



Direction Decision

by Susan Doran BA Hons MIPROW

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

Decision date: 27 August 2019

Ref: FPS/D3450/14D/115

**Representation by Lapley, Stretton & Wheaton Aston Parish Council
Staffordshire County Council**

**Application for the addition to the Definitive Map of a public right of way at
Birkenshaw Lane (OMA ref. LR615G)**

- 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 14 November 2018 is made by Lapley, Stretton and Wheaton Aston Parish Council¹.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 20 October 2006.
 - The Council was consulted about the representation on 6 June 2019 and the Council's response was made on 17 June 2019.
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Decision

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

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 applicant².
3. The Council has limited resources to deal with rights of way matters and the backlog of claims awaiting determination, many of which involve complex legal issues and/or interviewing a considerable number of witnesses and landowners. They acknowledge there is an expectation that Section 53 applications will be determined by an authority within 12 months of receipt. However, as this has proven to be unachievable, they have implemented a system for dealing with

¹ Having taken over the application from the late Mrs Bonner

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

applications. Their policy is to determine them in order of receipt, subject to a number of exceptions which are given priority. These include where delay would threaten the loss of the claimed right of way; 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 a detrimental effect to the health of the owner/occupier of the land; where having regard to the County 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 the highway, the application relates to a path of actual, or potential, regional or national significance; and, where a route would be relevant to the achievement of another of the County Council's statutory policy objectives. This appears to me to be a reasonable approach.

4. The Applicant states the application was ranked at number 220 in the Council's list in October 2008 and had only moved up to position 203 by early 2018. In this case, the Council says no request for prioritising the claim has been made, and the application does not have priority status, so will be determined on reaching the requisite ranking. They are unable to give an indication as to when the application is likely to be processed.
5. The Council does not consider that a direction should be given in this instance as there are other applications which are ahead in the ranking and/or equally deserving, and to issue a direction would disadvantage those parties. In addition, the Council has already been directed to determine some 84 applications by the Secretary of State with determination dates up to May 2020, and further requests for determinations are under consideration. It is acknowledged these will require significant staff input, and that if further directions are made in respect of these cases, the Council will have been set a target of determining over 40% of current applications within a very short timescale.
6. It is appreciated that if a direction is given in this case, then the determination of other applications will be affected. The Council considers that prioritising this application would result in their own prioritisation system being undermined with applications effectively being prioritised by the Secretary of State and not by the Council. Furthermore, whilst doing its utmost to meet the deadlines imposed, the Council considers that setting a deadline for determination, without taking account of the number of requests made and which are outstanding, fails to consider the burden imposed and is, albeit unintentionally, unreasonable. As a result, it believes the Council will have been set objectives that cannot realistically be met.
7. The Council appreciates the Applicants' wish to see their case determined as soon as possible, but remark there are many others with similar concerns, some whose applications pre-date this one by many years. Accordingly, this application should not take precedence over others which have been awaiting determination for a much longer time.
8. Whilst I acknowledge the Council's position, I do not consider that the current delay in determining this application, and the likely future delay, can be viewed as reasonable. 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. In this case, more than 12 years have passed since the application was submitted and, notwithstanding the issues

raised by the Council, no exceptional circumstances have been indicated by them for not determining it. The current timescale to determine this application cannot be considered to be reasonable.

9. 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 Council will require some time to carry out its investigation and make a decision on the application. A further period of 6 months has been allowed.
10. I note that the Applicant is concerned the application route may be lost to adverse possession. However, in the event of such an outcome, any pre-existing highway rights, should they be shown to exist, are not affected.

Direction

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 6 months from the date of this decision.

S Doran

Inspector