



Direction Decision

by **Jean Russell MA MRTPI**

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

Decision date: 16 July 2018

Direction Ref: **FPS/D3450/14D/50**

Application to add a footpath from Gallowstree Lane to Keele Road (A525)

- An application was made by Thistleberry Residents' Association to Staffordshire County Council for an order to modify its Definitive Map and Statement of Public Rights of Way under section 53(5) of the Wildlife and Countryside Act 1981 (the WCA81).
 - The Council's reference for the application is LS637G
 - The certificate attached to the application, as required under paragraph 2(3) of Schedule 14 of the WCA81, is dated 21 March 2008.
 - A representation has been made by the applicant under paragraph 3(2) of Schedule 14 seeking a direction from the Secretary of State to the Council to determine the application.
 - The representation is dated 10 December 2017.
 - The Council was advised of the representation on 3 January 2018 and its response was made on 26 February 2018.
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Decision

1. The Council is directed to determine the application (ref: LS637G) as set out in the Direction below.

Preliminary Matters

The Applicant

2. I shall treat Thistleberry Residents' Association as the "applicant" although the application was made by Anne-Marie Norrey on their behalf, and the representation was made by Dr A Drakakis-Smith on their behalf.

Statutory and Policy Context

3. Schedule 14 of the WCA81 sets out provisions relating to applications made under s53(5) for an order to make modifications to the Definitive Map and Statement of Public Rights of Way (DMS). The certificate described above was submitted under paragraph 2(3) of Schedule 14, to certify that notice of the application has been served on every owner and occupier of any land to which the application relates.
 4. Paragraph 3(1) of Schedule 14 requires authorities, as soon as reasonably practicable after receiving the paragraph 2(3) certificate, to (a) investigate the matters stated in the application; and (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.
 5. If the authority has not determined any such application within 12 months of receiving the certificate, paragraph 3(2) of Schedule 14 provides that the applicant may make representations to the Secretary of State who may, after consulting with the authority, direct them to determine the application before the expiration of such period as may be specified in the direction.
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6. Rights of Way Circular (1/09): Guidance for Local Authorities (C1/09) advises that the Secretary of State will take into account, in considering whether to direct an authority to determine an application within a specified period, any statement made by the authority setting out its priorities for bringing and keeping the DMS up-to-date; the reasonableness of such priorities; any actions already taken by the Council or expressed intentions of action on the application; the circumstances of the case and any views expressed by the applicant.

REASONS

The Council's Statement of Priorities and the Reasonableness of its Priorities

7. The Council's policy is to investigate and determine applications for orders to modify the DMS (Definitive Map Modification Order or DMMO applications) in sequence of receipt, unless there are exceptional circumstances which would justify prioritisation. In summary, the priority applications are those where:
 - (a) Delay to determination would threaten the loss of a claimed right of way;
 - (b) In the case of a claimed right of way, there is severe hardship, risk of confrontation between the claimant and the owner/occupier of the land, or evidence of a detrimental effect on the health of the owner/occupier;
 - (c) In the case of an application to delete or downgrade a right of way, delaying determination would result in severe hardship for the owner/occupier;
 - (d) The application is to add or upgrade a path of actual or potential regional or national significance regarding the Council's Sustainable Transport Policies;
 - (e) The route would be relevant to another Council policy objective.
8. I am satisfied that the Council has reasonable priorities for bringing and keeping the DMS up-to-date, but it is still required to investigate all DMMO applications in accordance with its statutory duties as explained further below.

The Actions or Intended Actions of the Council

9. The Council stated on 26 February 2018 that it had 241 DMMO applications awaiting determination. The application subject to this representation was deemed to not fall within any of the priority groups listed above, and ranked at no. 210. The Council was "unable to give a timescale as to how long it will take", but said that it was likely "to be some time before" investigations were concluded.
10. The precise number of applications and ranking of this case may not be exactly the same now as in February, but I assume that the situation remains the same in essence. If that is right, the Council will have taken no action on the application subject to this representation, and its intended action will be to commence investigations at an unspecified point in the future.
11. I understand why the Council states that "there is an expectation that [DMMO] applications will be determined...within twelve months of receipt". However, the duty under paragraph 3(1) of Schedule 14 is to investigate the application "as soon as reasonably practicable", and then make a determination after consultation. The paragraph 3(2) provision in respect of "12 months of receipt" is that applicant can then ask the Secretary of State to direct the authority to reach a decision.
12. For that reason, I place little weight on the Council's claim that the determination of all applications within 12 months is "unachievable". I allow that exact timescales for investigation can be difficult to predict, given the complexity of DMMOs, but that does not explain why the Council has failed to give even a broad indication as

to when it might start to investigate this case. The Council has not outlined any actions or intended actions which could be said to amount to investigation "as soon as reasonably practicable", and yet the application was made over ten years ago.

