

Date: 13 June 2023

Countryside and Rights of Way Panel - Friday 16th June 2023

Dear Sir / Madam,

I have recently forwarded to you a copy of the agenda for the next meeting of the Countryside and Rights of Way Panel.

I am now able to enclose a copy of the following reports that were unavailable when the agenda was circulated.

8. **S53 Wildlife and Countryside Act Application for an alleged footpath from Wadden Lane to Old 518 Weston** (Pages 1 - 4)

9. **S53 Application for an alleged Public Footpath between Deep Haye and Crownpoint, Cheddleton** (Pages 5 - 12)

John Tradewell
Deputy Chief Executive and Director of Corporate Services



ADDENDUM TO REPORT – LJ641G

Additional comments were provided by landowner B.

Email to: Laura James, Legal Officer

Date: 06/06/2023

S53 Application for the addition of Public Footpath from old A519 to Wadden Lane

Dear Laura

Your email of 11th May regarding the above matter is in conflict with the letter dated 10th March when the recommendation was to refuse the application. We have looked at the new documents supplied and can only see that document H2 refers to a footpath or right of way crossing the Waddens Farm. We are of the opinion that this refers to the Weston to Gayton Footpath to the west of the current proposal which is clearly visible on your plan B2. Can you please explain to us what other evidence has been uncovered since the letter of 10th March which made you consider changing the original recommendation.

Whilst we acknowledge that section 53 of The Wildlife and Countryside Act 1981 limits the evidence that is permitted to be considered when determining an application to open an alleged footpath, the Council should have regard to other existing legislation. For example, the Protection of Badgers Act 1992 prohibits badger setts being disturbed. For your information there is a large badger sett along the top of the escarpment which forms part of the alleged route.

Health and safety considerations should also be taken into account. Not only are the badger setts unsafe but the route through the woodland would require walkers to ascend and descend sheer escarpments which are currently heavily overgrown. At the northern end of the alleged route is a 90degree bend in Vicarage Bank at its junction with Wadden Lane. There are NO footpaths in this area making it exceptionally hazardous for any walkers. At the southern end, the alleged footpath exits onto the former A518 which is now a gated layby which is used regularly by Staffordshire County Council Highways department as a storage area for road surface chippings, waste material and site huts, again making it a hazardous area for pedestrians.

Before making a decision on this route we would strongly recommend a site visit by The Council so that they are aware of the hazards they would be inviting pedestrians to negotiate. If you act upon our recommendation, would you please contact us so that we can show you the route and point out the hazards to you.

In the event that you determine that the footpath should be recognised, could we suggest that it is diverted along the redline which we have marked on the attached plan, which is a copy of your plan B2, the benefits of this route would be that it would avoid the woodland area with the hazards that we have pointed out above making it safer for walkers. We would emphasise that our preference would be for you to revert back to the 10th March letter when the route was recommended for refusal.

