



Direction Decisions

by **Michael R Lowe** BSc (Hons)

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

Decision date: 19 April 2018

Ref: FPS/D3450/14D/37 - 43

Representations by Staffordshire Moorlands Bridleways Group and Border Bridleways Association

Staffordshire County Council

FPS/D3450/14D/37 Application to upgrade to a bridleway the footpath from Heaton Village to Hawksley Farm and county road (Council ref. LN623G)

FPS/D3450/14D/38 Application to upgrade to a restricted byway the footpath from map ref SJ 9653 6198 to Gun End 9653 6290 (Council ref. LV602G)

FPS/D3450/14D/39 Application to upgrade to a restricted byway the footpath from Oldfield Farm map ref 40816 35295 to parish boundary map ref 40811 35240 FP No34 (Council ref. LW604G)

FPS/D3450/14D/40 Application to upgrade to a restricted byway the bridleway from map ref SK 0050 5459 to map ref SK 0033 5418 (Council ref. LW602G)

FPS/D3450/14D/41 Application to upgrade to a restricted byway the footpath from map ref 0363 4268 to map ref 0388 4297 (Council ref. 001060)

FPS/D3450/14D/42 Application to upgrade to a bridleway the footpath from map ref SK 0237 5352 to map ref SK 0202 5247 (Council ref. 002369)

FPS/D3450/14D/43 Application to upgrade to a restricted byway the footpath from map ref SK0034 5420 Ashon Hurst to map ref SK0121 5356 Apesford Lane (Council ref. 008996)

- The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking directions to be given to Staffordshire County Council to determine various applications for Orders, under Section 53(5) of that Act.
 - The joint representations are made by Staffordshire Moorlands Bridleways Group and Border Bridleways Association and dated 13 October 2017.
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 7 June 2003, 6 May 2010, 6 September 2011, 16 September 2011, 26 October 2011, 10 May 2012 and 3 March 2014 respectively.
 - The Council was consulted about your representations on 7 November 2017 and the Council's response was made on 19 December 2017.
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Decisions

1. The Council is directed to determine the above-mentioned applications.

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. Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, states: "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...".
 4. The Council has a policy statement for prioritising applications under section 53(5) of the 1981 Act. This policy processes applications in order of the date of receipt with following exceptions for:-
 - (a) where delay would threaten the loss of a claimed right of way;
 - (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 detrimental effect on the health of the owner/occupier of the land;
 - (c) where in the case of an application for the deletion or downgrading of a right of way, delaying its determination will result in severe hardship to the owner/occupier of that land;
 - (d) where having regard to the 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 a 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 Council's statutory policy objectives.Priority is also given to such applications as are granted priority following a formal request.
 5. The Council submits that the applications in question have not been the subject of any such request and do not meet any of the criteria set for priority. The Council have ranked the applications 183, 218, 225, 224, 226, 229 and 231 respectively out of 241 pending applications. The Council are not able to offer any estimate of time for determining the applications and have received 20 previous directions with further cases pending.
 6. 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 these cases, the applicants have waited between 4 and 15 years before seeking a direction from the Secretary of State.
 7. The statutory duty is to investigate applications as soon as is reasonably practicable. The statement by the authority setting out its priorities for bringing and keeping the definitive map up to date is only reasonable if it is able to implement those priorities in accordance with the statutory duty and, under normal circumstances, within 12 months. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to recording public rights of way³.

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

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.

³ Paragraph 1.8, Rights of Way Circular 1/09 Version 2, October 2009

8. In the circumstances, I have decided that there is a case for setting a date by which time the applications should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the applications. A further period of 6 months has been allowed.

Directions

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** Staffordshire County Council to determine the above-mentioned applications not later than 6 months from the date of this decision.

Michael R Lowe

INSPECTOR