



## Direction Decision

by **Helen Slade MA FIPROW**

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

Decision date: 8 November 2017

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**Ref: FPS/D3450/14D/11**

**Representation by Gordon Payne, Burton Rambling Club**

**Staffordshire County Council**

**Application to add Public Footpaths in Winshill, Branston and Shobnall (OMA ref. LD607G)**

- 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 eight applications for Orders made under Section 53(5) of that Act.
- The representation, dated 11 July 2017 is made by Mr Gordon Payne.
- The certificates under Paragraph 2(3) of Schedule 14 are dated on various dates in 1994, 1995 and 1996.
- The Council was notified of the representation on 14 July 2017 and submitted its response on 11 October 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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### Procedural Matters

1. Mr Payne made a number of applications to Staffordshire County Council (the Order Making Authority or OMA) on 27 September 1994 and further applications on 27 February 1996. Rather confusingly, these applications all appear to have been given the same reference number by the OMA (LD607G 19/11/120) which has caused some difficulties in identifying the appeals. In addition, in some cases, the OMA's register of applications has not used the same descriptions for the routes as the applicant, causing further confusion.
  2. In order to avoid further problems, I intend to deal with all the appeals in one decision, but clearly identify each separate route as a discrete appeal.
  3. Mr Payne originally submitted his appeal himself, but has subsequently asked another person to act as his agent. For the avoidance of doubt, I have numbered the appeals in the sequence as submitted by the Agent, Mr Rice, rather than in the order set out by the applicant in his original submission. This is because two of the routes referred to by Mr Payne do not form part of the final appeal pursued on his behalf by Mr Rice.
  4. I have used the OMAs description of the routes from their register to identify each appeal route, except where I have indicated otherwise. In general, have referred to the most recent version of the application register submitted by the OMA with their response dated 11 October 2017, which appears to be more recent than the one submitted with the appeal by the applicant. Where this is not the case I have clearly indicated as such.
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### **Appeal Route 1**

*LD607G 19/11/120(1): Alleged Public Footpath between Tower Road and Ashby, Winshill.*

5. This application was submitted by Mr Payne on 27 September 1994 and certified on 9 January 1995. Mr Payne described the route as going to Ashby Road, Winshill. It is shown on the OMA register with a priority listing of 21.

### **Appeal Route 2**

*LD607G 19/11/120(1): Alleged Public Footpath between Shobnall Road and Footpath 11 Branston Parish*

6. This application was submitted on 27 September 1994 and certified on 11 October 1994. Mr Payne described this route in his application as going from Shobnall Road opposite Reservoir Road to Borough Boundary. It is shown in the OMA register with a priority listing of 22.

### **Appeal Route 3**

*LD607G 19/11/120(1): Alleged Public Footpath between Footpath 7 Branston Parish and the A38(T)*

7. This application was also submitted on 27 September 1994 and certified on 11 October 1994. Mr Payne described this route in his application as being from the Lawns Farm Path to the Borough Boundary, but it appears in the OMA register as Alleged Public Footpath between Footpath 7 Branston Parish and the A38(T). This is in accordance with the depiction of the route on the map attached to the application form. It is shown in the OMA register with a priority listing of 23.
8. I note that the copy of the OMA register submitted by Mr Payne with his appeal has a column marked 'Possible Alt Res' and that against this application registration is a comment: 'email sent to Paul 26/05/10'. I take this to mean that an alternative means of resolving the application was considered and that some action was taken on this possibility at that date. No further information in connection with such an email has been submitted by the OMA. This column does not appear in the most recent form of the register.

### **Appeal Route 4**

*LD607G 19/11/120(4): Alleged Public Footpath between Public Bridleway No. 8 Branston Parish and Shobnall Road*

9. This application, submitted on 27 September 1994 was also certified on 11 October 1994. Mr Payne described the route as running from the Albion Hotel to the Borough Boundary. It is shown on the OMAs register with a priority listing of 26.
10. This entry also has a reference to an email being sent on 26 May 2010 in the same column as I have described in paragraph 8 above. No further information has been submitted in this respect.

### **Appeal Route 5**

*LD607G 19/11/120(5): Alleged Public Footpath between Tower Road, Winshill and the County Boundary*

11. This application was submitted by Mr Payne on 27 September 1994 and certified on 13 October 1994. Mr Payne described the route as going to the Borough Boundary. It is shown with a priority listing of 27. Reference is also made against this application to the effect that an email was sent on 26 May 2010 in the same terms as described above. As before, no further information is available to me.

### **Appeal Route 6**

*LD607G 19/11/120(6): Alleged Public Footpath between FP 11 Outwoods Parish and the A38(T)*

12. Mr Payne described this route as running from the A38 Footbridge (MR233242) to the Borough Boundary (MR 231243). The application was submitted on 27 February 1996 and certified on the same date. It is shown with a priority listing of 28.

