



Direction Decision

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 15 March 2018

Ref: FPS/D3450/14D/18

Representation by Staffordshire Moorlands Bridleway Group

Staffordshire County Council

Application to upgrade to restricted byway Footpath 82 Ipstones, known as Mellow Lane

- The representation is made under Paragraph 3(2) of Schedule 14 to 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 15 September 2017, is made by Mrs J Turner on behalf of Staffordshire Moorlands Bridleway Group.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 1 September 2014¹.
- The Council was notified of the representation on 9 October 2017 and submitted its response on 22 November 2017.

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

Preliminary matters

1. The Staffordshire Moorlands Bridleway Group ("the SMBG") indicated that in April 1993 an application was made for Footpath 82, Ipstones, ("FP82") to be recorded as a bridleway. Staffordshire County Council ("the County Council") has no record of such an application. In January 2004 the SMBG applied for FP82 to be added as a publicly maintainable highway to the list held by the County Council under section 36 of the Highways Act 1980. This was acknowledged by the County Council as being 27 of 27 applications to be determined. There is no indication that that application has been determined.
2. In May 2014 the SMBG made an application for FP82 to be upgraded to the status of restricted byway. It is this application for which a request for a direction has been made.

Reasons

3. 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.

¹ There was a certificate dated 6 May 2014 showing that notices had been posted at either end of the route. This would be appropriate where the owner or occupiers could not be ascertained, for example if the land is unregistered, as per paragraph 2(2) of Schedule 14 to the 1981 Act.

4. 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 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 Circular².
5. 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.
6. Taking account of these matters, and *R v Isle of Wight County Council ex parte O'Keefe*, 1989³, ("*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.
7. *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.

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

³ [1989] JPL 934, [1989] 59 P & CR 283

8. The County Council indicated that it had been directed by the Secretary of State to determine fourteen applications by 31 August 2018. Additionally, a further thirty-eight requests for directions having been submitted to the Planning Inspectorate. The County Council raise concerns that their prioritisation system would be undermined by a direction, with applications effectively being prioritised by the Planning Inspectorate.
9. I note that the County Council has no record of the notification from June 2017 of a gate being locked, which SMBG says gives rise to a risk of confrontation. Although the County Council say that further information and evidence of the confrontation would be needed, the priority statement simply refers to '*a risk of confrontation*' not actual confrontation having occurred. It does not appear unreasonable to suggest that the locking of a gate gives rise to such a 'risk'. Now that the County Council are aware of a locked gate across a recorded public footpath there may be other action required on the matter in any event.
10. SMBG appear to have misunderstood the intention of allowing applications based on historical evidence to be investigated out of turn. I consider it is concerning that there may be a loss of live user evidence, which was apparently submitted in 1993.
11. The County Council say nine section 53 applications have been determined since April 2014, not four as suggested by SMBG. They confirm that SMBG has been notified of a Modification Order in Alton Parish. However, they are unable to say more than that it will be "some time" before this application is determined, lying at 230 out of 241 applications. I agree with SMBG that it appears there is no prospect of this application being determined for a considerable number of years.
12. I agree with SMBG that Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, is relevant. This 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...*".
13. I recognise that there are a large number of cases for the County Council to deal with, and accept the need to treat them in a fair and expedient manner. It is also appreciated that the County Council will require time to carry out its investigation and make a decision on the application, noting that other directions that have been made. It appears that at least some work has been carried out in relation to this application as evidenced by the consultation letter of October 2014 to the Cyclist Touring Club.
14. I do not believe a period of almost four years from the date of application is "*...within a reasonable time...*" when the 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.
15. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. Even taking account that some work appears to have been carried out on this application I consider it appropriate to allow a further 12 months for a decision to be reached.

Direction

16. 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 March 2019.

Heidi Cruickshank

INSPECTOR