



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: 22 January 2021

Ref: FPS/D3450/14D/152-156

**Representation by Staffordshire Moorlands Bridleways Group
Staffordshire County Council**

Application to upgrade the Footpath from Farwall Lane, Calton (the full extent of Waterhouses FP8) to Waterhouses FP10 to a Bridleway (OMA ref. 018142DW)

Application to upgrade to a bridleway the footpath running from SJ 9608342884 to SJ 9562842144 (OMA ref. 018838DW)

Application to upgrade to a restricted byway the footpath from Blackshaw Lane (C00074) Meerbrook to Roach Road (D1047) Upper Hulme (OMA ref. 018296)

Application to upgrade to a bridleway the footpath from Morridge Top A53 junction D44 (Footpath Heathylee 0.1702) to junction with Leek Road Barrow Moor/Morridge Top (OMA ref. 018280)

Application to upgrade to a bridleway the footpath from Lapwing Lane to Coal Pit Lane (Footpath Heathylee 14) (OMA ref. 018279DW)

- 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 by Julie Turner on behalf of the Staffordshire Moorlands Bridleways Group ('the Applicant'), dated 26 August 2020.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to 018142DW is dated 2 June 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to 018838DW is dated 10 June 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to 019296 is dated 8 June 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to 018280 is dated 17 May 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to 018279DW is dated 6 June 2019.
 - The Council was consulted about the Applicant's representation on 4 November 2020 and the Council's response was made on 24 November 2020.
-

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 applicant¹.

Reasons

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

4. The Council acknowledges that it has a backlog of 256 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 investigate and determine applications in chronological order of receipt subject to a number of exceptions which would give a case a higher priority.
5. The exceptions are: (1) where the land over which the route runs has received permission for development and (a) the implementation of such would mean the claimed way would be lost as a consequence of being built over and (b) all attempts to divert or otherwise cater for the route within the development have been exhausted; (2) where there is evidence of severe financial hardship caused by the existence of an application for an addition of a route to the owner / occupier of the land.
6. The Council submits that a request for priority has not been made in respect of these five applications and so they would lie on file until they reached the head of the list of applications.
7. Although without a published Statement of Priorities, I consider that the Council has identified several 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 placed on the Council to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

The actions or intended actions of the Council

8. The applications do not fall within any of the priority groupings identified by the Council and stood at numbers 220 to 223 and 225 in the undated register of applications which the Council appended to its response. Due to the number and complexity of the claims outstanding, the lengthy nature of the Section 53 process and the deadlines the Council faces from other directions which have

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

been given by the Secretary of State, the Council considers it very difficult to set out a timescale in which these applications will be determined.

9. 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 which are already ahead in the register and/or equally deserving of determination.
10. Secondly, the Council has been directed by the Secretary of State to determine 101 other applications which will require significant staff time and resources; the dates given by which these applications are required to be determined ranges from June 2018 to September 2021. It is known that the Planning Inspectorate are currently considering other requests for directions including those which are the subject of this representation.
11. Thirdly, further directions would result in further delays to the consideration of applications not subject to a direction and would in effect, introduce a new system of prioritisation which is outside the Council's control; the Council's prioritisation system would be undermined with priority effectively being set by the Planning Inspectorate.
12. Fourthly, whilst the Council will do its utmost to meet any deadlines imposed on it, the issuing of further directions without taking into account the burden imposed by existing directions would fail to take into account the burden already imposed and would be unreasonable; the result would be that the Council will have been set objectives that cannot realistically be met.
13. Finally, the Council recognises the applicant's concern about the time taken to process applications, and their wish to resolve these matters as quickly as possible; there are many other applicants with similar concerns. 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.

The circumstances of the case and views of the Applicant

14. The Applicant submits that the large backlog of undetermined applications has meant that 18 months² have passed without the Council having taken any action on the applications. The Applicant is concerned that at the Council's current rate of progress it may be decades or even centuries before these applications are considered. This cannot be regarded as dealing with applications 'as soon as reasonably practicable'.
15. The Applicant also submits that in relation to other applications it has made and where a direction has been sought, the Council has been unable to determine any of the applications in accordance within the timescale set out by the Secretary of State. The Council has been directed to determine one application by 20 August 2018, seven others by 19 October 2018, one by 8 February 2019, one by 31 March 2019, one by 1 August 2019, 3 by 14 April 2020 and 2 by 10 May 2020.
16. Of these 16 applications, the Council has determined three (7, 13 and 17 months after the date set for determination by the Secretary of State) and has made no progress on any of the other 13 applications it has been directed to determine.

² As at October 2020 – now 21 months at January 2021

17. It is the Applicant's view that the applications which are the subject of the current representation will only be dealt with if the Secretary of State issues a direction to the Council to determine them by a set date. However, the Applicant considers that as the Council appears to treat the Secretary of State's directions with contempt, it is unlikely that the Council will comply with any direction given within the date set.
18. The Applicant acknowledges that the Council not only has a backlog of applications, but also a backlog of cases for which it has received directions from the Secretary of State. The applicant submits that although in 2018 the Council had increased its staff resources dedicated to definitive map modification applications the number of applications being processed annually had subsequently fallen from 16 in 2018 to 15 in 2019; by October 2020 only 10 applications had been determined.
19. Based on the progress the Council has made over the past two years, the Applicant estimates that it will take 6 years for the Council to deal with its backlog of 'time expired' determinations. It is considered that no action will be taken on the applications subject to this representation unless the Council is directed to determine them within a specified time period.
20. The routes at issue in these applications are (with the exception of 018280) former Roads Used as Public Paths (RUPPs). These former RUPPs were reclassified as footpaths by the Council under the Special Review of the Definitive Map prior to the judgement of the Court of Appeal in *R v Secretary of State for the Environment ex parte Hood* (1975) [QB 891 CA] ('*Hood*'). In *Hood* the Court held that the Countryside Act 1968 did not displace the effect of s34(4)(b) of the National Parks and Access to the Countryside Act 1949 – that the depiction of a RUPP was conclusive evidence of at least bridleway rights.
21. The Applicant submits that these applications would result in the addition of routes which would address the relative lack of routes suitable for equestrian use within the Staffordshire Moorlands; the lack of bridleway provision is recognised by the Council's own ROWIP. The applications will provide much needed off-road routes for horse riders and cyclists and will significantly reduce the length of vehicular roads that have to be ridden. Consequently, these applications should be given higher priority.

Conclusions

22. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of their application within 12 months under normal circumstances. 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.
23. Similarly, it is acknowledged that the Council has recently been directed by the Secretary of State to determine 101 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.
24. 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; whilst only 20 months have elapsed since the applications were made it is not considered reasonable for the Council to be unable to state when investigation of the applications will commence.

25. If the Council's recent rate of progress in determining applications (between 10 and 16 per year) continues, then given the current position of these applications in the register, the Council may be in a position to determine these applications at some point in the next 13 to 20 years. Such a timescale cannot be described as reasonably practicable.
26. It can only be concluded that the Council has taken no action on these applications 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. 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.
27. In the circumstances, I consider it highly unlikely that the Council will commence its investigation of these applications without intervention. In ordinary circumstances, I would consider that the Council should determine the applications within six months of a direction being given. However, I also consider that the impact of the current coronavirus outbreak on local authorities may limit the Council's ability to adhere to a six-month timescale.
28. Accordingly, and to give the applicant some certainty that these applications will be determined in the near future, I consider it appropriate to allow the Council a period of 12 months for a decision to be reached.

Direction

29. 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 twelve months from the date of this decision.

Alan Beckett

INSPECTOR