



## Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 23 January 2019

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**Ref: FPS/D3450/14D/72-76**

**Representation by Martin Reay**

**Staffordshire County Council**

### **Applications:**

- LH637G**      **Application to add bridleway from bridleway south of Birdsley Farm to Portway Lane, Wigginton**
- LH640G**      **Adding footpath from B5405 to A5013, Seighford**
- LJ605G**      **Adding bridleway from A519 to bridleway next to Aqualate Mere, Forton**
- LJ610G**      **Adding footpath from Jolpool Lane to B5027, Sandon**
- LJ612G**      **a) Adding footpath from B5026 to highway to Chebsey;  
b) Adding footpath from B5026 to highway at Oxleasons;  
c) Adding footpath from B5026 to public path at railway boundary; and  
d) Adding footpath from highway to Chebsey to highway to Norton Bridge, Chebsey**

- 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 a number of applications for Orders, under Section 53(5) of that Act.
  - The representation is made by Martin Reay and is dated 2 March 2018
  - The certificates issued under Paragraph 2(3) of Schedule 14 are dated 11 January 1999, 5 February 1999, 26 March 1999, 21 April 1999, 10 May 1999 (LG612G (a)(b) and (c)), and 8 June 1999 (LG612G (d)) respectively.
  - The Council was consulted about the representation on 3 May 2018 and the Council's response was made on 12 June 2018.
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### **Decision**

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
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- 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 Council has submitted its policy statement for prioritising applications under section 53(5) of the 1981 Act. This policy processes applications in order of the date of receipt with following exceptions for:-
    - (a) where delay would threaten the loss of a claimed right of way;
    - (b) where in the case of a claimed right of way, there is severe hardship, or a risk of confrontation between the claimants and the owner/occupier of the affected land or there is evidence of detrimental effect on the health of the owner/occupier of the land;
    - (c) where in the case of an application for the deletion or downgrading of a right of way, delaying its determination will result in severe hardship to the owner/occupier of that land;
    - (d) where having regard to the Council's Sustainable Transport Policies, in the case of an application to add an additional public path to the Definitive Map 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 a route would be relevant to the achievement of another of the Council's statutory policy objectives.
  4. The Council states that no request for priority has been made in these particular cases, and that they will therefore lie on file until reaching the requisite ranking.
  5. The Council further indicates that they are unable to give a timescale due to the number and complexity of the claims on its list; the lengthy nature of the Section 53 process and the deadlines for other directions of this nature already received (48 to the date of their submission in this case). It claims that any additional directions will place an unreasonable burden on the Council and effectively undermine the Council's own prioritisation system.
  6. Mr Reay has indicated that the rate at which the Council is processing applications would mean waiting for between 56 years for a claim made 21 years before (i.e. in 1996) and over 100 years for a claim made 14 years before (i.e.2003). I agree with his view that this is totally unacceptable and manifestly unreasonable. In this case the applications were made in 1999 (now 20 years ago) indicating a likely wait of over 50 years.
  7. 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. In these cases, 20 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council.
  8. The Council considers that it would be unreasonable to issue any further directions, thereby setting objectives that cannot realistically be met. It seems

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

to me that the Council's own priority system, whilst it may appear to be a reasonable approach, is not being implemented in a timely manner which results in delays well beyond what the applicant has a right to expect.

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 Council will require some time to carry out its investigation and make a decision on the application but I consider that the applicant has already waited for an unreasonable period of time. A further period of six months only has therefore 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 six months from the date of this decision.

*Helen Slade*

INSPECTOR