



## Direction Decisions

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

Decision date: 31 August 2017

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**Ref: FPS/D3450/14D/6**

**referred to as 'Application A'**

**Representation by Border Bridleways Association**

**Staffordshire County Council**

**Application to add a bridleway from Oldcott Farm / Oldcott Drive to Colclough Lane / Kidsgrove Bank (Parish of Goldenhill) (LE607G)**

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Staffordshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 8 May 2017, is made by Anndrea Bossen on behalf of Border Bridleways Association.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 14 June 1995.
- The Council was notified of the representation on 9 June 2017 and submitted its response on 27 July 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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**Ref: FPS/D3450/14D/7**

**referred to as 'Application B'**

**Representation by Border Bridleways Association**

**Staffordshire County Council**

**Application to add a Bridleway from Wedgwood Lane (nr Marshfield Farm) to Hill Lane (nr Acorn Lodge) Gillow Heath (Parish of Biddulph) (011813)**

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Staffordshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 8 May 2017, is made by Anndrea Bossen on behalf of Border Bridleways Association.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 15 January 2016.
- The Council was notified of the representation on 9 June 2017 and submitted its response on 26 July 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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### Background

1. These representations for directions to be made to Staffordshire County Council ("the County Council") were submitted to the Secretary of State on behalf of the Borders Bridleways Association ("the BBA"). As they relate to the same applicant, authority and general matters to be taken into account they are dealt with together in this decision.
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## Reasons

2. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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.
3. 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 and Statement ("the DMS") 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, as set out in the Circular<sup>1</sup>.
4. The County Council referred to their criteria for dealing with such 1981 Act applications. They indicated that due to the number of claims made, and the limited resources allocated, there was a backlog of 241 applications to be determined, many of which involve complex legal issues and/or the interviewing of a considerable number of witnesses.
5. Taking account of these matters, and *R v Isle of Wight County Council ex parte O'Keefe, 1989*<sup>2</sup>, ("O'Keefe"), it is the policy of the County Council to determine applications in order of receipt unless a request for priority with accompanying relevant evidence is received. In such cases, the following exceptions apply to give priority to a claim:
  - a) Where delay would threaten the loss of a claimed right of way; or
  - 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 a detrimental affect to the health of the owner/occupier of the land; or
  - c) Where in the case of an application for deletion or downgrading of a right of way, delaying its determination would result in severe hardship to the owner/occupier of that land; or
  - d) Where having regard to the County 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 the 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 County Council's statutory policy objectives.

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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> [1989] JPL 934, [1989] 59 P & CR 283

6. O'Keefe relates to the order making authority's pre-order making responsibilities. It held that a decision could be quashed if it could be shown that the decision-making process was flawed. There is a duty upon a Council to make a properly informed decision, with a proper appreciation and weighing of the available evidence and any legal principle which may have to be applied. O'Keefe holds that the Council "*...must be able to say that it was "shown...that a right of way subsists or is reasonably alleged to subsist..." before they could make their order.*" It does not indicate that unlimited time should be available to reach such a properly informed decision.
7. The County Council indicated that it had been directed by the Secretary of State in respect of two applications<sup>3</sup> to be determined by 1 and 31 March 2018 respectively. It is understood that there are at least six other applications for directions being considered by the Planning Inspectorate.
8. Whilst the County Council said that there are other applications, which are ahead in ranking and equally deserving, and that issuing a direction in either of these cases would disadvantage those parties, I can only determine the applications which are before me. I agree with BBA that there is a statutory duty to keep the DMS under continuous review, as set out in section 53 of the 1981 Act. Although the County Council raise concerns that their prioritisation system would be undermined by a direction, with applications effectively being prioritised by the Planning Inspectorate, the right to apply to the Secretary of State for a direction is set out in the statute.
9. The County Council said that due to the complexity of claims and the lengthy nature of the section 53 process it was very difficult to put a timescale to determining a particular case. BBA were aware that the County Council have over 240 undetermined definitive map modification order applications to process but argued that the rate of determination of one per year, as has been the case in 2015 and 2016, with none so far in 2017, was unacceptable.
10. The Circular refers to the need to "*...investigate applications as soon as reasonably practicable...*" which arises from the 1981 Act itself<sup>4</sup>. I also note that Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, sets out that "*In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...*".
11. Although the chronological and exceptions policy appears reasonable it seems that lack of resources means that determinations are not being dealt with in any reasonable time. I do not consider that relying on there being a large number of other outstanding applications is a reasonable basis for not dealing with applications in an appropriate timescale. It may be that the issue of resources needs to be considered with this matter in mind.
12. I will consider the individual applications with these general points in mind.