Yours sincerely,

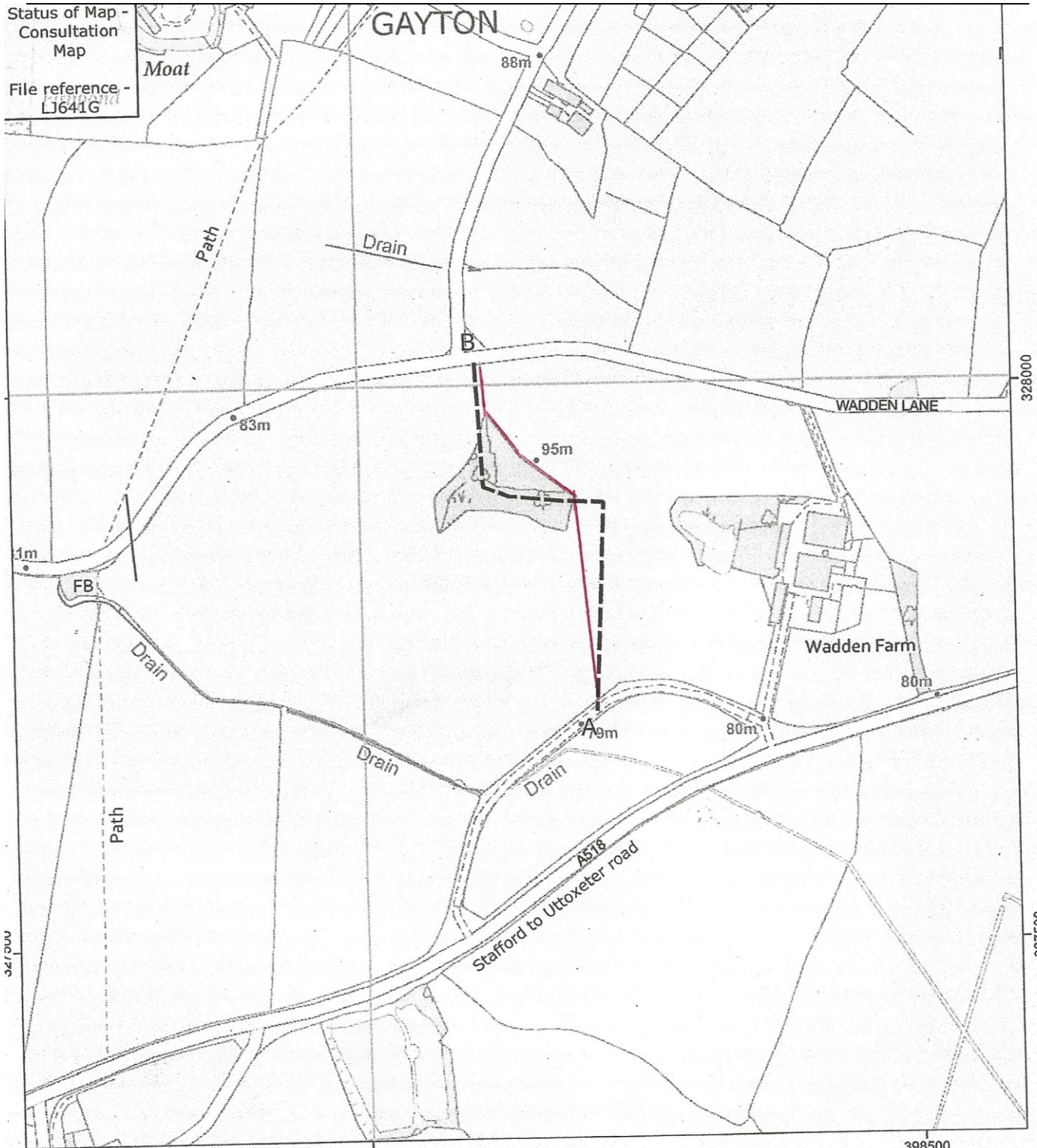
Wildlife and Countryside Act 1981, Section 53A(2)(b)

Proposed addition of public footpath west of Wadden Farm near Gayton

Staffordshire County Council

398000

398500



Map created at the scale of 1:5,000
(facsimiles may vary)

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 permitted to copy, sub-license, distribute or
 sell any of this data to third parties in any form.
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 shown at www.staffordshire.gov.uk/maps.
 Produced by Staffordshire County Council, 22/11/2022.

----- Route of alleged footpath

Response to the Landowner comments were provided by the Legal Officer.

Email to: Landowner B – Wadden Farm

Date: 12/06/2023

S53 Application for the addition of Public Footpath from old A519 to Wadden Lane

Dear [REDACTED]

Thank you for your email dated 6th June and the contents therein.

Your comments are noted and will be included as an addendum to the report for panel committee members ahead of the meeting.

In connection with the change of recommendation, in light of the comments received and on reviewing the evidence, the report was redrafted with a revised recommendation. This was to accept the application based on reasonable allegation, that is whether a reasonable person could reasonably allege a right of way subsisted.

With regards to health and safety and wildlife concerns raised, we acknowledge your concerns and whilst it is not our intention to belittle any legitimate concerns, the issues raised relating wildlife and health and safety, have to be disregarded under the law as it currently stands. These concerns are not a matter for this existing section 53 application.

Should the application be successful, and the Countryside Rights of Way panel members are minded to make an Order, then a future diversion could be discussed with the Rights of Way team and a site visit could be arranged at that time.