The Circumstances of the Case and Views of the Applicant

Encroachment onto the Path

13. As noted above, the application subject to this representation is to add a public footpath to the DMS. The applicant claims that a track has long existed on the ground, although I cannot speculate from the evidence – such as early maps and signs – as to whether or not the route carries public rights of way.
14. The DMMO application was made because the applicant was concerned that a new housing estate was encroaching on the track. The representation was made after, allegedly, the occupiers of three adjacent dwellings moved their boundary fences to and placed rubble on the path. The applicant later submitted that one of the occupiers, on 23 December 2017, made "a retrospective application...to change this land and its use from open space to private gardens for the three houses..."
15. If the "retrospective application" was for a grant of planning permission for a change of use of land, and if permission was so granted, that would not authorise any obstruction to or interference with any public right of way. However, the track is not recorded as a public right of way – and whether it should be is precisely the question that the DMMO application was made to resolve.
16. The Council did not comment on the "retrospective application", or on the assertions that the track is obstructed and at least one resident has sought to register part of the land as being within their title. The Land Registry has not said whether or not there is "a mistake in the register" – any such claim could only be investigated upon receipt of an AP1 application – but that is immaterial. For this decision, the applicant's crucial claim is that the track is being encroached upon as a matter of fact. The Council has not addressed or refuted that evidence.
17. The Council states that a previous request for a direction by the applicant was refused. I have not seen a copy of that decision, and do not know when it was made or the circumstances at the time. From the evidence before me, I find that further delay to determining the DMMO application would "threaten the loss of a claimed right of way". The application should be prioritised for determination under the Council's system on that basis, whether or not the applicant is right that there is also "a risk of confrontation" between the claimants and any occupiers.
18. The applicant has said that the track is a "historic community asset" and/or on the Council's "Local Historic Register". It is possible, then, that the path has actual or potential regional or national significance under the Council's Sustainable Transport Policies, or is relevant to another Council policy objective. I cannot make any firm findings on those matters, because the applicant has not shown that any part of the track is designated as a heritage asset. However, the Council's failure to address these claims adds a little weight to my assessment that the application should be determined.

The Backlog of Applications

19. In February, the Council had 28 outstanding directions to comply with, and 23 other DMMO applications that were subject to representations. By the date of this decision, some of the 28 may have been determined, but new directions may have been made. It can be assumed that the Council still has a backlog of applications to investigate, and this will put pressure on their officers as well as resources.

20. However, the determination of DMMO applications is a statutory duty which the Council must carry out. Their present administrative difficulties could neither be sufficient reason to not direct that the application is determined, nor carry much weight when deciding what period to prescribe in any direction. Indeed, the Council's own evidence is that the 28 directions awaiting compliance in February were to make determinations by various deadlines up until 31 August 2019, meaning that the applications could be investigated on a phased basis.
21. Given my finding that this application meets at least one criterion, it cannot be said that making a direction would undermine the Council's prioritisation system. Doing so would not disadvantage other "deserving" cases, because the Council would not be directed to delay them, only to determine this application by a specified time.

Conclusion

22. The Council has a reasonable system for prioritising DMMO investigations, but that does not alter or supersede its statutory duties. The present application remains undetermined more than ten years after it was made, and the intended actions of the Council do not amount to investigation "as soon as reasonably practicable". Further delay to determining the application would "threaten the loss of a claimed right of way" and so, with regard to all other matters raised, I conclude that there is a clear case for setting a date by when the application should be determined.
23. As to what that date should be, I consider that the threatened loss of the claimed right of way is immediate, but have also noted that the Council has a backlog of applications from previous directions. On balance, and since the Council will require time to carry out its investigation and consult other authorities, a further period of 6 months is allowed to make a determination.

DIRECTION

24. 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 application (ref: LS637G) not later than 6 months from the date of this decision.

Jean Russell

INSPECTOR