



Direction Decision

by Sue Arnott FIPROW

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

Decision date: 15 February 2021

Ref: FPS/D3450/14D/151

Representation by Mr & Mrs Firth

STAFFORDSHIRE COUNTY COUNCIL

Application to upgrade a public bridleway to a byway open to all traffic at Brick Kiln Lane, Barton under Needwood

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Staffordshire County Council to determine an application for an Order submitted under Section 53(5) of that Act.
 - The representation, dated 3 August 2020, is made by Mr and Mrs Firth.
 - The certificate under Paragraph 2(3) of Schedule 14 is undated but stated to be June 2019.
 - When notified of the representation, the Council submitted its response on 18 January 2021.
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Decision

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

Reasons

2. Mr and Mrs Firth submitted an application to Staffordshire County Council (SCC) in July 2019. This sought to record Brick Kiln Lane in Barton under Needwood as a byway open to all traffic (BOAT) rather than as a bridleway as it currently appears on the definitive map of public rights of way.
3. The evidence adduced in support of the claimed right of way dates back to 1778 and relies principally on an inclosure award of 1805 and a county surveyor's report dated 1901.
4. The applicants highlight SCC's lack of progress in determining this case which, they say, is straightforward and should have been resolved. They further note that the application failed to be shown on the public register of applications for definitive map modification orders¹.
5. 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

¹ I do not regard this as a significant factor since the case clearly does appear in SCC's schedule of applications.

- 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.
6. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances. In this case 18 months have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981 (the 1981 Act).
 7. In response Staffordshire County Council acknowledges that, due to the number of claims made under Section 53(5) of the 1981 Act and the limited resources allocated to deal with such matters, it now has a backlog of 266 cases yet to be determined. Mr and Mrs Firth's application is listed as No 224.
 8. SCC investigates and determines applications in order of receipt but with a number of exceptions which are to be given priority. In this case, no request for priority consideration has been submitted. Given the large number of applications to be processed, the Council is not able to give a time estimate for when this might be dealt with.
 9. A number of reasons are put forward by SCC to support its submission that no direction should be issued. Firstly, to bring this case forward would disadvantage other equally deserving cases. Secondly, SCC has already been directed by the Secretary of State to determine 86 cases within timescales extending to September 2021. Adding to this burden, when each case requires significant staff time and resources for investigation, would create an unrealistic timetable for the determination of 40% of its total caseload.
 10. Thirdly, directing the Authority to determine this case out of sequence will increase the waiting time for other cases and, in effect, introduce a new system of prioritisation which is outside the Authority's control. Fourthly, SCC argues that it is unreasonable to be directed to determine this case without taking into consideration the number of other similar directions that are current; and lastly it recognised that all applicants wish to see their applications dealt with as quickly as possible, but in this case no special circumstances have been identified which would give this precedence over others which have been waiting longer.
 11. I recognise that a lack of sufficient resources allocated to this area of work has pushed SCC into an invidious position, gradually accumulating an increasing number of cases to be taken out of turn as a result of being directed to determine them, leaving other cases to fall even further behind the statutory timetable that is anticipated.
 12. Nevertheless, even though Mr and Mrs Firth have not identified any reasons why their case deserves special priority, they are entitled to expect that their application is processed within a reasonable length of time. I therefore consider that there is a case for setting a date by which time the application should be determined.
 13. However, I accept that SCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that current

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

restrictions brought about by the Covid-19 pandemic are hindering research work and I must make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 18 months for a decision to be reached in this case.

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** Staffordshire County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

Sue Arnott

Inspector