

## Letter of the Law

A Court of Appeal decision is likely to result in the loss of more public vehicular rights of way.

In 2007 the owner over whose land run some claimed byways open to all traffic (BOATs), went to the High Court to try to overturn the decision of Hampshire County Council to make orders to record those routes on the definitive map of public rights of way. The judge in the judicial review proceedings held that the applications to add the routes – made by members of the Trail Riders Fellowship – were valid, even though the form of the applications did not comply strictly with the legal requirements. The landowner – supported by the anti-motor *Green Lane Protection Group* – went to the Court of Appeal. The case can be found at [www.bailii.org](http://www.bailii.org) (type in 'Winchester College'), and it is reported as:

*R oao Warden and Fellows of Winchester College and Humphrey Feeds Ltd v. Hampshire County Council and the Secretary of State for EFRA* [2008] EWCA Civ 431, 29 April 2008.

The three Court of Appeal judges held: When an application is made for an order to modify the definitive map, there are certain 'procedural requirements' required: notifying landowners, serving certificates, submitting a map of a certain scale, submitting copies of evidence, etc. In the normal way of things (i.e. before the implementation of the Natural Environment and Rural Communities Act 2006 (NERCA), on 2 May 2006) failure to comply precisely with the requirements is not 'automatically lethal' to the validity and progress of an application, and of an order based on such an application. It depends – to a large degree – on whether or not any party to the proceedings was disadvantaged by the technical deficiencies.

NERCA operated to extinguish any unrecorded public rights for mechanically propelled vehicles, with a limited number of 'exemptions' in certain cases. The principal exemptions affected cases, where applications to modify the definitive map of rights of way to show BOATs were made before 19 January 2005, or were made later, but were 'determined' by the council before 2 May 2006.

But (as George Laurence QC argued, and the appeal judges accepted) for the NERCA exemptions to be engaged, the wording of section 67 of NERCA is such that the applications *must* comply with certain of the procedural requirements – i.e. only procedure-compliant applications are NERCA-exempt applications.

So – as regards applications for BOAT that are NERCA-exempt by virtue of the date of application or determination, these must have a proper application form, proper maps, and copies of all the evidence relied upon. This strict rule applies only to a BOAT application insofar as NERCA bites upon the public rights for mechanically propelled vehicles within it. An application that has fallen foul of this new decision may well still be valid as a restricted byway application.

LARA believes that this is going to knock out a significant percentage of supposed NERCA-proof applications, simply because, when the applications were made, the people were 'doing them like they have always done them, and like everyone else does them' – a bit 'soft' as regards strict compliance with the regulations.

Is this yet another example of 'one rule for motorists and another rule for everyone else'? It has certainly worked out that way.

Find more information  
about current issues  
and contact LARA  
via our web pages at:  
[laragb.org](http://laragb.org)

# LARA NEWS

No. 41, 3 MAY 2008, page 1/1

