



Direction Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 1 February 2019

Ref: FPS/D3450/14D/55

Representation by Pauline Whalley

Staffordshire County Council

Application to upgrade Footpath no 73 Audley Parish and Footpath no 39 Newcastle Town to Bridleway

- 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 (ref. MMU/LD603G), under Section 53(5) of that Act.
 - The representation is made by Mrs Pauline Whalley, dated 17 January 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 2 September 1994.
 - The Council was consulted about the representation on 1 May 2018 and the Council's response was made on 7 June 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 applicant¹.
3. The application was submitted some 24 years ago and, I understand, in 2017 was ranked 17th in the County Council's list of priorities. The applicant has calculated that, on average, the County Council determines one or two applications per year. The applicant is therefore concerned that, at this rate, it will be many years before this application is considered and that the application will be put at risk because the user evidence will be weakened over that period.

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

4. The applicant, supported by the North Staffordshire Bridleways Association, maintains that the loss of access to the Apedale area has caused great inconvenience to local horse riders. The claim is considered to be important because the upgrade to a bridleway is intended to serve as an 'escape route' if a planned extension of the railway tracks in Apedale takes place. However, whilst I have been provided with an indication of the proposed route of that planned extension of the railway tracks, I have been provided with no details in terms of the likelihood of that extension taking place or the anticipated timescale.
5. In response, Staffordshire County Council explains that because of the number of applications received, the limited resources available to it and the strict requirements imposed upon surveying authorities by the *O'Keefe* case², it has with some exceptions resolved to determine applications in the order of receipt. The exceptions include where a delay would threaten the loss of the claimed right of way, where severe hardship would result from a delay and where the application relates to a path of actual or potential regional or national significance. In those circumstances, the application is afforded priority but only, as I read it, when specifically requested to do so. However, in this case no such request was made and the claim is not considered by the County Council to fall within any of the categories to which it would afford priority.
6. The County Council draws attention to the cumulative effect of directing it to determine multiple applications and points out that there are other applications ahead of this one in the ranking that are equally deserving. The County Council considers that directing that this application is determined would further put back those applications that are not subject to a direction and would disadvantage those applicants.
7. The County Council points out that, as of June 2018, it had already been directed to determine some 54 applications by the Secretary of State and that the Planning Inspectorate was considering a further 49 requests for direction. If the County Council was directed to determine the latter applications also, that would amount to some 40% of current applications having a target for determination within a very short timescale. The County Council considers that this would not only set objectives that cannot realistically be met, it would also undermine its own prioritisation system and result in a new system for prioritisation that is outside its control. The County Council therefore requests that consideration be given to the reasonableness of directing a single authority to determine a large number of applications.
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. The statutory duty is to investigate applications as soon as is reasonably practicable. In this case, more than 24 years have passed since the application was submitted. The County Council has provided no indication as to when the application may be determined. That cannot be considered reasonable by any standard. Furthermore, if it remains on the County Council's list without any priority being afforded to it, it is likely that this case will not be dealt with for at least a further eight years, such that the applicant would have waited for a total period of some 32 years: that also cannot be considered reasonable.

² *O'Keefe v SSE and Isle of Wight County Council* [1996] JPL 42, (CA) [1997] EWCA Civ 2219, [1998] 76 P&CR 31, [1998] JPL468

9. 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 County Council will require some time to carry out its investigation and make a decision on the applications. A further period of 6 months has been allowed.

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** Staffordshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Paul Freer

INSPECTOR