Yours sincerely,

Laura James

Legal Officer

Conclusion

As per the officers email to the landowner, the landowner comments are acknowledged, however, issues regarding concerns for health and safety and wildlife cannot be considered in law in connection with this S53 application and therefore officers recommendation remains unchanged.

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Miss E. Miller,
Cheddleton Historical and
Archaeological Society,



Facsimile: Stafford 215153

When telephoning, please
ask for Mr. Bradbury
Extension 6193

My ref. 2/MWB/ark 19/3/1/32 Your ref.

Date. 18 April 1989

Dear Miss Miller,

Alleged Right of Way from Crown Point
to Deep Hayes, Cheddleton

You will probably recall that in November 1987 you submitted evidence of an alleged footpath between Crown Point and Deep Hayes.

Since you submitted the evidence, the County Council has started to operate the provisions of the Wildlife and Countryside Act 1981 relating to public rights of way. This means that, if you wish to pursue your claim for a public right of way, it will be necessary for you to submit a formal application under Section 53 of the Wildlife and Countryside Act 1981 to request the County Council to make a modification order to include the path on the definitive map.

I therefore enclose copies of the relevant forms and you will note that the onus is placed on the applicant to notify the landowner of the application and to certify to the County Council that the owner has been so notified.

The advantage of this procedure is that the applicant has a right of appeal in the event of non-determination and/or refusal of the application.

If however you do not wish to pursue your claim for a public right of way you do not need to take any further action.

Yours sincerely,

C/MWB/ARK/170489/LETTER
FILE COPY

Titchener, Hannah (Corporate)

From: [REDACTED]
Sent: 12 June 2023 12:44
To: Titchener, Hannah (Corporate); Winnington, Mark (County Cllr)
Subject: RE: DMMO application for the addition of a public footpath at Deep Haye and Crownpoint Cheddleton. Our Reference: LA647G/008169
Attachments: Crown Point Application - Direction By The Secretary Of State.pdf; Appendix - SCC Did Not Start Operating The 1981 Act Until April 1989.pdf

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Dear Ms Titchener

Definitive Map Modification Application LA647G – Submitted on 18th April 1989


Regarding the above referenced definitive map modification application, due to be determined on June 16th, please ensure that Panel Members who decide this matter are furnished with a copy of this email and attachments before deciding whether an Order should be made or not.

1. Firstly, the Panel will appreciate that to expect Cheddleton Parish Council to constructively comment on or add to evidence of use, submitted more than 33 years ago, is challenging, unreasonable and impossible. This is further frustrated by so many of the evidence providers having sadly passed away or becoming uncontactable during the abhorrent and totally unacceptable delay by Staffordshire County Council to deal with this application. Attached is a copy of the decision served by the Secretary of State, directing Staffordshire County Council to determine the claim by no later than 6th May 2020. Staffordshire County Council has ever failed to comply and acted in contempt of the direction. You will see that, even going back nearly four years now, how critical the Secretary of State was of the Council – also emphasising how delays of this nature disable proper investigation of applications and evidence provided for them. I have highlighted relevant text on the attached copy of the direction for ease of reference.
2. In respect of the evidence of use period quoted in the report, of between 1970 and 1990, we regard this to be probably questionable as well. As the attached appendix to the report confirms, Staffordshire County Council states that it was not operating in compliance with the terms of the 1981 Wildlife and Countryside Act until 1989. It has, however, provided no explanation for not commencing operating in accord with the Act earlier than this. This is a material omission given that the initial evidence in support of this application was submitted in November 1987 but not responded to until 18th April 1989 (sixteen months after its submission). If November 1987 was interpreted as the date that the status of the route came into question this would make the 20-year user evidence period to be assessed as between November 1967 and November 1987. In this period:
 - There are 10 user statements that cover **the** full 20-year period retrospectively to November 1987.
 - One additional user covers a period of 19 years prior to November 1987.
 - Adding the balance of users, including user evidence submitted in 1989, the aggregate user evidence, in our opinion, meets the threshold of user to create assumed dedication as a public path.
3. The task of commenting on the draft report has also been hindered and obstructed by:
 - Officers unnecessarily redacting user details from all the statements of use forms thereby making it impossible to identify and contact them for elaboration - assuming users have survived the abhorrent delay.

