

TOWN AND COUNTRY PLANNING
Diversion order

Edited by Aviva Golden, barrister

**Calder v Secretary of State for
the Environment and others**

Queen's Bench Division: Mr Nigel Macleod QC (sitting as a deputy judge of the division)
March 9 1995

**Property developers — Planning permission for houses —
Bridleway crossing plots — Diversion order — Objection
— Diversion confirmed — Application to quash making
of diversion order — High Court holding Secretary of
State had not erred in law — Decision reasonable —
Application dismissed**

In March 1988 Tarmac obtained planning permission to erect 37 houses on land encompassing the appeal site. After construction commenced the local authority informed Tarmac that a bridleway crossed three of the proposed dwelling plots. The council made a diversion order at the request of Tarmac, but objections were raised and an injunction served to prevent further work on the three plots. An inquiry was held and a modified diversion order was confirmed. Planning permission was granted for works needed to implement the diversion, but the High Court quashed the diversion order in October 1991.

The council refused to make a further diversion order and Tarmac requested the Secretary of State for the Environment to divert the bridleway under powers given by section 247 of the Town and Country Planning Act 1990. The Secretary of State declined on the grounds that exceptional circumstances did not exist. Following the refusal of the Secretary of State to divert the bridleway, Tarmac submitted an application to permit the erection of the three dwellings on the plots affected by the bridleway. On refusal Tarmac appealed to the Secretary of State, who proposed to make a diversion order under sections 247 and 253 of the 1990 Act in accordance with his powers in Circular 2/93 — *Public Rights of Way*. The applicants sought to quash the making of the diversion order.

Held The application was dismissed.

1. In his decision letter the Secretary of State had specifically addressed in the way in which he had

approached his policy in para 17 of Annex A of Circular 2/93. There was no fault with his understanding or application of the policy.

2. Having decided to use the section 253 procedure, the sole questions for the Secretary of State were whether he was satisfied that the discretion was necessary to enable the permitted development to be carried out; and, if so, whether he would make the section 247 order.

3. Section 247 empowered the Secretary of State to make the diversion order if he thought that that was necessary to enable the development to be carried out in accordance with the grant of planning permission. There was no challenge to the grant of permission on the appeal and the permission in question was for three houses in the positions shown on the plans before the Secretary of State. It was not for the Secretary of State, acting under section 247, to postulate other development if he was satisfied of the necessity of the diversion to allow the permitted development of the three houses to be carried out.

4. The Secretary of State was satisfied from the inspector's report that the loss of trees to divert the bridleway was not sufficiently detrimental to the character and amenity of the area to justify refusing the appeal (which was not challenged) nor to justify refusing to confirm the diversion order. That was a reasonable judgment which he was entitled to make: see *Simplex GE (Holdings) v Secretary of State for the Environment* [1988] 3 PLR 25; *Bolton Metropolitan Borough Council v Secretary of State for the Environment* (1990) 61 P&CR 343.

Nigel Ley (instructed by Nyland & Beattie, of Widness) appeared for the applicant; David Holgate (instructed by the Treasury Solicitor) appeared for the Secretary of State for the Environment; the local planning authority, Woodspring District Council, did not appear and were not represented; Charles George QC (instructed by the solicitor to Tarmac Housing Division) appeared for Tarmac.