



Direction Decision

by Jean Russell MA MRTPI

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

Decision date: 10 August 2018

Direction Ref: FPS/Q1770/14D/3

Application to downgrade Buriton Byway Open to All Traffic (BOAT) No. 19, known as 'the Milky Way', to a Bridleway, and to downgrade Buriton Byway Open to All Traffic (BOAT) No. 47 to a Bridleway

- An application was made by Karen White on behalf of Buriton Parish Council to Hampshire 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 DMMO 1168 BURITON.
 - The certificate attached to the application, as required under paragraph 2(3) of Schedule 14 of the WCA81, is dated 15 February 2016.
 - 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 4 January 2018.
 - The Council was advised of the representation on 18 January 2018 and its response was made on 28 February 2018.
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Decision

1. The Council is directed to determine the application (ref: DMMO 1168 BURITON) as set out in the Direction below.

Preliminary Matters

The Applicant

2. I shall treat Buriton Parish Council as the 'applicant' in this decision; the application was made by Karen White on their behalf, and the representation was made by Karen Crookshank 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
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with the authority, direct them to determine the application before the expiration of such period as may be specified in the direction.

6. Rights of Way Circular (1/09): Guidance for Local Authorities 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 Claims Policy is to place applications for orders to modify the DMS (Definitive Map Modification Order or DMMO applications) on a chronological waiting list known as "List A". If it can be demonstrated that the route is under threat from development, the claim will be moved from List A to List B.
8. If the route is not threatened by development, but it can be demonstrated that it is in the interests of the public to expedite investigation, the application may be moved from List A to List C. This will be the case if the claim would, if successful, fulfil or contribute towards the performance of an action identified in a Countryside Access Plan, or the implementation of other agreed access or transport policy, strategy or initiative.
9. Lists B and C, like List A, are structured chronologically – and the Council's approach is to process claims from each list in turn. I am satisfied that the Council has reasonable priorities for bringing and keeping the DMS up-to-date. That said, the Council is still required to meet its statutory duty to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

The Actions or Intended Actions of the Council

10. In its response to the representation, the Council described the pre-existing situation: it was processing claims received in 2007; the application was ranked 57th on List A; and "a number of years" would likely elapse before investigation was begun¹. In other words, the Council had taken no action on the application, and its intended action was to start investigating at an unspecified future point.
11. The Council then conceded that, for the reasons detailed by the applicant in the representation – set out below – there is a case for prioritising the claim. The Council agreed to move the application to List C if I am "content with this approach". It is welcome that the Council is prepared to take action more quickly, but I am not clear as why it would delay re-listing until it receives this decision. My powers are to direct (or not) that the application be determined before the expiration of a given period, not to tell the Council how to apply its own policy.
12. The applicant objects that the Council proposes to place the application 5th on List C, suggesting that this claim gives rise to greater public benefit than those ahead. That may be a question that the Council is prepared to address; the Claims Policy is expected to be reviewed to ensure "the best possible benefit to the public".
13. Under the Claims Policy as it stands, however, the public benefit test is used only to ascertain whether an application should be on List C; the position on that list is a matter of chronology. That approach is not unreasonable and, in any event, the

¹ The application was ranked at 61 when the representation was made.

other claims on List C are not before me; I cannot comment on their relative public interest or direct the Council to place this application in any position on any list.

14. However, that finding does not assist the Council. Even if it would be reasonable to place the application 5th on List C, the Council has only said that doing so would make "it likely that a determination could be reached within the next year". That statement is neither precise nor guaranteed – despite the fact that the claim was made more than two years ago and investigation has not commenced.
15. I conclude that, while the Council is likely to move the application from List A to List C, it has taken no such action yet and the timescale for determination of the claim remains uncertain. The Council has not shown that it will investigate the matters stated in the application "as soon as is reasonably practicable".

