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| **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: 13 April 2021** |

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| **Ref: FPS/D3450/14D/150**  **Representation on behalf of Mr R O Foulkes, deceased**  **Staffordshire County Council**  **Application to record three Byways Open to All Traffic in the Parish of Eccleshall (OMA ref. LC604G)** |
| * 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 25 June 2020 is made by Mr D Rice[[1]](#footnote-1). |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 17 June 1993. |
| * The Council was consulted about the representation on 18 January 2021 and the Council’s response was made on 26 February 2021. |
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Decision

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

Reasons

1. 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 applicant[[2]](#footnote-2).
2. The Council says it has a backlog of 251 claims awaiting determination and has limited resources to deal with rights of way matters. Whilst it acknowledges the expectation that section 53 applications will be determined within 12 months of receipt, this has proved unachievable for them. Many of the claims, it says, will involve complex issues and/or interviewing a considerable number of witnesses and landowners. Consequently, the Council has implemented a system to determine claims in date order of receipt subject to exceptions which are given priority. These exceptions include applications where the land over which the route runs has received permission for development that would result in the loss of a claimed way by being built over, or all attempts to divert or accommodate the route within the development have been exhausted; or where there is evidence of severe financial hardship caused to the owner/occupier of the land by an application for a claimed route.
3. Priority status has not been requested for this application. And, given the backlog of claims, the nature of the section 53 process and deadlines for directions already granted, the Council is unable to estimate or give a timescale as to how long it will take for this application to be investigated and processed.
4. Of the 251 claims listed by the Council, this application is numbered as priority ‘8’. Nevertheless, the Council points out that there are other applications which are ahead in the ranking and/or equally deserving and would, as a consequence of a direction being issued in this case, be further delayed, or disadvantaged. It is on this basis that they do not consider this application warrants prioritisation above those with a higher listing. It does not consider there are any special reasons why this application should take precedence over the others, notwithstanding the applicant’s concerns about the time it may take to process this application and their desire for a speedy resolution. There are, the Council points out, many other applicants with similar concerns, and some applications that have been awaiting determination for a longer period of time.
5. Whilst I acknowledge these factors, I do not consider that the delay in determining this application can be viewed as reasonable. As the agent for the applicant states, this application has remained undetermined for more than 27 years since first lodged with the Council. Furthermore, despite it being ranked fairly high up the Council’s list for determination, the Council has been unable to indicate any timescale as to when it will be considered, or as the applicant comments, if ever. The Council remarks it has already been directed by the Secretary of State to determine some 96 applications[[3]](#footnote-3), all of which will require significant staff time to investigate and decide. I appreciate this will require the Council to determine a large proportion of the claims on its register within a short timescale thereby impacting on those claims that remain on the list. I further note that, despite the Council indicating it is doing its utmost to meet the deadlines imposed on it, it feels its approach to prioritising cases is effectively being overridden by a new system outside its control, resulting from directions being given by the Secretary of State. However, this does not negate or detract from the expectation on behalf of an applicant of a determination of their application within 12 months under normal circumstances, and their right to seek a direction from the Secretary of State. Furthermore, the legislation clearly sets out the Council’s statutory duties in relation to its function as Surveying Authority.
6. Accordingly, 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 additional time to carry out its investigation and make a decision on the application.  Given the exceptional circumstances currently being experienced as a result of the coronavirus (Covid-19) outbreak, a further period of 12 months has been allowed.

**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 12 months from the date of this decision.

S Doran

**Inspector**

1. Acting as Agent for Mr M Rowley on behalf of the late Mr R O Foulkes, applicant [↑](#footnote-ref-1)
2. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)
3. In the period June 2018 to August 2022 [↑](#footnote-ref-3)