



# Direction Decision

by **Susan Doran BA Hons MIPROW**

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 03 January 2018

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**Ref: FPS/D3450/14D/10**

**Representation by Thomas Mellon**

**Staffordshire County Council**

**Application to add a footpath from Hulme Close across the field to the outer perimeter of Keele Golf Course (OMA ref. LW600G)**

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Staffordshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 25 May 2017, is made by Thomas Mellon.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 24 April 2011.
- The Council was notified of the representation on 9 August 2017 and submitted its response on 21 September 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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## Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers. The Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant<sup>1</sup>.
2. The Council has limited resources to deal with the backlog of claims awaiting determination, many of which involve complex legal issues and/or interviewing a considerable number of witnesses. The application is currently ranked at number 223 of 241 applications awaiting determination. The Council's policy is to determine applications in order of receipt, subject to a number of exceptions which are given priority. These include where delay would threaten the loss of the claimed right of way; where in the case of a claimed right of way there is severe hardship, or a risk of confrontation between the claimants and the

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<sup>1</sup> Rights of Way Circular 1/09 Version 2, October 2009, Department for Environment, Food and Rural Affairs

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owner/occupier of the affected land, or there is evidence of a detrimental effect to the health of the owner/occupier of the land; where having regard to the County Council's Sustainable Transport Policies, in the case of an application to add an additional public path to the Definitive map or to upgrade the existing status of the highway, the application relates to a path of actual, or potential, regional or national significance; and, where a route would be relevant to the achievement of another of the County Council's statutory policy objectives. This appears to me to be a reasonable approach. Nevertheless, and notwithstanding that there are limited resources available for this task and many cases to determine, the Council has a statutory duty to keep the definitive map and statement under continuous review. The complexity of the cases and need for time-consuming investigation are not, in my view, exceptional circumstances.

3. In this case the Council says no evidence has been put forward and no request made to indicate that this application fulfils any of the priority exceptions, and I accept this. The application is based on user evidence and the applicant reports that sadly three of the witnesses have passed away. It is feared that, as time passes, others who could have provided important evidence will have moved away, become un-contactable, or have passed away. Furthermore, given the Council's backlog of applications, the applicant considers there is no realistic prospect of this application being determined within his lifetime. It is claimed that the Council is determining one application per year, and therefore it is likely to be a further 200 years before this application is determined. Indeed, the Council is unable to give a timescale for how long it will take for the application to be processed, but acknowledges that it is likely to be some time before it will conclude its investigations and determine the claim.
4. The Council appreciates the applicant's concerns, but points out that many other applicants have similar concerns. There are many applications submitted still awaiting determination, some pre-dating this one by several years, and there are no special reasons why this application should take precedence over others.
5. The Council also states it has been directed by the Secretary of State to determine 7 applications between 1 March and 31 August 2018. It is aware of a least 16 more applications for directions awaiting determination. It does not consider that a direction should be given as regards this application for several reasons. There are other applications which are ahead in the ranking and equally deserving, and to issue a direction would disadvantage those parties. There are no special reasons why this application should be prioritised on merit. For the Secretary of State to prioritise this application would result in the Council's own prioritisation system being undermined with applications effectively being prioritised by the Planning Inspectorate and not by the Council.
6. It is appreciated that if a direction is given in this case, then other applications will be affected. However, my role is to consider the application before me and in so doing I note that the applicant has exercised his right to apply for a direction from the Secretary of State. An applicant's right to do so gives rise to the expectation of a determination of that application within 12 months under normal circumstances<sup>2</sup>. In this case, six years have passed since the

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<sup>2</sup> The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14

application was submitted. No indication has been given as regards when the Council expects to be able to determine the application, and the backlog of applications suggests this will be many years, even decades, hence. I do not consider that this can be viewed as reasonable.

7. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I consider it appropriate to allow a further 12 months for a decision to be reached.

### **Direction**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Staffordshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

*S Doran*

**Inspector**