranted.

- A 68 I shall not leave this aspect of the claim without expressing my sympathy for the inspector's position. She was dealing with a factual situation which, in the experience of specialist counsel before me, was unique. It does not appear that she was invited, first, to consider whether the statement *could* be reconciled with the map; nor does she appear to have received submissions upon the existence or otherwise of an evidential presumption in favour of one document or the other. It is entirely understandable that the inspector should have proceeded as the issues were presented to her and that she believed the *Trevelyan* presumption applied to the map at the expense of the statement.
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Issue (4)—discretionary relief

- C 69 One of the factual issues of concern to the inspector was: if the commencement of FP12 was between the King William IV public house and the shop, what route did it take northwards from position Q? Did it, as the order modification delineated, proceed in a smooth north north-westerly direction, or did it take a dog leg to the west somewhere to the north of positions Q and R before proceeding northwards along the line C–A? The evidence was conflicting. Mr Morshead argues that since this was a principal and sustainable reason for the inspector's conclusion that she could not be satisfied on a balance of probabilities that a path existed along the line B–A, this court should not interfere. It was an issue of fact.
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- 70 Mr Laurence counters that the inspector should not have rejected the order modification. The terms of the statement were sufficiently precise to have deserved weight. Had the inspector approached the statement in this way, and not commenced her examination with a presumption against it, it is at least arguable she would have been drawn to make a decision which of the competing routes to the north of position Q was correct on a balance of probability. Further, the inspector should not have rejected path A–B on the ground that part of it was unsubstantiated. The inspector had power under Schedule 15 to the 1981 Act, subject to a further public inquiry if necessary, to confirm that part of the order modification which was proved (adding a footpath along the line B–Q and deleting the footpath along the line C–R) and to reject that part of the order modification between points Q and A. Mr Morshead rejoined that the inspector does not appear to have been invited to consider such a proposal.
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- 71 I recognise and propose to give full effect to the principle that the inspector's decision should not be disturbed unless it was reached upon an incorrect application of the law, or was irrational, and upon reconsideration the decision would arguably have been different: see *Simplex G E (Holdings) v Secretary of State for the Environment* (1988) 57 P & CR 306.
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- 72 I do not believe it is necessary to resolve the question whether the inspector should have exercised her wider powers under Schedule 15 to recommend confirmation with modifications because I have concluded that the application of the evidential presumption in favour of the definitive map and against the statement undermines the factual conclusions reached by the inspector. It is, I agree with Mr Morshead, entirely possible that the inspector's decision would have been the same had no such presumption been applied. The inspector went so far as to conclude that it had not been shown that the path A–B subsisted or was even reasonably alleged to exist. However, her decision upon the path A–B which, according to her approach
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was the only alternative candidate available, was reached upon application of a test that *cogent* evidence was required to displace an evidential presumption that path A–C was correct. It is hardly surprising that the inspector was influenced by inconsistencies in the evidence as to part of the route A–B to conclude that the presumption had not been displaced. It is not, in these circumstances, possible to conclude that upon fresh consideration the result would necessarily be the same. Unhindered by the presumption the inspector may have adopted a less sceptical approach to the task of ascertaining which was the probable route.

73 Thus, it is my judgment that: (1) For the purposes of section 56 of the Wildlife and Countryside Act 1981, the definitive map is the primary and source document. If the accompanying statement cannot be read as supplying particulars of the position of the footpath shown on the map then the position as shown on the map prevails over the position described in the statement. It is conclusive evidence unless and until review under section 53(2). As the absence of authority in this fertile area of litigation demonstrates, the number of occasions when the statement cannot be regarded as compatible with the map will be rare. The question whether they are in irreconcilable conflict is a matter of fact and degree. In reaching a conclusion whether the statement can be reconciled with the map, a degree of tolerance is permissible, depending upon the relative particularity and apparent accuracy with which each document is drawn. Extrinsic evidence is not relevant to this exercise save for a comparison between the documents and the situation on the ground at or about the “relevant date”. (2) At review, neither the map nor its accompanying statement is conclusive evidence of its contents. In the case of irreconcilable conflict between the map and the statement, there is no evidential presumption that the map is correct and the statement not correct. The conflict is evidence of error in the preparation of the map and statement which displaces the *Trevelyan* presumption. Each should be accorded the weight analysis of the documents themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate. (3) The inspector wrongly applied a presumption in favour of the map at the expense of its statement and failed to give any consideration to the merits, if any, in the particularity with which the terms of the statement were drawn. Had she approached the issues before her untroubled by an evidential presumption for the map and against the statement she might have concluded that the order modification was correct on a balance of probability. (4) Accordingly, the inspector’s decision must be quashed. I shall hear further submissions upon consequential relief.

Claim allowed.

Leave to appeal refused.

Solicitors: Solicitor, Norfolk County Council, Norwich; Solicitor to the Department for the Environment, Food and Rural Affairs.

Reported by THAMALA PERERA, Barrister