

# Byways and Bridleways Trust

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Mrs Annie Owen  
Planning Inspectorate  
Room 4/11 Kite Wing  
Temple Quay House  
2 The Square  
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3 July 2009

Dear Mrs Owen,

## **Re: Inspectors' decisions regarding the specification in orders of 'structures' as limitations.**

As you may know, this Trust led the way in pushing for the proper specification of 'structures as limitations' in Highways Act, and other, orders. As you will know, a number of independent inspectors have doggedly declined to modify orders to specify such limitations beyond, e.g., 'bridle gate'. With regard to the then-latest version of the 'Structures Guidance', on 10 June I wrote to the Secretary of State. I said,

"This Trust (and other organisations and individuals) has a number of objections to orders lodged, and will continue to object to orders where appropriate. To assist us, can you please tell me whether anything has changed your view on the 'legal element' as set out in the latest draft version of the guidance (I am not concerned here with 'best practice', or anything sub-legal)? If you have discovered that the draft guidance is wrong as to the law and its bite, please tell me (and the others) and I will review our operational practices, and our backlog, immediately. I am not asking you to pre-empt the final guidance: I am asking you whether anything has changed your view since the latest draft was issued."

Today, the Secretary has responded,

"We have not changed our view on the 'legal element'. However, I have revised the assertion that the DDA requires much more detailed specification of structures. As it stood this was a little misleading. As you have suggested, case law indicates that the recording of rights of way and limitations should be as accurate as the circumstances permit. And the obligation on authorities to comply with the DDA makes accurate recording something that is in their interests to do as well as being good practice. But this is not the same as saying that DDA itself requires much more detailed specification of structures."

I am mostly content with that reply. It brings into sharp relief two fundamental issues:

- Firstly, (per all the variants of the guidance so far) structures erected as a consequence of diversions or creations have to be Disability Discrimination Act (DDA) compliant (whatever that actually is), and, secondly,
- (to quote the Secretary), "... case law indicates that the recording of rights of way and limitations should be as accurate as the circumstances permit."

So, an order (or the relevant type) that specifies a structure as a limitation must specify a DDA compliant structure, not because the DDA says that the order must specify this, but because the DDA requires the OMA to specify DDA compliant structures (or, perhaps, justify why not, in any case), and, as the Secretary says, whatever structure is to be erected should be specified "as accurately as the circumstances permit." And, where this is a 'new structure', circumstances plainly do permit proper specification.

The DDA places a heavy burden of compliance on the OMA. That compliance must be reflected in the structure chosen for use. That structure is known at the time, and so must be 'accurately specified' in the order.

If a structure is not accurately specified, then the inspector has a choice: modify the order (if the necessary information is available), or decline to confirm the order. The act of confirmation (or not) is a 'public authority function' and must therefore be carried out in light of, and in accordance with the requirements of, the DDA.

I do not want to see any more orders made with insufficient specification, or orders confirmed in line with the recent trend. I ask you please to circulate this letter to all inspectors, or apprise them of the issues in my letter of 10 June and the Secretary's of 3 July (both attached). If you say that you will not do this, might I respectfully say that your choice in the matter is also a 'public authority function' and therefore bitten by the DDA. If you do not apprise and advise inspectors about the Secretary's view (you and the Secretary advise inspectors regularly) and a decision arises as a consequence that is discriminatory against disabled persons (e.g. the confirmation of an order with a limitation that is not DDA compliant, where the Secretary (through his inspector) has the power to cure the deficiency (modify the order), or stop the harm (decline to confirm) then your decision may well itself be discrimination against the interests of the disabled. It is a far-reaching statute, the DDA.

Will you please tell me whether or not you are issuing advice to inspectors consequent upon this letter, or not; if yes, what, please, and if not, why not?

Regards.

Yours sincerely,

Alan Kind

Editor



# The Planning Inspectorate

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Mr A Kind  
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Your Ref:  
  
Our Ref: PINS 1/79/44  
  
Date: 27 July 2009

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Dear Mr Kind

**RE: Inspectors decisions regarding the specification in orders of 'structures' as limitations**

Thank you for your letters of 3 & 20 July asking us to circulate your letter of 3 July to Inspectors, or apprise them of the issues in your letter of 10 June and Defra's letter of 3 July.

We have considered your request and have decided not to circulate the letters but have instead written to Inspectors in the following terms:

Earlier this month Defra wrote to Alan Kind in response to his query about the guidance given to Inspectors about specifying 'structures' as limitations in orders (as required by the Disability Discrimination Act (DDA)). The relevant part of Dave Waterman's reply is as follows:

*"We have not changed our view on the 'legal element'. However, I have revised the assertion that the DDA requires much more specification of structures. As it stood this was a little misleading. As you have suggested, case law indicates that the recording of rights of way and limitations should be as accurate as the circumstances permit. And the obligation on authorities to comply with the DDA makes accurate recording something that is in their interests to do as well as being good practice. But this is not the same as saying that DDA itself requires much more detailed specification of structures."*

Therefore Inspectors should ensure that the recording of limitations should be as accurate as the circumstances permit. Defra will be issuing more detailed guidance on structures later this year.

Yours sincerely

*Annie J Owen*

Annie J Owen (Mrs)  
Rights of Way Section Manger

