



Direction Decision

by Paul Freer BA (Hons) LL.M PhD MRTPI

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

Decision date: 31 January 2019

Ref: FPS/D3450/14D/106

**Representation by Caverswall Parish Council
Staffordshire County Council**

**Application to upgrade footpath to a Byway Open To All Traffic from
Malthouse Hill/ A520 to Roughcote**

- 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/LL602G), under Section 53(5) of that Act.
 - The representation is made by Caverswall Parish Council, dated 16 May 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 27 March 2001.
 - The Council was consulted about the representation on 18 May 2018 and the Council's response was made on 22 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. In this case, the application was submitted some 17 or so years ago. The applicant indicates that, as of May 2018, the application ranked 150 out of circa 241 undetermined applications. The applicant has calculated that the County Council determines one application per year on average but that, at the time of making the request for direction, had not determined any applications within the preceding two years. At that rate, the applicant is concerned that the application subject to this request would not be determined for several decades, if at all.

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

4. The applicant explains that the original application was supported by 24 witness forms, but that the delay to date has resulted in some of those witnesses now becoming uncontactable or otherwise not available. The applicant is therefore concerned that the application will be put at risk because the user evidence will be weakened and/or compromised by the delay.
5. In November 2007, Staffordshire County Council published a Rights of Way Improvement Plan. In that plan, the County Council acknowledged that the number of applications determined would fall from about 25 per year at that time to no more than 12 per year. Subsequently, at a County Council Meeting in October 2017, it was indicated that the priority would be to keep open those routes that already exist rather than add new routes to the network. The applicant considers that, without a direction to determine being made, the application will remain undetermined.
6. 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 when specifically requested to do so. However, in this case no such request was made.
7. 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.
8. 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.
9. 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, the application was submitted over 17 years ago. It is apparent from the Council's response, its recent track record of determining applications and the County Council Meeting in October 2017 that the applicant would be unlikely to receive an outcome for many decades to come. That cannot be considered reasonable by any standard.

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

10. 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.
11. Representations were made by Caverswall Parish Council to the effect that rights under Article 6(1) of the Human Rights Act 1998 would be violated if the authority is not directed to determine the application. Article 6(1) provides that in the determination of his 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. However, my decision as to whether the authority has investigated and determined the application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a determination of the applicant's civil rights and obligations. Article 6(1) is not applicable to this decision.

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