



## Direction Decision

by Mrs Helen Slade MA FIPROW

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/45**

**Representation by Brian Smith**

**Staffordshire County Council**

**Application to upgrade to a restricted byway the footpath from Stoney Lane, Calton map ref 0892 5021 to Main Road A523 map ref 0980 4983 (OMA ref. 012193DW)**

- 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 23 October 2017 is made by Mr Brian Smith on behalf of the British Horse Society.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 16 September 2015.
- The Council was notified of the representation on 3 November 2017 and submitted its response on 18 December 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. Mr Smith had to submit his application three times because Staffordshire County Council ('the Council') mislaid it, twice. However it was eventually included on their list of applications at number 237 out of 241 outstanding applications. The oldest application dates from 17 July 1990. In 2014 the Council indicated in a report that applications based on wholly historical evidence would be considered out of chronological order of receipt to provide

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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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- flexibility. Since that time only 4 applications have been determined; a progress rate of about one application per year. At this rate, he points out, it would be 237 years before his claim was considered.
3. In 2007, the Council published its Rights of Way Improvement Plan ('ROWIP') in which it acknowledged that the number of staff available to deal with applications under the 1981 Act had been reduced and that the previous rate of determination (about 25 per year) would fall to no more than 12 per annum. In fact, less than 10 applications have been processed between January 2008 and the present time.
  4. Mr Smith highlights the expectation enshrined in the European Convention on Human Rights, and enacted in the Human Rights Act 1998, that he is entitled to a fair hearing within a reasonable time. He also points out that at the time the 1981 Act was going through parliament, it was made clear that the expectation of government was that applications would be expedited within the 12 months allowed. In the light of the impending introduction of new legislative procedures contained in the Deregulation Act applicants are being encouraged by respected bodies such as the Open Spaces Society to urgently submit applications for directions to the Secretary of State to avoid the costs involved with the proposed court procedures.
  5. Mr Smith draws attention to the acknowledgement by the Council in its ROWIP of the shortage of recorded off-road routes for horse riders and cyclists and the safety implications which arise as a consequence. The ROWIP states that priority will be given to applications for multi-user routes. This application is to upgrade a route to a multi-user route, and is also based wholly on historical evidence – both of which are reasons for giving it priority. There is no evidence that the Council are following its own intentions. In a response to a question from a member of the public at a Council meeting on 12 October 2017 the Cabinet Member for Communities stated that the Council prioritises its spending on keeping open those routes that already exist, rather than seeking to add new routes to the network.
  6. In response, the Council points to the reduced resources available for Rights of Way work, and states that it deals with applications in chronological order, unless certain criteria apply, or a request for priority has been made. No such request has been made in this case. Applications for priority cannot be made by applicants on the basis that their application is based on historical evidence. The policy on dealing with such applications was introduced to give flexibility to the Council Officers in determining which applications to deal with. Due to the complexity of the casework and the lengthy legal procedures no time scale can be given with respect to the present application. They confirm that it is prioritised at number 237 out of 241.
  7. The Council do not consider a direction should be given in this case as it would undermine the prioritisation system of the Council and there are a number of other cases where applicants have similar concerns. A number of other directions have also been received by the Council which further stretches their ability to deal with other applications.
  8. The Council has a statutory duty to keep the Definitive Map and Statement up to date, and the work involved in doing that cannot, in itself, be considered to be an exceptional circumstance. Adequate resources should be provided to permit the authority to carry out its statutory functions in connection with producing an accurate and up to date legal record of public rights of way. The

Council does not appear to be implementing its own policies for prioritising applications which provide for multi-user routes, nor exercising their flexibility to deal with applications based on historical evidence. A potential delay of over 200 years, based on the present rate of progress, is clearly beyond any definition of 'reasonableness'.

9. The existence of applications of longer-standing than this one does not constitute a reason for not dealing with this particular application. The appeal procedure is available to everyone and is there to be used. Mr Smith has availed himself of the opportunity and should not be penalised by the lack of action by others entitled to take advantage of the same procedures. Clearly the advice referred to by Mr Smith is likely to have contributed to the increased number of requests for determination, and this also needs to be factored into the Council's work programmes.
10. 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<sup>2</sup>. In this case, over two years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application, and I also acknowledge that the route is already a legally recorded public right of way, albeit a public footpath and not a restricted byway. Its continued existence as a highway is not threatened by a delay in determining the application to upgrade it.
11. Nevertheless, 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 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.

*Helen Slade*

INSPECTOR

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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