



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: 30 July 2018

Ref: FPS/D3450/14D/51

Representation by Derek Luker

Staffordshire County Council

Application to add a public footpath from Weston Road to Tixall Road, Stafford (OMA ref. LF612G)

- 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, dated 16 December 2017, is made by Derek Luker.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 8 July 1996¹.
 - The Council was consulted about your representation on 4 January 2018 and the Council's response was made on 28 February 2018.
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Decision

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

Reasons

2. 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 applicant².
3. 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 and landowners. The Council acknowledges there is an expectation that Section 53 applications will be determined by an authority within 12 months of receipt. However, as this has proved unachievable, they have implemented a system for dealing with applications. Their policy is to determine applications in order of receipt,

¹ No year is specified on the certificate. However, the Applicant states his application was submitted in 1996 and this is the date given in the Council's list of applications.

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

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 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.

4. In this case, the Council says no request for prioritising the claim has been made, and the application does not fall within any of the priority exceptions, and I accept this. However, the application is based on user evidence and the Applicant is concerned the passage of time has had and will have a detrimental effect on the ability to validate that evidence. Many of the users will have moved away from the area, become otherwise unable or unwilling to give evidence, or will sadly have passed away. Furthermore, given the Council's backlog of applications, the Applicant considers there is no realistic prospect of this application being determined for, in all, some 75 years. It is currently listed as number 55 in the Council's list of applications. It is claimed that the Council is determining one application per year, considerably less than the target of 12 applications set in its 2007 Rights of Way Improvement Plan, thus providing no reassurance of this application being determined for a considerable number of years to come. However, whilst the Council says it has determined 11 claims since January 2008, it is unable to give a timescale for how long it will take for this application to be processed.
5. It is acknowledged that the Council has limited resources available for the task and many cases to determine (a backlog of 241 in total). However, these factors together with the complexity of the cases and the need for time-consuming investigation are not, in my view, exceptional circumstances nor do they affect the Council's statutory duty to keep its definitive map and statement under continuous review. It is further acknowledged that the Council has already been directed to determine 28 other applications before August 2019 which will require significant staff input; and that a further 23 requests await determination.
6. The Council does not consider that a direction should be given as regards this application as there are other applications which are ahead in the ranking and equally deserving, and to issue a direction would disadvantage those parties. It believes that prioritising 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. Nevertheless, I do not consider that the current delay in determining this application, and the likely future delay, can be viewed as reasonable.
7. It is appreciated that if a direction is given in this case, then other applications, which may be ranked higher in terms of priority, 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. In this case, some 22 years have passed since the application was submitted. 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.

8. Representations were made to the effect that rights under Article 6 of the Human Rights Act 1998 are engaged and violated by the delay in determining this application. Article 6 provides that in the determination of their 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 for the Applicant's civil rights and obligations. Article 6 is not applicable to this decision. Other representations were made about the efficacy of determining the application and these are also noted.

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