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<sup>3</sup> Refs FPS/D3450/14D/3 and FPS/14D/4

<sup>4</sup> Schedule 14, paragraph 3(1)

### **Application A**

13. The County Council referred to their exceptions to priority, as set out in paragraph 5, indicating that no request for priority status was received with regard to this application. They said that BBA had not provided reasons why any of these exceptions applied and, therefore, it should not be prioritised over other claims to be dealt with in chronological order.
  14. I accept the view of the County Council that there appear to be no exceptions arising in relation to their priorities. However, this claim was made twenty-two years ago and is now at number 39 in the list of applications. On the basis of a rate of determinations of one per year this suggests it could take more than sixty years from application to determination. I have to agree with BBA that such a time period clearly exceeds any parameter which could be regarded as having the matter dealt with "*...as soon as reasonably practicable.*"
  15. I recognise that there are a large number of cases for the County Council to deal with, and accept the need to treat cases in a fair and expedient manner. It is also recognised that a direction in relation to this case would mean that others would be pushed further down the list. However, I do not believe a period of twenty-two years – or potentially far longer - from the date of application could be viewed as being "*...within a reasonable time...*".
  16. It will be noted that 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<sup>5</sup>. I consider that this indicates the timescale which was thought reasonable to expect such matters to be determined. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application and noted that other directions have been made and will be under consideration.
  17. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 12 months for a decision to be reached.
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### **Application B**

18. BBA referred to the County Council exceptions to chronological priority, set out in paragraph 5, arguing that delay would threaten the loss of the route, paragraph 5.a), due to the need for maintenance. The County Council referred to the apparent maintenance of the route undertaken by the BBA and, quite rightly, said that the recording of a route on the DMS would not necessarily mean that it was publicly maintainable. The County Council believed that the route did not meet this criterion for prioritisation.
19. BBA also argued that the route was a path of actual, or potential, regional significance, in line with paragraph 5.d). They said that the County Council "*Historic Environment Character Assessment: Staffordshire Moorlands, August 2010*" ("*the Assessment*") promotes retention of this type of path in this particular locality as being of significant importance. The claimed route falls with the area identified as BBHECZ 18 – Gillow Heath, which landscape was said to have possible 13<sup>th</sup> century origins.

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<sup>5</sup> The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14

20. In relation to paragraph 5.e) BBA argued that there was value for engagement of the community and visitors with the historic landscape and a link to the Biddulph Valley Railway, which they said would meet the cultural aims of the Council policy. This again refers to matters within the *Assessment*, which refers to the utilisation of a number of public rights of way in interpretation of the history and local distinctiveness of this landscape.
21. I note that the County Council Rights of Way Officer was unable to see anything referring directly to the claimed route within the *Assessment*. However, the *Summary of Recommendations* sets out that "*There are a set of generic statements which in reality apply to all zones. These relate to general principles...The integrity of the historic landscape character...should be considered when planning the siting, scale and relative density of any potential new development*".
22. I consider that the BBA make a reasonable argument that the route may be of potential regional significance by reference to the *Assessment*, although ultimately that would be a matter for the relevant Officer or Committee of the County Council to determine. Whether this route could be utilised to meet the other objectives would also be a matter for the relevant Officer or Committee dealing with that area of work. The County Council indicated that no priority status had been given to this application and take the view that there are no exceptions arising in relation to their priorities.
23. BBA said that the landowners do not object to the route, which is used by horse riders, cyclists and walkers, whilst the County Council indicated that other routes, currently ahead in the ranking list were currently blocked. It appears that the public are not at any current disadvantage with regard to being able to use the claimed route. However, it may also be the case that this is a 'quick win', as landowners and the public appear to be in agreement that it has public status.
24. The County Council have not prioritised the claim, which was made in January 2016, and so it appears that, at priority listing 235, it would wait to be dealt with after all the claims ahead of it in the list. Two claims from 1998 and 2004 sit at priorities 1 and 2, but the rest of the claims appear to be in approximate chronological order, dating from 1990.
25. As the claim from 1990 has not been dealt with within a twenty-seven year period, and the County Council have given no indication of how they might expedite dealing with these applications, I can only assume that it will be at least that length of time until this claim reaches the top of the list. I recognise that there are a large number of cases for the County Council to deal with, and accept the need to treat cases in a fair and expedient manner. It is also recognised that a direction in relation to this case would mean that others would be pushed further down the list. However, I do not believe that such a likely time period from the date of application could be viewed as being "...as soon as reasonably practicable" or "...within a reasonable time...".
26. 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. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application and noted that there are other directions that have been made.

27. Although BBA said that request for updates on the matter were ignored, I note an email update to a query in June 2016. I do not find this a relevant factor in relation to the application before me.

28. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 12 months for a decision to be reached.

### **Directions**

#### **Application A**

29. 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 31 August 2018.

#### **Application B**

30. 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 31 August 2018.

*Heidi Cruickshank*

INSPECTOR