



Direction Decision

by Peter Millman BA

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

Decision date: 5 June 2017

Ref: FPS/Z4718/14D/7

Representation by Kirklees Bridleways Group

Kirklees Council

Application to upgrade a footpath to bridleway between Wilshaw Road and Wood Nook Lane, Holmfirth.

Kirklees Council reference 872/9/MOD/193/Wood Nook/GC

- 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 Kirklees Council ("the Council") to determine an application for an Order, under Section 53(5) of that Act.
- The representation, dated 13 March 2017, is made by Mr M Corrigan, Chairman of the Kirklees Bridleways Group.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 1 February 2016.
- The Council was notified of the representation on 21 March 2017 and submitted its response on 3 April 2017.

Summary of Decision: 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, 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 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.
2. The application for a modification order in this case was made on 6 Jan 2016. The route concerned is already recorded on the Definitive Map and Statement as a public footpath. The applicant's statement that gates were subsequently locked across the route in February 2016, restricting access to walkers only, is not disputed by the Council. The applicant's argument that this is an important

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

route linking two villages and keeping riders off busy roads is supported by the score it has been given on the Council's priority matrix (see also below at paragraph 5), according to which the application route would add 'a missing or strategic link to the PROW [public rights of way] network', would contribute 'significantly to ROWIP [rights of way improvement plan] priorities/objectives', would be 'a route that provides access to a wide section of the public' and would provide 'a safe alternative to a road for users'.

3. The application is said to be supported by 49 completed user evidence forms attesting to use of the route from the 1950s onwards. In response to a letter from the Planning Inspectorate asking what he considered the special circumstances to be which should lead to his application being given priority, the applicant stated that it was a very important route locally. Local riding businesses had been affected by the locking of gates. There were, within 2 miles of the path, ten commercial liveries and nine private yards with a total of 225 horses and ponies. The route had been available for horses for at least 20 years before the gates were locked. Cyclists were also affected.
4. In summary, the applicant stated: "We consider the special circumstances to be the safety of both horses and riders who are being forced onto busy main roads and the fact this closure is putting jobs and people's livelihoods at risk."
5. In response to the application for a direction, the Council provided a 'priority matrix scoring sheet' which is applied to applications for modification orders and was approved by the Council's Cabinet in 2012. Applications for modification orders are scored according to a number of factors, and those applications which are scored most highly are investigated first. This application has been scored and is ranked 56th. The Council states that it is difficult to give an estimated date for the application to be decided due, for example, to the number of cases which are ranked above it, and the possibility of higher ranking applications being received subsequently.
6. The Council comments on the special circumstances claimed by the applicant, stating that it is often the case that the public may be deprived of the use of a route, and that generally this applicant's concerns are recognised in the scoring matrix. It concludes with the statement: 'The Council respectfully asks the Secretary of State to resist the request for a direction, since if granted it would affect the consideration of other applications for modification orders of higher priority to the Council.'
7. The Council provides no information about the level of resources it is currently applying to applications for modification orders, or whether the list of applications is getting longer or shorter, or how many applications were determined in the past year. 122 outstanding applications are listed. The 4 which have the highest priority were received in 1993, 1991, 1988 and 1990 respectively. The Council does, however, provide a copy of the Executive Summary of its ROWIP, which contains a number of laudable aspirations, the first of which is to protect, improve and develop the rights of way network. No indication is given of the timescale within which these aspirations are to be achieved.
8. It seems to me that there is nothing inherently wrong about the way that applications are prioritized. The problem would appear to be, from the limited evidence provided, one of resource availability to deal with the number of outstanding applications for modification orders. If the applications with the highest priority are all at least 24 years old, then it is likely, I consider, that

this application has no hope of progressing even to a determination within the next 20 years, by which time many potential witnesses may have left the area or not be available for other reasons. It is not acceptable, in the circumstances, to ask, respectfully or otherwise, that the Secretary of State resists the request for a determination when the Council has, it seems, no idea when it might deal with the application.

9. 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, 16 months have passed since the application was submitted. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application.
10. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 12 months for a decision to be reached.

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** Kirklees Council to determine the above-mentioned application not later than 30 June 2018.

Peter Millman

INSPECTOR