



## Direction Decisions

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/67-71 and 85-88

Representations by Martin Reay

Staffordshire County Council

<b>Applications:</b>	Application reference	Date of Certificate
<b>Adding footpath from Weston Road to Knight Avenue, Stafford Town</b>	LF617G	undated
<b>Adding footpath from FP6 at Beacon Farm to Lower House Farm, Hopton and Coton</b>	LG604G	21 April 1997
<b>Adding footpath from Buttermilk Hill to Smallwood Manor, Marchington</b>	LG650G	5 January 1998
<b>Adding footpath from Kingsford Lane to Compton Road, Kinver</b>	LH613G	22 May 1998
<b>Adding footpath from Eccleshall Road to footbridge over River Sow, Creswell</b>	LH627G	3 November 1998
<b>Adding footpath from Grindley bank/Grindley lane to path at Blythebridge, Stowe</b>	LK609G	11 May 2000
<b>Upgrading to bridleway the footpath from Upper Hatton to road at Swynnerton Old Park, Swynnerton</b>	LK621G	17 July 2000
<b>Adding footpath from footpath at Tenement Farm to highway east of Edgewells Farm, Ramshorn and Farley</b>	LK639G	15 August 2000
<b>Upgrading to bridleway the footpath from Worston Lane to Cherry Lane, Seighford</b>	LN644G	8 December 2003

- 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 the above applications for orders under Section 53(5) of that Act.
- The representation is made by Martin Reay, dated 2 March 2018.
- Certificates under Paragraph 2(3) of Schedule 14 in relation to each application are dated as list above.
- The Council was consulted about the representations on 3 May 2018 and the Council's response was made on 12 June 2018.

### Decisions

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

### 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 applicant<sup>1</sup>.
3. The applications listed above were submitted between 15 and 21 years ago. The applicant has written to various officers at the County Council, including the Chief Executive and the solicitor responsible for administering applications made under Section 53 of the 1981 Act, seeking an indication as to when the applications might be determined but has received no response. The applicant has calculated that, on average, the County Council determines one application per year. The applicant is therefore concerned that, at that rate, it will be many years before these applications are considered.
  4. 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* case<sup>2</sup>, 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 these cases no such request was made and the claims are not considered by the County Council to fall within any of the categories to which it would afford priority.
  5. The County Council draws attention to the cumulative effect of directing it to determine multiple applications and points out that there are other applications awaiting determination that are equally deserving. Some of these other applications pre-date the applications listed above, many by a number of years. 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.
  6. 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.

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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> *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

7. In that context, the County Council is concerned that this request relates to a number of applications that were submitted over a period of time. It considers that to direct that these applications all be determined within a relatively short period and to the same deadline would be manifestly unreasonable, and that a more reasonable approach would be to seek directions in line with the dates that the applications were made.
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 these cases, at least 15 years and up to 21 years have passed since the applications were originally submitted. The County Council has provided no indication as to when these applications may be determined. That cannot be considered reasonable by any standard.
9. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. In view of the length of time that has already passed, I see no justification for staggering the directions to reflect the dates on which the applications were originally submitted. 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.

### **Directions**

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 applications not later than 6 months from the date of this decision.

*Paul Freer*

INSPECTOR