



Direction Decision

by **Helen Heward BSc (Hons)**

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

Decision date: 30 October 2018

Ref: FPS/D3450/14D/53, 56 and 57

**Representation by North Staffordshire Bridleways Association
Staffordshire County Council**

Applications to upgrade Footpath No. 20 to Bridleway (Betley Parish)(LB607G), Footpaths Nos. 13 and 77 to Bridleway (Endon and Stanley Parish)(LF601G) and Footpath No. 18 to Bridleway (Swynnerton Parish)(LF602G)

- 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, under Section 53(5) of that Act.
 - The representation, dated 17 January 2018, is made by Jane C Ridley of the North Staffordshire Bridleway Association ("NSBA").
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 15 November 1992, 9 May 1996 and 5 August 1996 respectively.
 - The Council was consulted about your representation on 27 April 2018 and the Council's response was made on 7 June 2018.
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Decision

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. The Council has only limited resources, a backlog of 238 applications, as of June 2018, and some or many may involve complex issues and the interviewing of a considerable number of witnesses and landowners. However, Circular 1/09 makes it clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the

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

- protection and recording of public rights of way, and the Council has statutory duties to keep the definitive map up to date. A lack of resources is not a sufficient excuse for a significant delay in determining any application and does not amount to exceptional circumstances.
4. The Council determines applications in chronological order unless one of the following specified exceptions is applicable:
 - (a) Delay to determination would threaten the loss of a claimed right of way;
 - (b) In the case of a claimed right of way, there is severe hardship, risk of confrontation between the claimant and the owner/occupier of the land, or evidence of a detrimental effect on the health of the owner/occupier;
 - (c) In the case of an application to delete or downgrade a right of way, delaying determination would result in severe hardship for the owner/occupier;
 - (d) The application is to add or upgrade a path of actual or potential regional or national significance regarding the Council's Sustainable Transport Policies;
 - (e) The route would be relevant to another Council policy objective.
 5. I have no reason to believe that the Council's policy for prioritising applications is unreasonable. The Council has not received a request for prioritisation of these applications. Other applications are ranked higher. In the Council's list of 241 outstanding cases LF601G and LF602G are ranked 47 and 48. The applicant claims that it took four years for LB607G to rise from 10th position to sixth. The number of applications and ranking may not be exactly the same now, but it is likely that the Council will have taken no action on the cases.
 6. Given the potential complexity, exact timescales for investigation can be difficult to predict, but these factors do not explain why the Council has failed to give even a broad indication as to when it might start to investigate the cases. 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. However, 22 years have passed since LF601G and LF602G were submitted. In the case of LB607G it is 26 years. For investigation to not have occurred in over two decades, without any exceptional circumstances as to the cause of delay, is unreasonable and an indication that the Council is not making reasonable progress in its duty to investigate and to determine applications as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 to the 1981 Act.
 7. The applicant (NSBA) makes the point that the delay jeopardises the validation of the user evidence if this becomes necessary. I agree. Such long delays may result in the loss of an ability to test the evidence of use and as suggested some of the users may have moved away, be unable to elaborate on that evidence or have passed away. Land ownership may have changed and/or land owners may now also be unable to respond with relevant evidence.
 8. NSBA is concerned that the claimed routes in LB607G and LF602G are at risk in the consideration of variations to the currently proposed High Speed Two (HS2) railway route. For LF601G the applicant argues that the claimed route is part of the long distance horse route: "The Potteries Ring Route". For LF602G NSBA argue that there is a need to resolve an alternate route for the Potteries Ring Route, avoiding the HS2 railway route.
 9. The Council acknowledge that the HS2 issue could have implications for several routes that are subject to applications. I agree. It is likely that in the planning

- process for the HS2 railway route an undetermined claim would carry less weight than an Order that is made and one that is confirmed. It is possible, then, that delay in dealing with LB607G and LF602G could potentially jeopardise adequate provision being made for the claimed bridleways if the Orders were to be confirmed. In which case these applications might fall within the Council's prioritisation criterion (a) where delay to determination would threaten the loss of a claimed right of way.
10. The Council also acknowledge that some outstanding applications could have potential significance for specific circular routes of regional significance. In relation to applications LF601G and LF602G the Potteries Ring Route issue could mean that these cases have actual or potential regional or national significance under the Council's Sustainable Transport Policies, and so may fall within the Council's prioritisation criterion (d).
 11. From the evidence before me I cannot make any firm findings on these matters. However, the Council's failure to address these claims adds more weight to my assessment that the applications should be determined. The applicant could have requested that the Council prioritise the applications, but there was no requirement for the applicant to do so.
 12. The Council draw attention to some 54 directions to determine issued by the Secretary of State. The Council require time to carry out its investigation and make decisions on these applications. The workload involved in each case will vary but could be significant. The Secretary of State was considering 49 requests for determination at the time the Council responded. The County Council's own prioritisation system could be undermined, with applications effectively prioritised by the Planning Inspectorate. Other even longer standing applications and parties in other cases could be disadvantaged. Even so, NSBA exercised their right to apply for a direction to the Secretary of State. I have to consider this representation and I have decided that it would be reasonable to set a date by which time the applications should be determined. I consider it appropriate to allow a further 12 months to determine the applications; this is the normal expected timescale for the determination of any application.
 13. NSBA argue that rights under Article 6 of the Human Rights Act 1998 are engaged and violated by the delay in determining these applications. Article 6 provides that in the determination of their 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. However, my decision as to whether the authority has investigated and determined these applications as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 to the 1981 Act does not amount to a decisive determination for the Applicant's civil rights and obligations. Article 6 is not applicable to this decision and it is not for me to comment on the merits of the cases in support of the applications to modify the definitive map.

Direction

14. 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 applications not later than 12 months from the date of this direction decision.

Helen Heward
INSPECTOR