



LEGAL MEMORY (THE EVIDENTIAL VALUE OF ANCIENT DOCUMENTS)

Introduction

1. This Advice Note explains that in determining a public right of way case the concept of 'legal memory' has long ceased to have any place. This term refers to the period back to which user had originally to be shown for a claim based on long usage to succeed. By the early nineteenth century use for 20 years was accepted as being sufficient for this purpose and the year 1189 ceased to have any relevance in this context.
2. This Note is publicly available. It is not an authoritative interpretation of the law.

Consideration

3. The concept of legal memory is applicable only to private - not public - rights of way. Where determination of public rights of way under the Wildlife and Countryside Act 1981 are concerned, Mr Justice Taylor held in the case of *Rubinstein-v-Secretary of State for the Environment*⁽¹⁾ that:

“...there is no limit on the evidence which can be adduced (that is to say, no limit in regard to a relevant date being the deadline for going back)...”.

4. It is also specifically prescribed in section 32 of the Highways Act 1980 that:

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced”

Conclusions

5. Inspectors are therefore required to take into account any map, plan or other document tendered in evidence regardless of its age. However, they need only accord the weight they consider justified by all the circumstances. Provided Inspectors do not act in a way which is *Wednesbury* unreasonable, the weight they give to any piece of evidence is entirely a matter for their discretion.

¹ *Rubinstein-v-Secretary of State for the Environment (1989) 57 P&CR 111@116*