



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: 14 April 2020

Ref: FPS/D3450/14D/135

Representation by Loggerheads Parish Council

Staffordshire County Council

Application to add a Byway Open to All Traffic from the A53 Blore Heath; and/or upgrading to a Byway Open to All Traffic that part of Footpath 15 from the Bungalow to the boundary between OS Plots 1997 and 3500 (OMA ref. LH609G)

- 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, under Section 53(5) of that Act.
 - The representation dated 9 December 2019 is made by Loggerheads Parish Council.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 May 1998.
 - The Council was consulted about the representation on 13 December 2019 and the Council's response was made on 27 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 Applicant¹.
3. The Council is experiencing a backlog due to the number of definitive map modification claims awaiting determination (234) and their limited resources to deal with rights of way matters. Many of the claims, they say, involve complex legal issues and/or interviewing a considerable number of witnesses and landowners. Whilst the Council acknowledges the expectation that section 53

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

applications will be determined within 12 months of receipt, due to the volume of cases, it has implemented a system to determine them in date order of receipt subject to exceptions which are given priority. These include applications where the land over which the route runs has received permission for development that would result in the loss of a claimed way, or all attempts to divert or accommodate the route within the development have been exhausted; or where there is evidence of severe financial hardship caused to the owner/occupier of the land by an application for a claimed route. In this instance, priority status has not been requested. Given the backlog of claims, the nature of the section 53 process and deadlines for directions already granted, the Council is unable to estimate or give a timescale as to how long it will take for this application to be processed.

4. I acknowledge, as the Council points out, that there are other applications which are ahead in the ranking. These they say are equally deserving, so to issue a direction in this case would disadvantage those parties. The Council has already been directed to determine some 83 applications by the Secretary of State with determination dates up to May 2020, and further requests for determinations are under consideration. I appreciate the Council's comments that those currently to be determined will require significant staff input, and if further directions are made, they will have been set a target of determining over 40% of current applications within a very short timescale. This will result in further delays for those applications not subject to a direction.
5. The Council considers that prioritising this application would result in their own prioritisation system being undermined with applications effectively being prioritised by the Secretary of State and not by themselves. Furthermore, whilst doing its utmost to meet the deadlines imposed, the Council considers that setting a deadline for determination, without taking account of the number of requests made and which are outstanding, fails to consider the burden imposed and is, albeit unintentionally, unreasonable. As a result, the Council believes it will have been set objectives that cannot realistically be met.
6. Although the Council believes this application should not take precedence over others which have been awaiting determination for a much longer time, as it considers there are no special reasons to do so, more than 21 years has passed since the application was lodged with them, and the Applicant has had no indication as to when it will be determined. Further, the Applicant estimates there are over 100 applications to be determined before this one and, with current progress and without intervention, it is likely to be around 30 years or more before the Council is able to make a decision on this application.
7. Whilst I acknowledge the Council's position, I do not consider that the current delay in determining this application, and the likely future delay, can be viewed as reasonable. 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. Notwithstanding the issues raised by the Council, no exceptional circumstances have been indicated by them for not determining it.
8. Accordingly, 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 additional time to carry out its investigation and make a decision on the application. Given the exceptional circumstances currently being

experienced as a result of the coronavirus (Covid-19) outbreak, a further period of 12 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 Staffordshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

S Doran

Inspector