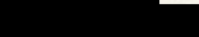
- Masking information such as date of birth, thereby "avoiding" Panel Members observing the improbability of users having survived the abhorrent and inexcusable 33 year delay so far to determine this application.

These issues and criticism arise from the Councils inaction for over three decades rather than criticism of Officers who are now dealing with applications. Being faced with an impossible task of validating, clarifying, expanding on or adding extra user evidence 33 years after the application was submitted is ridiculous. The Panel will, therefore, understand why we will be appealing any decision not to make an Order for this claim. Although it cannot be legally considered, we also know full well that public use of the application route has continued for decades after this claim was submitted.

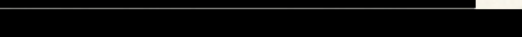
Kind Regards,

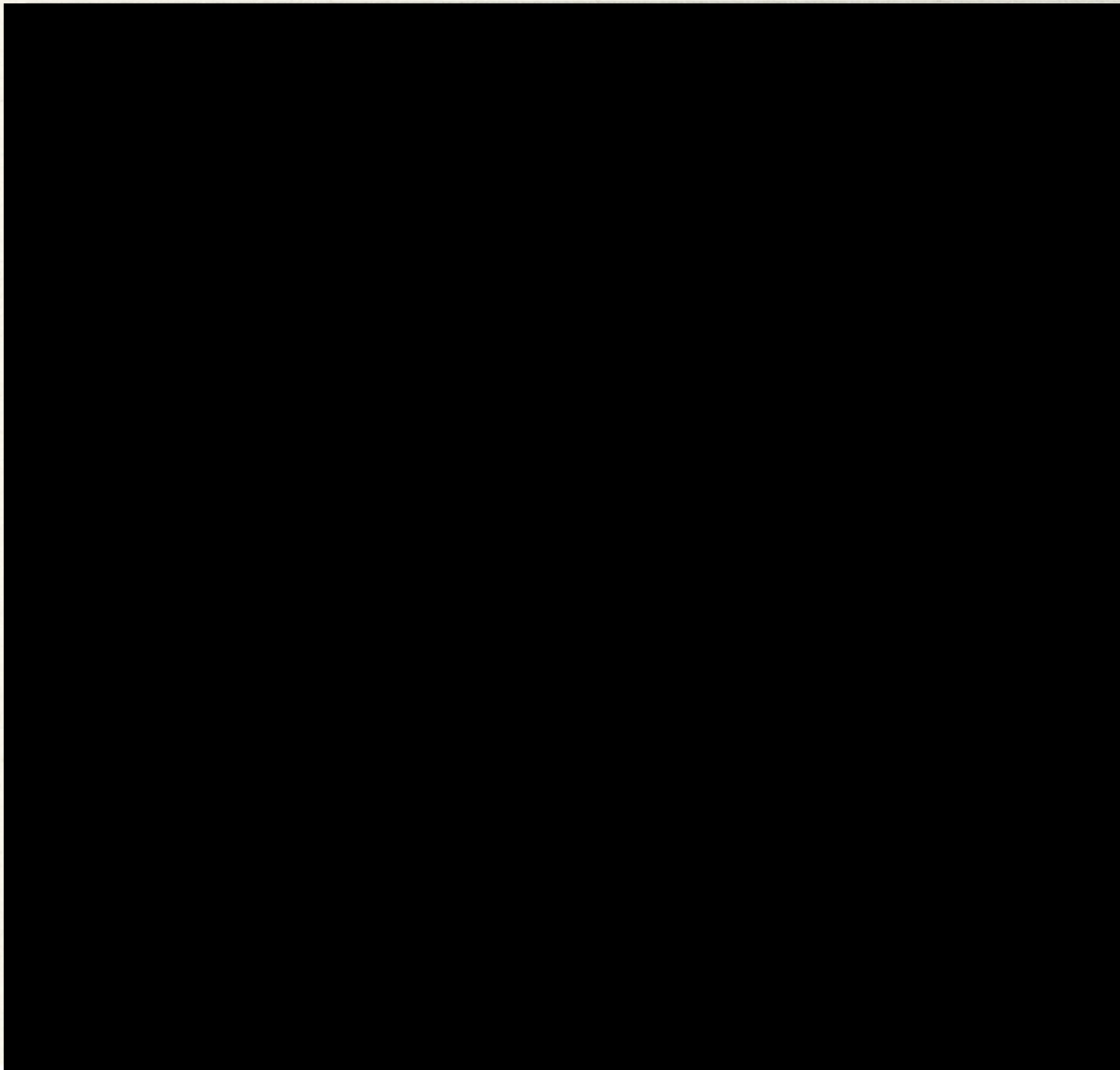

Louise Eyre
Parish Clerk
Cheddleton Parish Council

Tel: 

Mobile: 

Email: 

Address: 





Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 6 September 2019

Ref: FPS/D3450/14D/109-112

Representation by Cheddleton Parish Council

Staffordshire County Council

Application to add a Public Footpath Deep Haye and Crown Point, Cheddleton (LA647G)

Application to add a Public Footpath between Hollow Lane & Footpath No. IR2248, Cheddleton (LE617G)

Application to add a Public Footpath at rear Ox Pastures to Ostlers Lane, Cheddleton (LE614G)

Application to add a Public Footpath between Footpath No. 28 Longsdon & St Edwards Hospital, Cheddleton (LG659G)

- 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 County Council') to determine four applications for Orders, under Section 53(5) of that Act.
 - The representation is made by Louise Eyre on behalf of Cheddleton Parish Council ('the Parish Council') and is dated 18 January 2019.
 - The certificates required under Paragraph 2(3) of Schedule 14 are dated 18 September 1990; 24 November 1995; 24 October 1995; and 22 February 1998 respectively.
 - The Council was consulted about the representation on 23 January 2019 and the Council's response was made on 5 March 2019.
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Decision

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

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 applicant¹.
3. In this case, all the applications were made over 20 years ago. All of them rely to some extent on evidence of use of the ways concerned and the applicant has indicated that many of the witnesses may now be difficult or impossible to contact. Consequently, there is a significant risk of the evidence being eroded. There is also an indication amongst the papers that one of the applications (LG614G) may be threatened by proposed development.
