



Direction Decision

by Jean Russell MA MRTPI

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

Decision date: 29 June 2018

Direction Ref: FPS/G3300/14D/37

Application to add a bridleway/restricted byway/byway open to all traffic running from A38 AX 1/19 to join with AX 29/37, AX 1/20 and AX 13/7 on the Shipham Road (Callow Drove).

- The application was made to Somerset County Council for an Order to modify the Definitive Map and Statement of Public Rights of Way under section 53(5) of the Wildlife and Countryside Act 1981 (the WCA81).
- The certificate attached to the application as required under paragraph 2(3) of Schedule 14 is dated 1 October 2015.
- The Council's reference for the application is RW/820M.
- A representation concerning the application, dated 14 December 2017, was made by Venetia Craggs.
- The representation is made under paragraph 3(2) of Schedule 14 of the WCA81 seeking that a direction be given to the Council to determine the application.
- The Council was consulted about the representation on 22 January 2018 and the Council's response was made on 1 March 2018

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

PRELIMINARY MATTERS

Legal Context

1. Schedule 14 of the WCA81 sets out provisions relating to applications made under s53(5) of the Act for an Order which makes modifications to the Definitive Map and Statement of Public Rights of Way (DMS).
 2. The applicant for the Order was Ms Craggs on behalf of Sedgemoor Byways and Bridleways Association. The certificate described above was made by the applicant under paragraph 2(3) of Schedule 14 to certify that notice of the application has been served on every owner and occupier of any land to which the application relates.
 3. Paragraph 3(1) of Schedule 14 requires authorities, as soon as reasonably practicable after receiving the paragraph 2(3) certificate, to (a) investigate the matters stated in the application; and (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.
 4. If an authority has not determined any such application within 12 months of their receiving the certificate, paragraph 3(2) of Schedule 14 provides that the applicant may make representations to the Secretary of State who may, after consulting with the authority, direct them to determine the application before the expiration of such period as may be specified in the direction.
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5. In considering whether to direct an authority to determine an application within a specified period, the Secretary of State will take into account any statement made by the authority setting out its priorities for bringing and keeping the DMS up-to-date; the reasonableness of such priorities; any actions already taken by the authority or expressed intentions of action on the application; the circumstances of the case and any views expressed by the applicant¹.

The Application and Representation

6. The application is made to upgrade a route which is already recorded on the DMS as a footpath to a bridleway or higher status public right of way.
7. As noted above, in accordance with paragraph 3(2) of Schedule 14, the Council was consulted on the representation that it be directed to determine the application. After the Council had made its response, on 21 April 2018, the applicant emailed the Planning Inspectorate with new information regarding a relevant planning application. The Council was given an opportunity to comment on this information and did so on 16 May. I have taken account of the original and additional submissions from both parties.

REASONS

The Council's Statement of Priorities and the Reasonableness of its Priorities

8. The Council has published a Statement of Priorities, which is to investigate applications for Definitive Map and Statement Modification Orders (DMMOs) by using the Rights of Way Improvement Plan (ROWIP) scorecard to determine their investigation, unless specified criteria apply which would allow the application to be considered 'out of turn'.
9. If subject to the scorecard system, applications are assessed with regard to their impact on the rights of way network, safety and physical characteristics; higher scores are given to applications to add or upgrade routes on the DMS which would result in maximum benefit to the public.
10. The Council also considers applications concerning routes which connect to each other or are in the same vicinity for 'batching' for efficiency reasons. Applications within a batch are scored on their merits, but individual scores are then averaged in order to prioritise the investigation of the batch.
11. I am satisfied that the Statement sets out reasonable priorities for investigating DMMO applications – although it is also necessary for the Council to carry out such investigations in accordance with its statutory duties.

The Actions or Intended Actions of the Council

12. When the Council was first consulted on the representation, it commented that the application is 'awaiting investigation'. The Council estimated that it would take around 15 years before work began on the relevant batch – and so this application would have been investigated some 17-18 years after it was made. I would have found it difficult to reconcile that timetable with the statutory requirement to investigate applications as soon as reasonably practicable.
13. On 12 April 2018, however, the Council's Regulatory Committee gave support for the application being taken 'out of turn'; on 16 May, the Council informed

¹ Rights of Way Circular (1/09): Guidance for Local Authorities, version 2, October 2009, DEFRA.

me that investigation has begun². I welcome this decision, but the Council has not said when it now anticipates that the application may be determined.

