



# Direction Decision

by **Heidi Cruickshank** BSc (Hons), MSc, MIPROW

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

Decision date: 19 February 2018

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**Ref: FPS/D3450/14D/12**

**Representation by Mr M Reay**

**Staffordshire County Council**

**Application to add a bridleway from Six Ashes Road to the County Boundary at 799896**

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 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 2 September 2017, is made by Mr M Reay.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 5 February 2004.
- The Council was notified of the representation on 3 October 2017 and submitted its response on 16 November 2017. The applicant made further comment on 23 November 2017.

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

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## Procedural matters

1. Once the relevant authority, in this case Staffordshire County Council ("the County Council"), has submitted their comments, no further comments are invited. In this case the applicant sent additional comments, which were accepted as they provided further relevant information.

## Reasons

2. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") 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.
3. 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 and Statement ("the DMS") 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, as set out in the Circular<sup>1</sup>.

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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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4. The County Council referred to their criteria for dealing with such 1981 Act applications. They indicated that due to the number of claims made, and the limited resources allocated, there was a backlog of 241 applications to be determined, many of which involve complex legal issues and/or the interviewing of a considerable number of witnesses.
5. Taking account of these matters, and *R v Isle of Wight County Council ex parte O'Keefe, 1989*<sup>2</sup>, ("*O'Keefe*"), it is the policy of the County Council to determine applications in order of receipt unless a request for priority with accompanying relevant evidence is received. In such cases, the following exceptions apply to give priority to a claim:
  - a) Where delay would threaten the loss of a claimed right of way; or
  - b) Where in the case of a claimed right of way, there is severe hardship, or a risk of confrontation between the claimants and the owner/occupier of the affected land or there is evidence of a detrimental affect to the health of the owner/occupier of the land; or
  - c) Where in the case of an application for deletion or downgrading of a right of way, delaying its determination would result in severe hardship to the owner/occupier of that land; or
  - d) 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; or
  - e) Where a route would be relevant to the achievement of another of the County Council's statutory policy objectives.
6. *O'Keefe* relates to the order making authority's pre-order making responsibilities. It held that a decision could be quashed if it could be shown that the decision-making process was flawed. There is a duty upon a Council to make a properly informed decision, with a proper appreciation and weighing of the available evidence and any legal principle which may have to be applied. *O'Keefe* holds that the Council "*...must be able to say that it was "shown...that a right of way subsists or is reasonably alleged to subsist..." before they could make their order.*" It does not indicate that unlimited time should be available to reach such a properly informed decision.
7. The County Council indicated that it had been directed by the Secretary of State to determine fourteen applications within a year. Additionally, a further thirty-six requests for directions having been submitted to the Planning Inspectorate, twenty-four made by this applicant. The County Council raise concerns that their prioritisation system would be undermined by a direction, with applications effectively being prioritised by the Planning Inspectorate. The chronological and exceptions policy appears reasonable and I accept that no exceptions have been put forward by the applicant.
8. The Council say that they cannot provide a clear timescale for determining a case but that it would be 'some time' before this application is determined. I agree with the applicant that at the current rate of determination (two in 2015,

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<sup>2</sup> [1989] JPL 934, [1989] 59 P & CR 283

- one in 2016 and none, at time of writing, in 2017) there seems to be no prospect of this application being determined in the foreseeable future.
9. The County Council said that the application was incorrect in requesting *"the upgrade to a bridleway the footpath from Six Ashes Road to County Boundary at 799896"* as there is no existing public footpath currently on the DMS in that location. However, they appear to have accepted the application without advising that it was incorrect or required revision; it is numbered LN650G in their priority list at 190 out of 241 applications. I do not consider this matter relevant to the application for a direction.
  10. I agree with the applicant that it is unreasonable and unfair, to both the applicant and the affected landowner, that the application has not been determined in the more than 13 years since it was made. The Circular refers to the need to *"...investigate applications as soon as reasonably practicable..."* which arises from the 1981 Act itself<sup>3</sup>. I also note that Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, sets out that *"In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law..."*.
  11. I recognise that there are a large number of cases for the County Council to deal with, and accept the need to treat cases in a fair and expedient manner. However, I do not believe a period of more than thirteen years from the date of application could be viewed as being *"...within a reasonable time..."*. As the Circular sets out, *"Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way..."*.
  12. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application and noted that there are other directions that have been made.
  13. In this particular case the route is a cross-border route, relying, as I understand it, on the same evidence for the application to this County Council and Shropshire County Council. Taking account of best use of public funds it would be sensible for one authority to deal with the entirety of the route. It is presumed that the Shropshire application has not been determined as the County Council indicated there to be no continuation for this claim. I accept that it may take some time for an agreement to be reached on such an approach and so would allow additional time for this.
  14. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 18 months for a decision to be reached.

## Direction

15. 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 ensure

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<sup>3</sup> Schedule 14, paragraph 3(1)

determination of the above-mentioned application, by themselves or through agreement by their neighbouring authority, not later than 31 August 2019.

*Heidi Cruickshank*

INSPECTOR