

# Direction Decision

by **K R Seward Solicitor**

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

Decision date: 22 October 2018

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**Ref: FPS/D3450/14D/105**

**Representation by Stowe by Chartley Parish Council  
Staffordshire County Council**

**Application to add a footpath across runways and perimeter tracks at  
Hixon Airfield, Stafford**

- An application was made by Hixon Parish Council and Stowe by Chartley Parish Council to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 (the 1981 Act).
  - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14, is dated 18 March 2012.
  - The Council's reference for the application is MMU/008109 (also shown as 002018).
  - The representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to Staffordshire County Council to determine the application.
  - The representation, dated 9 May 2018, is made by John Blount on behalf of Stowe by Chartley Parish Council.
  - The Council was consulted about the representation on 29 June 2018 and its response is dated 9 August 2018.
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## Decision

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

## Reasons

2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement.
  3. 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.
  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 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
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- circumstances of the case and any views expressed by the applicant<sup>1</sup>.
5. The County Council acknowledges that it has a backlog of applications awaiting determination. At the time of its response the figure stood at 236 outstanding applications. Whilst recognising the expectation that applications under section 53 are determined within 12 months of receipt, the County Council says that this has proven unachievable given the number of applications and its limited resources available.
  6. Having regard to these matters and the judgment in *R v Isle of Wight County Council ex parte O'Keefe, 1989*<sup>2</sup>, the County Council has decided to determine applications in the order of receipt unless a listed exception applies for the application to be given priority. In this instance, no request has been made for the application to have priority status and so it will lie on file until reaching the requisite ranking. The application was ranked at 227 when the County Council responded and supplied its list.
  7. The *O'Keefe* judgment concerns the interpretation of sections 53 and 54 of the 1981 Act and an order making authority's pre-order making responsibilities. Nothing in the judgment indicates that unlimited time should be available to reach a properly informed decision.
  8. The Staffordshire County Council Rights of Way Improvement Plan, published in 2007 indicates that staff dealing with section 53 applications has been reduced as part of the Council's spending review. Therefore, it is unlikely that the number of applications determined will exceed 12 per annum.
  9. Stowe by Chartley Parish Council comments that less than 10% of the anticipated determinations have actually been dealt with. This will have given the Parish Council little reassurance that its application will be considered any time soon.
  10. The County Council is unable to estimate or give a timescale as to how long it will take for the application to be processed. This is due to the number and complexity of claims, the lengthy nature of the section 53 process and the deadlines from Directions already issued by the Secretary of State.
  11. It is entirely reasonable for the County Council to determine applications in order of receipt, subject to the prescribed exceptions. It is acknowledged that section 53 applications can be complex and time consuming. However, it is unreasonable for a determination to take in excess of 6 years when there is an expectation of a determination within 12 months under normal circumstances. As the Parish Council points out, over time people who provided evidence will have moved away or be unable/unwilling to give evidence in person.
  12. There are other applications ranked higher in the County Council's list and to issue a determination would disadvantage those involved who have been waiting longer. However, that does not justify a direction not being given in this instance when the 12 month period has long expired. I recognise that resources are limited, but the County Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Compliance with that duty and all it entails cannot be considered as an exceptional circumstance.

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<sup>1</sup> Paragraph 4.9 of Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

<sup>2</sup> [1989] JPL 934, [1989] 59 P & CR 283

13. According to the County Council's figures, it has already been directed to determine some 59 applications by the Secretary of State. Apparently 50 of those applications have determination dates ranging from May to October 2018. In addition to this application, 47 others are said to be under consideration by the Planning Inspectorate. Should these all be subject to a 6 month determination date, then the County Council fears it would be set a target of determining over 40% of current applications within a very short timescale.
14. Given the passage of time, if the County Council complies with the directions given then it will already have determined or progressed those cases. In the meantime, other directions may well have been issued. As more directions are issued there will be a further increase in waiting time for other applicants. The County Council suggests that granting directions would result in its own prioritisation system being undermined with applications effectively being prioritised by the Planning Inspectorate on behalf of the Secretary of State.
15. The Parish Council has merely exercised its right to seek a direction. That same right is available to all applicants and is there to be used. Applications can only be considered in accordance with the statutory provisions within the 1981 Act. It is not a question of the Secretary of State imposing a system of prioritisation, but applying the law.
16. The County Council considers that the burden imposed from the number of requests and deadlines for determination is unreasonable with the end result of it having been set objectives that cannot realistically be met. Ultimately though, it is the responsibility of the Council to ensure that sufficient resources are devoted to meeting its statutory duties with regard to the protection and recording of public rights of way, as set out in Circular 1/09.
17. I recognise that there are other applications outstanding which were submitted a number of years before this one. A direction would give the application precedence over those cases. That is an inevitable consequence of any direction. It is not reason to decline a direction in this case especially as there is no evidence that the County Council is achieving any reduction in its backlog.
18. Over 6 years have lapsed since the application was submitted and no exceptional circumstances have been advanced by the County Council. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application in circumstances where it has other directions to meet. Having regard to all issues raised, I consider it appropriate to allow a further period of 12 months for a decision to be reached.

### **Direction**

19. 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 12 months from the date of this decision.

*K R Saward*

INSPECTOR