 4. The County Council has submitted its current list of applications awaiting investigation and has explained the way in which it deals with such applications, including how it applies its policy of priorities. It is clear that the County Council has also implemented a policy over recent years of reducing resources for this type of work, resulting in a significant backlog of cases (almost 240). The County Council also points out that a number of directions have been issued to it by the Planning Inspectorate over recent months. The County Council claims, in its submission, that if directions are issued in respect of these claims it will have the effect of requiring the determination of over 40% of current outstanding applications within a very short timescale; an objective which it is considered cannot realistically be met.
 5. The County Council points out that the quasi-judicial nature of the process, and the differing circumstances of each case, means that complex issues are involved and it is difficult to provide clear timescales for determining a particular case.
 6. The County Council has a statutory duty to keep the Definitive Map and Statement up to date and the work involved in performing that role cannot be considered to be an exceptional circumstance justifying any delay. Adequate resources should be provided to permit the execution of statutory functions in a timely manner.
 7. These applications have been made by the Parish Council; a body which is democratically elected to deal with matters of concern to the local population it represents. Whilst the County Council has its own priority system, which sets out what appears to be a reasonable approach, it is not being implemented in a timely manner. Consequently, delays are being experienced well beyond that which an applicant has a right to expect. Furthermore, as these cases are principally based on user evidence, I agree with the applicant that the delays may result in the loss of the relevant information due to the inevitable consequences of the passing of time. The longer the delay the more difficult it will become to properly investigate the claims, making it harder for the County Council to discharge its duties effectively.
 8. 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 20 years have passed since the applications were submitted (in one case almost 30 years) and no exceptional circumstances have been indicated to justify their non-determination. It is inevitable that the Council will require some time to carry out its investigations and to make decisions on the applications. Nevertheless, due to the excessive delay already experienced by the applicant, I have decided that there is a case

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

for setting a date by which time these applications should be determined. A further period of no longer than six 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 applications not later than six months from the date of this decision.

Helen Slade

INSPECTOR

