



## Direction Decision

by Alan Beckett BA MSc MIPROW

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

Decision date: 3 January 2019

---

**Ref: FPS/D3450/14D/99,100, 101, 102 & 103**

**Representation on behalf of Mrs Pauline Whalley**

**Staffordshire County Council**

**Applications:**

**To upgrade FP49 Newcastle Town, from Prices Footrail to junction of FPs 45 and 46 to bridleway (LM632G)**

**To add a bridleway, from Prices Footrail FP 49 Newcastle Town to Footpath 52 Newcastle Town (LM633G)**

**To upgrade part of FP42 Audley Parish and FP41 Newcastle Town to bridleway (LM634G)**

**To add a bridleway along Springwood Road, Newcastle from FP41 to Audley Road (LM635G)**

**To add a bridleway from High Lane, Audley Parish to Footrail at FP49 Newcastle Town (LM636G)**

- 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 ('the Council') to determine applications made for Definitive Map Modification Orders ('DMMOs') under Section 53(5) of that Act.
  - The representation is made on behalf of Mrs Pauline Whalley ('the Applicant') by the North Staffordshire Bridleways Association, dated 18 May 2018.
  - The certificates under Paragraph 2(3) of Schedule 14 in relation to these applications are dated 27 July 2002.
  - The Council was consulted about the Applicant's representation on 21 May 2018 and the Council's response was made on 29 June 2018.
- 

### Decision

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

### ***Statutory and policy context***

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.
  3. 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 applicant<sup>1</sup>.

## **Reasons**

### ***The Council's Statement of Priorities and the reasonableness of its priorities***

4. The Council acknowledges that it has a backlog of 238 section 53 applications which it has yet to deal with, many of which it says involve complex issues and / or the interviewing of a number of witnesses and landowners. The Council submits that it has limited resources available to investigate these applications and in consequence a decision had been taken to address the backlog in chronological order of receipt subject to a number of exceptions which would give a case a higher priority.
5. The exceptions are: (a) where delay would threaten the loss of the claimed right of way; or (b) where there is severe hardship or a risk of confrontation between the claimant and the owner / occupier of the land or there is evidence of a detrimental effect upon the health of the owner or occupier of the land; or (c) where in a case of an application to delete or downgrade a right of way, delaying the determination will result in severe hardship to the owner or occupier of that land; or (d) where having regard to the Council's Sustainable Transport Policies, in the case of an application to add a public path 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 the route would be relevant to the achievement of another of the Council's statutory policy objectives.
6. Although without a published Statement of Priorities, I consider that the Council has identified a number of factors which could lead it to conclude that an application could be considered 'out of turn', but that otherwise applications would be dealt with in chronological order of receipt. Whilst there is nothing before me to suggest that the approach taken by the Council for bringing and keeping the Definitive Map and Statement up to date is unreasonable, that does not alter the statutory duty on the authority to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

### ***The actions or intended actions of the Council***

7. The applications do not fall within any of the priority groupings identified by the Council and in June 2018 stood respectively at numbers 171 to 175 in the register of applications. The Council considers it very difficult to set out a timescale in which these applications will be determined.
8. The Council gives several reasons as to why it does not consider that a direction should be given on these applications. First, a direction on these applications would disadvantage the parties to other applications higher up the register. Secondly, the Council has been directed to determine 56 other applications which will require significant staff time and resources. Thirdly, further directions would result in further delays to the consideration of applications not subject to a direction. Fourthly, the issuing of further directions without taking into account the burden imposed by existing directions would be unreasonable. Fifthly, these requests form part of a total of 15 direction requests from this Applicant; it would be manifestly unreasonable for directions

---

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

to be given for the determination of all applications within the same timescale. Finally, the Council does not consider there to be any special reasons why these applications should take precedence over applications which have been waiting for a much longer period of time.

9. The scale of the task facing all surveying authorities dealing with DMMO and other rights of way casework is recognised and understood. It is also acknowledged that the Council has limited resources available to it with which to undertake such work.
10. Similarly, it is acknowledged that the Council has recently been directed by the Secretary of State to determine 56 other applications which have been made to it and which had not been determined within 12 months of the receipt of the relevant paragraph 2(3) certificate. It is acknowledged that the granting of further directions in respect of these applications will add to the burden already imposed upon the Council.
11. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate; it is not considered reasonable for sixteen years to elapse between an application and its determination, or for the Council to be unable to state when investigation of the application will commence.
12. It can only be concluded that the Council has taken no action on these applications in the sixteen years since they were made, and would appear to have no intention of taking any action on them in the foreseeable future. Deferring the investigation of the applications for an unspecified length of time is, on the face of it, wholly inconsistent with the Council's statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice and means that there is uncertainty for the Applicant as to when a decision is likely to be reached.
13. The lack of action by the Council and its failure to set out any firm intended action, would justify making a direction that the application is determined before the expiration of a given period.

***The Circumstances of the Case and Views of the Applicant***

14. The Applicant submits that the Council has not determined a section 53 application for more than two years, the most recent determination having been made in February 2016. In the applicant's view, at current processing rates it is likely that the determination of these applications will take up to 192 years. The Applicant also notes that the applications were supported by evidence of long use by the public; the unacceptable delay in investigating the applications results in witnesses becoming uncontactable as they move residence, pass away or become untraceable for other reasons.
15. I am unaware of whether these applications rely solely on evidence of long use by the public, but the Applicant would appear to have legitimate concerns about relevant user evidence becoming unavailable as a result of the passage of time given that the applications were made more than sixteen years ago.
16. The Applicant also notes the lack of bridleway provision within Staffordshire and submits that the Special Review of RUPPs led to a significant loss of equestrian routes as many RUPPs were incorrectly reclassified as footpaths. Whilst these matters may be of concern to the Applicant, the presence or

absence of equestrian provision in the area is not a matter which can carry significant weight when considering whether the Council should be directed to determine these applications.

17. The Applicant draws attention to the Rights of Way Improvement Plan published by the Council in 2008 which she says set out that a reduction in available resources would result in no more than 12 applications being determined per year. In the subsequent years of the Plan, the Council has only achieved an average of 1 determination per year. The applicant considers that no progress on these applications can be expected from the Council without intervention from the Secretary of State.
18. The Applicant has waited 16 years for the Council to begin the investigation of these applications, and I consider it highly unlikely that the Council will commence its investigation without intervention. In the absence of evidence to the contrary, I find that the age of the applications together with the Applicant's concerns regarding the potential loss of user evidence through the passage of time to be compelling reasons for the setting of a date by which the applications should be determined.

### **Conclusions**

19. If the Applicant's estimate of the Council's average rate of progress of 1 application being determined each year is correct, then given the current position of these applications in the register, the Council may reach a determination on these applications at some point towards the end of the twenty-second century. Such a timescale cannot be described as being reasonably practicable.
20. Representations were made regarding the applicant's rights under Article 6(1) of the Human Rights Act 1998. Article 6(1) provides that, 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. This decision addresses the matter of whether the matters set out in an application are to be investigated as soon as is reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act. The decision does not amount to a determination of the Applicant's civil rights and obligations under Article 6(1).
21. In the circumstances I have decided that there is a compelling case for setting a date by which these applications should be determined. Although I am aware that the Council has recently been directed to determine 56 other applications and that the Council will require some time to carry out its investigation into these applications and make a decision on them, I do not consider it appropriate to allow more than 6 months for the Council to do so.

### **Direction**

22. 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 six months from the date of this decision.

*Alan Beckett*

INSPECTOR