### **Appeal Route 7**

*LD607G 19/11/120(8): Shobnall Road (MR 231234) to Footbridge (MR233242)<sup>1</sup>*

13. Mr Payne's application for this route was submitted and certified on 27 February 1996. The entry in the OMA register under this reference refers to a companion application for a route from the same footbridge but running to Shobnall Street. That application was numbered *LD607G 19/11/120(7)* and is shown on the copy of the OMAs 'Closed Files' register submitted by Mr Payne with his appeal. The route described in that register<sup>2</sup> now appears to have been added to the Definitive Map and Statement and the OMA has closed the file on that application. I assume that the incorrect route description in the 'live' register is an administrative error, and I have treated the appeal route as the one described by Mr Payne and shown on the map attached to his application as leading to Shobnall Road. On that basis, the register shows a priority listing of 29.

### **Appeal Route 8**

*LD607G 19/11/120(9): Alleged Public footpath between Brookside and Wheatley Lane, Winshill*

14. This route is described in the register in the same manner as described by Mr Payne in his application, which was made and certified on 27 February 1996. It is shown in the OMA register with a priority listing of 30.

### **Reasons**

15. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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

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<sup>1</sup> This is the description on Mr Payne's application form and NOT the description in the OMA Register

<sup>2</sup> i.e. the route from the footbridge to Shobnall Street

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<sup>3</sup>.

16. The OMA acknowledges that it has a backlog of 241 applications awaiting attention and has submitted information relating to its policy in approaching this work. The caseload is prioritised in accordance with that policy, and unless a request for priority is granted, it deals with applications in order of their date of receipt. The present rate of progress appears, from the statistics, to be less than one case per year. Whilst it may be acceptable, in general terms, to deal with applications chronologically, the backlog dates back to 1991 which can under no circumstances be considered reasonable.
17. The OMA cites complex legal problems and lengthy investigation times as reasons for the backlog, but I do not accept those reasons as being exceptional. That is the nature of the work, and it requires appropriate resources.
18. Neither do I accept that directions recently given in respect of other appeals demonstrate exceptional circumstances justifying further delay. They are merely consequences of the unreasonable delays which are evident from the register. The earliest application on the register awaiting action is dated 1 September 1991 – 26 years ago. Mr Payne has already waited patiently for over 21 years, and has finally gone to the trouble of making an appeal. Although, regrettably, there may be applications older than his, I do not accept that as a reason as to why his applications should not be dealt with outside of the OMA policy. The appeal procedure is available to everyone and is there to be used. Mr Payne has availed himself of the opportunity and should not be penalised by the action, or lack of it, by others entitled to take advantage of the same procedures.
19. The County Council has indicated, in answer to a question from a Councillor in a Full Council Meeting held on 12 October 2017, that due to budgetary restrictions it has cut back on the work it does in relation to Definitive Map Modification Orders ('DMMOs') in favour of other services. Whilst the difficulties are appreciated, the OMA has a statutory duty to deal with applications for DMMOs. The task is made more difficult by excessive delay since, where cases are based on user evidence, the loss of witnesses due to age or relocation is a significant risk. Both the applicant and the public in general are entitled to expect the OMA to carry out its functions effectively, and in a reasonable and timely manner.
20. 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<sup>4</sup>. In this case, up to 23 years have passed since the first applications were submitted and no exceptional circumstances have been

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<sup>3</sup> Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

<sup>4</sup> The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14

indicated. At the rate of determination currently demonstrated by the OMA, Mr Payne would have to wait at least another 20 years for his applications to be dealt with, and possibly longer. This is completely unacceptable.

21. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Nevertheless, in the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. Given the excessive delay already experienced by the applicant, I consider it appropriate to allow no more than a further 6 months for decisions to be reached on all eight applications listed above.

### **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 following described eight applications not later than six months from the date of this decision:

- 1) *LD607G 19/11/120(1): Alleged Public Footpath between Tower Road and Ashby, Winshill.*
- 2) *LD607G 19/11/120(1): Alleged Public Footpath between Shobnall Road and Footpath 11 Branston Parish*
- 3) *LD607G 19/11/120(1): Alleged Public Footpath between Footpath 7 Branston Parish and the A38(T)*
- 4) *LD607G 19/11/120(4): Alleged Public Footpath between Public Bridleway No. 8 Branston Parish and Shobnall Road*
- 5) *LD607G 19/11/120(5): Alleged Public Footpath between Tower Road, Winshill and the County Boundary*
- 6) *LD607G 19/11/120(6): Alleged Public Footpath between FP 11 Outwoods Parish and the A38(T)*
- 7) *LD607G 19/11/120(8): Shobnall Road (MR 231234) to Footbridge (MR233242)*
- 8) *LD607G 19/11/120(9): Alleged Public footpath between Brookside and Wheatley Lane, Winshill*

*Helen Slade*

INSPECTOR