The Circumstances of the Case and Views of the Applicant

The Interests of the Public

16. As noted above, the application is made for an order to modify the DMS so that two routes are downgraded. The applicant submits that the routes were incorrectly recorded on the DMS as 'roads used as public paths' in the 1950s, and the DMS was incorrectly modified to record the routes as 'byways open to all traffic' (BOATs) in 1986. It is asserted, with regard to historic documentary evidence, that the routes should be recorded as having no higher status than that of bridleway.
17. I cannot comment on the case for the application itself, but the fact that it turns on rights of vehicular use is relevant to this decision. The applicant suggests that there is a lack of room to pass on the "narrow" routes, and so there is conflict between vehicular users and those who walk or ride. It is also said that damage from vehicles leads to closure of the routes for repairs, which must be done at public expense; walkers and riders are unable or disinclined to use the tracks because of their condition as well as the actual/perceived danger of collision.
18. The applicant further states that BOAT 19 is a historic sunken lane, while vehicular users go off-road from BOAT 47 into woodland which is designated for its nature conservation interest. Whether or not any of the applicant's concerns are well-founded – or would be appropriately addressed by order or other means – they relate to public safety, public expenditure and environmental damage. The Council has agreed that it is in the public interest to expedite investigation of this claim. I find that the questions arising from the contested status of the routes provide a reason to set a date by when the application must be determined.

The Earlier Request for Expedition of the Claim

19. The Council suggests that the applicant had not made any earlier case that the application be prioritised under the Claims Policy, but that makes no difference to this decision. The Council itself is responsible for evaluating claims on that basis.
20. Moreover, and as the Council has noted, the applicant asked that the claim be "expedited" at the outset – in a cover letter dated 15 February 2016. The 'February letter' specifically requested expedition of the application or that a temporary Traffic Regulation Order (TRO) is imposed. It was said that TROs had previously been applied for in respect of BOAT No. 19 and those TRO applications had been justified by conflict between users and environmental damage.
21. Any matters related to TROs are outside of my remit, but the February letter is important because it effectively sought priority action in respect of the application routes for the same reasons that are now given in support of a direction. The letter did not mention the Claims Policy or even substantiate the conflict and damage

concerns, but it should still have alerted the Council to at least the possibility that there could be grounds for expediting the application in the interests of the public.

22. If the Council disagrees with that finding, it is obvious now that the applicant's concerns for public safety and the environment are long-standing. The February letter adds weight to the case for making a direction.

Personal Circumstances

23. It is said that the person who made the application for Buriton Parish Council has moved out of the area, while other people who provided supporting evidence are of retirement age or no longer alive. In fairness to the Council, the claim is made on the basis of documentary evidence alone; it does not seem that investigation of the application, or confirmation of any order if made, would depend on the input of any individual witness. Even so, when any person makes, supports or even objects to an application, they can have a reasonable expectation that it will be determined in accordance with the statutory framework and not some indefinite future date.

The Backlog of Applications

24. The Council has a backlog of DMMO applications arising from "resourcing issues" – but there is no suggestion that this problem would prevent the application from being determined within the next year if it is moved to List C. Indeed, the Council has not shown that its backlog would prevent it from making a determination within a shorter period if I was to find such a direction justified.

Conclusion

25. The Council has a reasonable system for prioritising DMMO investigations, and it now proposes to move the application up from List A to List C under the Claims Policy, because the applicant has demonstrated that it is in the interests of the public to expedite investigation. However, the Council also indicates that it has taken no action yet and so, with regard to all other matters raised, I conclude that there is a case for setting a date by when the application should be determined.
26. As to what the date should be, the Council's has not shown that its expectation of the application "likely" being determined "within the next year" means that the matters are to be investigated as soon as is reasonably practicable. I have taken account of the Council's backlog but find – from the serious public interest concerns raised and the delays to date – that the Council ought to be directed to determine the application before the expiration of less than 12 months.
27. Since the Council will need time to carry out its investigation and consult other authorities, a further period of 6 months is allowed to make a determination.

DIRECTION

28. 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** Hampshire County Council to determine the application (ref: DMMO 1168 BURITON) not later than 6 months from the date of this decision.

Jean Russell

INSPECTOR