The Circumstances of the Case and Views of the Applicant

The Callow Rock Quarry Planning Permission

14. The applicant requested that the Council be directed to determine the application on the basis that land crossed by the route was within a site subject to a planning application (ref: 1/17/16/083) for a northern lateral extension to Callow Rock Quarry. I understand that the quarry owners do not own 'Callow Drove', but that would not prevent approval of the proposed operations, and the Council has confirmed that permission was granted on 12 April 2018.
15. Planning permissions do not authorise obstructions to or interference with any public right of way under highways or planning legislation – but where such obstruction would result from permitted development, an application may be made to divert (part of) the route, so that the affected way is deleted from the DMS and an alternative route created and recorded.
16. The planning application was approved by the Council's Regulatory Committee on consideration of a report which stated that the quarry 'proposal will obstruct the footpath' – and a diversion order had already been applied for. A condition was imposed on the permission that no development shall take place which would '*interfere with or compromise the use and physical stability of public footpath AX13/7 until a footpath diversion order has been made and confirmed, and the diverted route...made available...*'³
17. The protection afforded to the route in law applies to the right recorded on the DMS – which is to pass and re-pass on foot. When deciding whether to make and confirm the diversion order, the Council would have no remit to determine whether the route has a higher status. Any new route created by order would be a public footpath, and only need to be capable of use as such.
18. The condition imposed on the quarry extension permission does not give the application route any more protection than it already has, because planning conditions must be relevant to planning and not used to control matters such as public rights of way⁴. However, the wording of the condition is significant because it affirms that the route is only protected as a footpath.
19. The Statement of Priorities explains that DMMO applications may be taken out of turn where the path is likely to disappear as a result of development. I find that any unrecorded public rights to ride the route by horse or other means are likely to be threatened by the quarry extension, unless the question of what public rights subsist along the route is settled, through determination of the application, before any diversion order is made.
20. The Council has not only started to investigate the application, but also informed the quarry developer that the application will be determined before the diversion order. Again, I endorse this approach but am surprised the Council has not given even an indicative timetable.

² Letter from the Council dated 16 May 2018

³ I assume for the sake of argument that the condition would cover the application route running from the A38 AX 1/19 to join with AX 29/37, AX 1/20 and AX 13/7.

⁴ The National Planning Policy Framework requires that planning conditions are necessary; relevant to planning and the development permitted; enforceable; precise; and reasonable in all other respects.

21. The grant of permission for an extension to Callow Rock Quarry has made the status of the route a pressing question – and so it is necessary for me to make a direction in order to give the applicant certainty, to assist the quarry developers and in accordance with the Council’s Statement of Priorities.

The Applicant’s Personal Circumstances

22. The applicant also seeks a direction on the basis that her ‘age is against’ her. This consideration could not be decisive on its own, and is less relevant now that the Council has started to investigate the application – but still adds a little weight to my finding that a direction ought to be made.

The Backlog of Applications

23. Before deciding to investigate the application ‘out of turn’, the Council explained that there were delays to the process because it has received an exceptionally high number of DMMO applications over the past eight years. It is no longer necessary for me to address this matter.

Conclusion

24. I conclude that, while the Council has said that investigation has begun, it has provided little information on the now expected timetable for determination of the application. Planning permission has been granted for quarrying operations which would obstruct the route and create a need for diversion order.
25. In the circumstances, there is a case for setting a date by which time the application should be determined. Since the Council will require time to carry out its investigation and consult other authorities and, a further period of 6 months is allowed to make a determination.

DECISION

26. The Council is directed to determine the application (ref: RW/820M) as set out in the Direction below.

DIRECTION

27. 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** Somerset County Council to determine the application (ref: RW/820M) not later than 6 months from the date of this decision.

Jean Russell

INSPECTOR