



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 14 June 2018

Ref: FPS/D3450/14D/49

Representation by Paul Martin

Staffordshire County Council

Application to add a Footpath from Keele Road to Butts Walk and Paris Avenue, Westlands, Newcastle under Lyme (OMA ref. LF609G)

- 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, under Section 53(5) of that Act.
 - The representation is made by Paul Martin, dated 3 December 2017.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 29 June 1996.
 - The Council was consulted on the representation on 9 January 2018 and the Council's response was made on 12 March 2018.
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Decision

1. The Council is directed to determine the above-mentioned application.

Preliminary matters

2. The representation and original application was made by a Paul Martin. However, Paul Martin has since passed away and the matter has been taken over by the Thistleberry Residents Association.

Reasons

3. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, 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 applicant¹.
4. The Council has decided to investigate and determine applications in order of receipt with certain exceptions where priority is given. In this case no request

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

- has been received by the Council for priority and the application does not have any priority status. The Council is unable to give a timescale as to how long it will take for the application to be processed and the application is ranked at 51 out of a total of 241 applications waiting to be determined. The Council consider that is likely to be some time before they determine the application.
5. 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. In this case, more than 21 years have passed since the application was submitted and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.
 6. Whilst it is reasonable for the Council to determine applications in order of receipt, subject to certain exceptions, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take more than 21 years. It is appreciated that the Council has limited resources but it should be noted that the Council has statutory duties to keep the definitive map up to date. Lack of resources are not a sufficient excuse for a significant delay in determining any application and do not amount to exceptional circumstances. Circular 1/09 makes it clear that 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.
 7. It is noted that other applications are ranked higher in the Council's priority list and it is accepted that to issue a determination would be to the detriment of the parties involved. However, as noted above for the determination of an application to take more than 21 years is unreasonable.
 8. The applicant makes the point that the delay jeopardises the validation of the user evidence if this becomes necessary. I agree that the delay may result in the loss of an ability to test the evidence of use and as suggested some of the users may have moved away, be unable or unwilling to elaborate on that evidence or have passed away; this is of further concern.
 9. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. It is also acknowledged that the Council has received directions for determinations requiring a number of applications to be determined by August 2019 and that the Secretary of State is considering other requests for determination. Nevertheless in the circumstances I have decided that there is a case for setting a date by which time the application should be determined. I consider it appropriate to allow a further 12 months to determine the application; this is the normal expected timescale for the determination of any application.
 10. Representations are made to the effect that rights under Article 6(1) of the Human Rights Act 1998 are engaged and violated. Article 6(1) provides that in the determination of civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, my decision as to whether the authority has investigated and determined this application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a decisive determination in respect of civil rights and obligations. Article 6(1) is not applicable to this decision.

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** Staffordshire County Council to determine the above-mentioned application not later than 12 months from the date of this Direction Decision.

Martin Elliott

INSPECTOR