



# Direction Decision

by **Susan Doran BA Hons MIPROW**

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

Decision date: 28 February 2020

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**Ref: FPS/L3245/14D/2**

**Representation by Stoke upon Tern Parish Council  
Shropshire Council**

**Application to amend the Definitive Map and Statement by the addition of a Public Bridleway from Ollerton Lodge to Peplow Chapel, Parish of Stoke upon Tern (OMA ref. 124)**

- 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 Shropshire Council to determine an application for an Order under Section 53(5) of that Act.
  - The representation made by Stoke Parish Council is dated 5 November 2019.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 17 November 2016.
  - The Council was consulted about the representation on 27 November 2019 and the Council's response was made on 6 January 2020.
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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 applicant<sup>1</sup>.
3. In this case, the Applicant seeks to expedite determination of the application submitted to the Council over 3 years ago, which it sees as having no realistic prospect of being determined within the foreseeable, or even distant, future. Based on documents published by the Council, the Applicant estimates<sup>2</sup> they held some 84 definitive map modification applications during the period August 2017 to November 2019, of which only 5 were determined. This leaves 79 applications (including this one) for which no decision has been made. This

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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> As at November 2019

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equates, on the last 2 years progress, to an average determination rate of less than 2.5 applications a year. Accordingly, the Appellant calculates, with 64 applications pre-dating this application to be determined by the Council, it will indicatively be a further 25 years before it is determined.

4. The Council has a Statement of Priorities which sets out the reasons for prioritisation of claims outstanding in its Register. This Application is number 65 of 81 applications awaiting determination and falls within Priority Area 1<sup>3</sup> of its Statement, being tenth in line for investigation within this area. Temporary staff shortages over the last 12 months have impacted on the Council's ability to deal with such claims. However, it is anticipated that in March 2020 a further assessment of Priority Area 1 applications can be undertaken, in particular of the top 10 claims. This application could fulfil other criterion within the Statement<sup>4</sup> resulting in it moving further up the list for investigation.
5. I appreciate the Council's comments about resources. However, the legislation clearly sets out the statutory duties in relation to its function as Surveying Authority. Whilst the Council has a priority system and it is anticipated that this application may be re-evaluated and progress further up the list for determination, no timescale or estimation of when it will be determined has been given. In this regard, I note the Applicant's concerns that witnesses who have submitted statements in support of the application may not be available in the future to verify, clarify or elaborate on their evidence as time passes by. 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 this case, over three years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation of it being addressed within 12 months, for the determination of the application to take a further unspecified number of years.
6. 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. 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** the Shropshire Council to determine the above-mentioned application not later than 6 months from the date of this decision.

*S Doran*

**Inspector**

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<sup>3</sup> North Shropshire and the remaining un-reviewed parishes within Oswestry district – being an area that has not undergone the district review process

<sup>4</sup> Prioritisation in accordance with key local demands identified through the Shropshire's Great Outdoors Strategy; or in the public interest