



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

Ref: FPS/D3450/14D/94-98

Representation made by North Staffordshire Bridleways Association on behalf of Mrs Pauline Whalley

Staffordshire County Council

Applications:

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| LM627G | To upgrade to Bridleway part of FP44 Newcastle Town, from Apedale Road to junction with FP46 |
| LM628G | For a Bridleway from disused railway to The Drive (FP41) Audley Parish, via Burgess' Wood |
| LM629G | For a Bridleway from Church Farm, High Street, Halmer End, Audley Parish |
| LM630G | To upgrade to bridleway FP46 Newcastle Town |
| LM631G | For a bridleway from junction of FPs 45/46/49 Newcastle Town to Apedale Road near sawmill |

- 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 applications for Orders made under Section 53(5) of that Act.
 - The representation is made by North Staffordshire Bridleways Association ('NSBA') acting as Agent on behalf of the applicant, Mrs Pauline Whalley, and is dated 2 April 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 27 February 2002.
 - The Council was consulted about the representation on 21 May 2018 and the Council's response was made on 29 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 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
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- expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
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 (50 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. The NSBA indicate that the Council has a backlog of 241 undetermined definitive map modification order applications spanning around 27 years, and that the rate of determination is approximately one per year (although none has been determined since February 2016). It is likely to be many more decades before these applications are determined and delays of this length are manifestly unreasonable. Witnesses are becoming uncontactable due to age and infirmity or because they have passed away or relocated.
 7. I note the submissions made with regard to the reducing resources being applied to the rights of way functions at the Council but the legislation clearly sets out the statutory functions of authorities in this respect. 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, 18 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. This is an unacceptable situation.

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

8. The Council considers that it would be unreasonable to issue any further directions, thereby setting objectives that cannot realistically be met. It seems 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. Furthermore as these cases are based on user evidence, the delays risk the loss of the relevant information due to the inevitable consequences of the passing of time.
9. Representations were made regarding the applicant's rights under Article 6(1) of the Human Rights Act 1998. Article 6(1) provides that, in the determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. This decision addresses the question of whether the matters set out in an application are to be investigated as soon as is reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act. The decision does not amount to a determination of the Applicant's civil rights and obligations under Article 6(1).
10. I place no weight on the merits or otherwise of the applications themselves as that is not a matter for me to determine. Neither do I place any reliance on the results of earlier reviews of the Definitive Map or allegations of 'errors'.
11. In the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the applications. In the light of the need to secure the evidence, a further period of six months only 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 applications not later than six months from the date of this decision.

Helen Slade

INSPECTOR