



## Direction Decisions

by **K R Saward Solicitor**

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

Decision date: 21 November 2018

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**Ref: FPS/Q4245/14D/3 (Application A)**

**Representation by Mrs June Mabon**

**Trafford Borough Council**

**Application to add a bridleway from easterly termination of restricted byway no.14 Carrington, to the northerly termination of restricted byway no.9 Altrincham (Council ref: DMMO 105)**

- 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 Trafford Borough Council to determine an application for an Order, under Section 53(5) of that Act.
  - The representation, dated 25 May 2018, is made by Mrs June Mabon.
  - The certificate attached to the application as required under Paragraph 2(3) of Schedule 14 is dated 28 April 2017.
  - The Council was consulted about the representation on 13 July 2018 and the Council's response is dated 3 August 2018.
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**Ref: FPS/Q4245/14D/4 (Application B)**

**Representation by Mrs June Mabon**

**Trafford Borough Council**

**Application to upgrade existing footpath to bridleway from Sinderland Road to the Altrincham M B Boundary (Council ref: DMMO 106)**

- 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 Trafford Borough Council to determine an application for an Order, under Section 53(5) of that Act.
  - The representation, dated 28 May 2018, is made by Mrs June Mabon.
  - The certificate attached to the application as required under Paragraph 2(3) of Schedule 14 is dated 28 April 2017.
  - The Council was consulted about the representation on 13 July 2018 and the Council's response is dated 3 August 2018.
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### Decisions

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

### Preliminary matters

2. Applications were made by Mrs June Mabon to Trafford Borough Council to modify its Definitive Map and Statement of Public Rights of Way under Section 53(5) of the 1981 Act in respect of two claimed routes. One application sought the addition of a bridleway to the Definitive Map and Statement. The other sought an upgrade of a footpath registered on the Definitive Map and Statement to a bridleway. Both applications were made on 28 April 2017. From the map supplied, the claimed bridleways appear to be linked.
  3. The basis of the representation from Mrs Mabon is the same in each case. The
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Council has made a single response. Therefore, I address the issues together but, clearly, they are separate applications and I must consider whether or not a direction should be given in each case.

## Reasons

4. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement.
5. 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.
6. 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>.
7. The Council acknowledges that it has no separate statement of priorities aside from those contained within the Trafford Council Rights of Way Improvement Plan, Statement of Action, dated March 2009. However, this document does not include timescales and contains no specific action for applications of this kind.
8. 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.
9. Whilst the applications were made on 28 April 2017 with notice served on the landowners (including Network Rail), the Council sought confirmation for the applicant that all land affected by the routes was registered<sup>2</sup>. It emerged that a section of land for Application B was unregistered. It was not until 21 September 2017 that Network Rail confirmed it was the landowner.
10. When the applicant queried progress on her two claims on 9 May 2018, the Council advised that work would progress after the workload related to two previous applications had reduced. The Council confirms that it has a total of four applications for Definitive Map Modification Orders including those submitted by Mrs Mabon. It wishes to finalise the two earlier applications before proceeding with work on Mrs Mabon's applications.
11. As a decision was made earlier in 2018 on one of those previous applications and the other one appears to be reaching its final stages, Mrs Mabon considers there is not an unacceptably large backlog of application work delaying matters.
12. The Council clarifies that objections have been made to one published Order. It will need to prepare documents for an appeal if current negotiations for the

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

<sup>2</sup> i.e. at H.M. Land Registry

withdrawal of those objections is unsuccessful.

13. At the time of the Council's response in August 2018, a decision was due to be made "shortly" on the other outstanding application. However, the Council anticipates that the matter is likely to be referred to the Planning Inspectorate necessitating the preparation of documents as a minimum.
14. As a small local authority, the Council has limited resources and the Officer concerned also has other responsibilities. In concentrating on two Orders, the Council submits that it is in line with other Greater Manchester Authorities who have larger dedicated resources available.
15. Even so, the Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Compliance with that duty and all it entails cannot be considered as an exceptional circumstance. Circular 1/09 is 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.
16. The Council suggests that a 6 month period is needed before starting its investigations. It states that there are important investigations required in connection with user evidence regarding vehicle control barriers erected across the route for Application A and its prior public use. In order to consider the evidence received, collect evidence from landowners and occupiers and take statements, the Council requests 18 months to complete its investigations on both applications.
17. According to the Council, the applications followed a short period when the claimed path in Application A was unavailable for public use. The landowner, who is described as a large developer in the area, subsequently reconsidered the decision to prevent its public use. Whilst acknowledging the importance of clarifying the rights of the public to use the paths, the Council points out that there is nothing currently preventing their public use.
18. Nevertheless, over 12 months has now elapsed since title to the land affected was clarified. There is no certainty that the applications will be processed within the anticipated timescale. It is appreciated that the Council will require some time to carry out its investigations and make a decision on the applications. Given the physical proximity of the claimed routes, it makes sense for the applications to be investigated contemporaneously. The Council does not have a large backlog of applications. No exceptional circumstances have been indicated.
19. In the circumstances I have decided that there is a case for setting a date by which time each application should be determined. On the information given, I am unpersuaded 18 months is needed bearing in mind the small number of applications before the Council. A further period of 12 months has been allowed.

### **Directions**

20. 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 Trafford Borough Council to determine the above-mentioned applications not later than 12 months from the date hereof.

*K R Seward*  
INSPECTOR