



Direction Decision

by Alan Beckett BA MSc MIPROW

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

Decision date: 3 January 2019

Ref: FPS/D3450/14D/77, 78, 79 & 80

Representation by Mr Martin Reay

Staffordshire County Council

Applications:

Adding a public footpath from Cadmans Lane, Essington to public footpath No. 26B Norton Canes (LJ621G)

Adding a footpath from Wadden Lane to Old Uttoxeter Road, Weston (LJ641G)

Adding a footpath from Church Lane to footpath No. 3 Gayton (LJ642G)

Adding a footpath from Fradswell Lane to footpath O.1410(a), Fradswell (LJ662G)

- 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 ('the Council') to determine applications made for Definitive Map Modification Orders ('DMMOs') under Section 53(5) of that Act.
 - The representation is made by Mr Martin Reay ('the Applicant'), dated 2 March 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to LJ621G is dated 23 July 1999.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to LJ641G is dated 29 September 1999
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to LJ642G is dated 12 November 1999
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to LJ662G is dated 23 December 1999.
 - The Council was consulted about the Applicant's representation on 3 May 2018 and the Council's response was made on 12 June 2018.
-

Decision

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

Statutory and policy context

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.
 3. 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.

Reasons

The Council's Statement of Priorities and the reasonableness of its priorities

4. The Council acknowledges that it has a backlog of 238 section 53 applications which it has yet to deal with, many of which it says involve complex issues and / or the interviewing of a number of witnesses and landowners. The Council submits that it has limited resources available to investigate these applications and in consequence a decision had been taken to address the backlog in chronological order of receipt subject to a number of exceptions which would give a case a higher priority.
5. The exceptions are: (a) where delay would threaten the loss of the claimed right of way; or (b) where there is severe hardship or a risk of confrontation between the claimant and the owner / occupier of the land or there is evidence of a detrimental effect upon the health of the owner or occupier of the land; or (c) where in a case of an application to delete or downgrade a right of way, delaying the determination will result in severe hardship to the owner or occupier of that land; or (d) where having regard to the Council's Sustainable Transport Policies, in the case of an application to add a public path or to upgrade the existing status of a highway, the application relates to a path of actual, or potential, regional or national significance; or (e) where the route would be relevant to the achievement of another of the Council's statutory policy objectives.
6. Although without a published Statement of Priorities, I consider that the Council has identified a number of factors which could lead it to conclude that an application could be considered 'out of turn', but that otherwise applications would be dealt with in chronological order of receipt. Whilst there is nothing before me to suggest that the approach taken by the Council for bringing and keeping the Definitive Map and Statement up to date is unreasonable, that does not alter the statutory duty on the authority to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

The actions or intended actions of the Council

7. The applications do not fall within any of the priority groupings identified by the Council and in June 2018 stood respectively at numbers 118, 123, 124 and 130 in the register of applications. The Council considers it very difficult to set out a timescale in which these applications will be determined.
8. The Council gives several reasons as to why it does not consider that a direction should be given on these applications. First, a direction on these applications would disadvantage the parties to other applications higher up the register. Secondly, the Council has been directed to determine 54 other applications which will require significant staff time and resources. Thirdly, additional directions would result in further delays to the consideration of applications not subject to a direction. Fourthly, the issuing of further directions without taking into account the burden imposed by existing directions would be

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

- unreasonable. Fifthly, these requests form part of a total of 22 direction requests from this Applicant; it would be manifestly unreasonable for directions to be given for the determination of all applications within the same timescale. Finally, the Council does not consider there to be any special reasons why these applications should take precedence over applications which have been waiting for a much longer period of time.
9. The scale of the task facing all surveying authorities dealing with DMMO and other rights of way casework is recognised and understood. It is also acknowledged that the Council has limited resources available to it with which to undertake such work.
 10. Similarly, it is acknowledged that the Council has recently been directed by the Secretary of State to determine 54 other applications which have been made to it and which had not been determined within 12 months of the receipt of the relevant paragraph 2(3) certificate. It is acknowledged that the making of further directions in respect of these applications will add to the burden already imposed upon the Council.
 11. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate. It is not considered reasonable for nineteen years to elapse between an application and its determination, or for the Council to be unable to state when investigation of these applications will commence.
 12. It can only be concluded that the Council has taken no action on these applications in the nineteen years since they were made, and would appear to have no intention of taking any action on them in the foreseeable future. Deferring the investigation of the applications for an unspecified length of time is, on the face of it, wholly inconsistent with the Council's statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice and means that there is uncertainty for the applicant as to when a decision is likely to be reached.
 13. The lack of action by the Council and its failure to set out any firm intended action, would justify making a direction that the application is determined before the expiration of a given period.

The circumstances of the case and views of the Applicant

14. The Applicant acknowledges that the current requests form part of a larger group of 22 applications for which he is seeking directions from the Secretary of State. In an attempt to avoid further direction requests the Applicant had written to the Chief Executive of the Council and the Director responsible for rights of way matters to explain why it was considered unreasonable to be expected to wait indefinitely for the applications to be determined, over and above the 19 years which had already elapsed and to request an indication of when the applications would be determined. The Applicant states that his letter was neither acknowledged nor replied to.
15. The Applicant submits that during the past 10 years, the Council has determined on average 1 application per year. On that basis, the Applicant estimates that it is unlikely that the applications will be determined within his lifetime without intervention by the Secretary of State. The Applicant considers this to be unacceptable and manifestly unreasonable.

16. The Applicant submits that a delay in the determination of these applications of 19 years so far with no prospect of determination for many decades to come is simply unacceptable. It is the Applicant's belief that this situation would only be remedied by the exercise of the Secretary of State's power to direct the Council to determine the applications within a defined time limit.
17. The Applicant has waited 19 years for the Council to begin the investigation of these applications, and I consider it highly unlikely that the Council will commence its investigation without intervention. In the absence of evidence to the contrary, I find that the age of the applications to be a compelling reason for the setting of a date by which the applications should be determined.

Conclusions

18. If the Applicant's estimate of the Council's average rate of progress of 1 application being determined each year is correct, then given the current position of these applications in the register, the Council may reach a determination at some point towards the middle of the twenty-second century. Such a timescale cannot be described as being reasonably practicable. Consequently, it appears unlikely that these applications will be determined without intervention.
19. In the circumstances I have decided that there is a compelling case for setting a date by which these applications should be determined. Although I am aware that the Council has recently been directed to determine 54 other applications and that the Council will require some time to carry out its investigation into these applications and make a decision on them, I do not consider it appropriate to allow more than 6 months for the Council to do so.

Direction

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 Staffordshire County Council to determine the above-mentioned applications not later than six months from the date of this decision.

Alan Beckett

INSPECTOR