DEFINITIVE MAP AND DEFINITIVE STATEMENT - PRECEDENCE

Introduction

1. The purpose of this Advice Note is to inform Inspectors of the Planning Inspectorate’s opinion on the precedence of definitive maps and definitive statements.

2. This Advice Note is publicly available but has no legal force.

Background

3. The Wildlife and Countryside Act 1981 does not state whether the definitive map or the definitive statement has precedence. However, Section 56(1)(e) of the Act indicates that the purpose of the two documents is different. It provides:

“A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent…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 and width thereof at that date, and any particulars so contained as to the 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…”.

To summarise: the map is conclusive evidence as to the existence and status of any right of way shown, whilst the statement is conclusive evidence as to the position and width, and limitations or conditions. It seems reasonable to conclude, therefore, that the respective documents have precedence on the particulars to which the Act provides they are conclusive evidence.

4. However, in determining modification orders, Inspectors are occasionally presented with evidence to the effect that there is a conflict between the information on the definitive map and that contained in the definitive statement. In R oao Norfolk County Council v SSEFRA 2005, Pitchford J advised that

“…the correct approach to the 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”.

But Pitchford J went on to confirm that where there is a conflict between the map and statement, the map takes precedence. This is because “...the
discretionary particulars depend for their existence upon the conclusiveness of the obligatory map”.

5. Following on from this, the judge stated that the question of “...whether the statement does describe the position of a footpath shown on the map is...a matter of fact and degree”. In this case it was agreed by the parties that in a situation where a 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, the statement could reasonably be held to be describing the position of the footpath marked on the map. The judge agreed that this was “...an appropriate concession”. He went on to add that “...whether the statement was describing the position of the footpath marked on the map need not require the precision of a slide-rule”. In reporting that the position of the footpath on the map and statement differed by a distance of 30 metres, Pitchford J said “...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”.

6. However, it is important for Inspectors to note that Pitchford J went on to say that once an Order Making Authority proposed to modify the map, and that modification is before an Inspector for determination, there is no evidential presumption in favour of the map at the expense of the statement. Pitchford J held that at the review stage (i.e. when the Inspector is making his/her decision) if there is a clear discrepancy between the map and the statement, what is required is simply a consideration as to which route, on the balance of probability, is correct, if any, in the light of all the relevant evidence including the terms of the map and statement. In such circumstances, he held that it would be inappropriate to impose an artificial presumption on one as against the other.

7. On the subject of the definitive statement, Inspectors should be aware of the letter issued by the Department of the Environment on 22 July 1997 and the Welsh Office on 24 July 1997, copies of which are attached. Those letters amend the wording of paragraph 31 of DoE circular 2/93 and WO 5/93 respectively. The relevant information for England can now be found in paragraph 6.17 of the DEFRA Circular 1/09 (Version 2).
Department of the
Environment, Transport
and the Regions

To: See List Below

Dear Chief Executive

RIGHTS OF WAY: CIRCULAR 2/93, PARAGRAPH 31

1. I am writing about DoE Circular 2/93 (WO 5/93) (Rights of Way) on the interpretation of definitive maps and statements. We have concluded that paragraph 31 of the Circular, on the interpretation of definitive statements, is more restrictive than the Wildlife and Countryside Act. The Circular presumes that everything (apart from position and width) included in a statement is a limitation or condition on use, whereas the Act allows other information to be recorded.

2. The current text of paragraph 31 should be replaced with revised text, as follows:

   “Information recorded in the definitive statement about position or width or as limitations or conditions affecting a public right of way is conclusive evidence of position, width, limitations or conditions. Information may be recorded in the definitive statement which, in practice, restricts the use of the way by those whose rights to use it are recorded on the definitive map. Where such information is not about position or width or is not recorded as a limitation or condition, highway authorities should examine the evidence in each case in order to resolve the inconsistencies.”

3. This amendment to the circular is being announced today in both Houses of Parliament.

Yours faithfully

SUSAN CARTER

The Local Government Association
The Association of National Parks
The Chief Executive
County Councils in England
District Councils in England
Metropolitan and Unitary Authorities
London Borough Councils
The National Park Officer
National Park Authorities
The Chief Executive, The Broods Authority
Dear Colin

RIGHTS OF WAY: CIRCULAR 5/93 (DOE CIRCULAR 2/93) AND VEHICULAR RIGHTS

I am writing to advise you about 2 matters which may have an effect on rights of way.

Welsh Office Circular 5/93 includes guidance on the interpretation of definitive maps and statements. The Government has concluded that paragraph 31 of the Circular, on the interpretation of definitive statements, is more restrictive than the Wildlife and Countryside Act 1981. The Circular presumes that everything (apart from position and width) included in a statement is a limitation or condition on use, whereas the Act allows for other information to be recorded.

The current text of paragraph 31 should be replaced with:-

"Information recorded in the definitive statement about position or width or as limitations or conditions affecting a public right of way is conclusive evidence of position, width, limitations, or conditions. Information may be recorded in the definitive statement which, in practice, restricts the use of the way by those whose rights to use it are recorded on the definitive map. Where such information is not about position or width or is not recorded as a limitation or condition, highway authorities should examine the evidence in each case in order to resolve the inconsistencies".

I am also writing to advise you of the Government’s interpretation of the effect that the judgement in the case of Robinson-v-Adair (McCowan L J and Dyson, J, QBD 16 February 1995, TLR 2 March 1995) has on establishing whether vehicular rights of way have accrued as a result of 20 years’ use under section 31 of the Highways Act 1980.