



Direction Decision

by Mrs Helen Slade MA FIPROW

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

Decision date: 19 February 2018

Ref: FPS/D3450/14D/44

**Representation by Mr & Mrs Alan and Lorna Cope
Staffordshire County Council**

Application to add footpath from Bolton Farm, Town End Road, Foxt to bottom of Pine Wood/ join Ipstones 47 (OMA ref. 010440)

- 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 made under Section 53(5) of that Act.
- The representation, dated 16 October 2017 is made by Mr Alan and Mrs Lorna Cope.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 4 February 2015.
- The Council was notified of the representation on 10 November 2017 and submitted its response on 2 January 2018.

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

Reasons

1. Authorities are required to investigate applications 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. 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.
2. Mr and Mrs Cope submitted their application to Staffordshire County Council ('The Council') when a well-used local path was obstructed. The claimed route is acknowledged by the owners of part of it as being a public right of way. As a result of their application Mr and Mrs Cope have received threatening letters which have been passed to the Police for action. The Council has a backlog of applications which has accumulated over a period of more than 27 years and the current rate of determination is less than one per year. The applicants believe that there is no prospect of their application being determined for

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

- decades to come, and that the delay will result in the consequent loss of witnesses, and thus evidence.
3. The Council has responded by saying that although the application was originally made in February 2015, it was not formally acknowledged until 8 June 2015 as there were perceived shortcomings in the application. The Council has indicated in its response to the representation that, due to the limited resources allocated to deal with rights of way matters, it has a list of 241 applications outstanding, on which this application is ranked at number 233 in terms of priority. The Council states that applications are dealt with in order of receipt except in certain circumstances where priority will be given. The criteria are listed as being:
 - 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 (*sic*) to the health of the owner/occupier of the land; or
 - c) (not applicable); 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;
 - e) Where a route would be relevant to the achievement of another of the County Council's statutory policy objectives.
 4. The Council also states that to prioritise the application from Mr and Mrs Cope would disadvantage other claimants whose applications are higher up the priority list, and would undermine the Council's own prioritisation system. There are a large number of other applicants with similar concerns, and it is not the role of the Council to deal with allegations of public order issues, criminal damage and death threats. The responsibility for this lies with the Police.
 5. Furthermore, the Council has recently received directions from the Secretary of State in some 20 other cases, and is therefore unable to give any timescale for the determination of the present application.
 6. Circular 1/09 makes it clear that authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way. They also have a duty to keep Definitive Maps and Statements as up to date as possible so as to provide an authoritative document of the highest attainable accuracy. Authorities should give priority to producing an up to date map and statement on which all public rights of way are recorded. I do not consider that claims of under-resourcing, or the existence of earlier directions, are acceptable reasons for failing to carry out statutory functions. A potential delay of over 200 years before the application is considered by the Council, as indicated by their current rate of determination, cannot, under any circumstances, be considered reasonable.
 7. Furthermore, it would appear that, even by the Council's own priority criteria, this application does fall into one of the categories for prioritisation (risk of

confrontation). Although it may not be the duty of the Council to investigate public order issues, the prioritisation criteria set by the Council itself clearly acknowledges the need to address matters within their powers which may be the source of such incidents. The applicants make reference to a number of incidents suffered not only by themselves but by other parties. The role of the Police in dealing with such matters can only be hindered by the lack of an authoritative legal record of public rights of way.

8. 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 circumstances². In this case, nearly three years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. Indeed the application would seem to fit the Council's own criteria for receiving priority attention. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Nevertheless, 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 six months for a decision to be reached.

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 six months from the date of this decision

Helen Slade

INSPECTOR

² 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