



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: 20 July 2018

Ref: FPS/J1155/14D/6

Representation by Terence Ward and Christopher Hickson

Devon County Council

Application for a byway open to all traffic at Powderham Road, Newton Abbot

- 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 Devon County Council to determine an application for an Order, under Section 53(5) of that Act.
- The representation, dated 16 November 2017, is made by Terence Ward and Christopher Hickson.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 18 October 2016.
- The Council was notified of the representation on 14 December 2017 and submitted its response on 29 January 2018.

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 Council's Statement of Priorities comprises Definitive Map Review Policy Statements contained within its Rights of Way Improvement Plan as updated and approved by its Public Rights of Way Committee. It has adopted a parish-by-parish review to meet its statutory duty to keep the Definitive Map and Statement under continuous review. Completion of the parish-by-parish review is sought before 1 January 2020 (Policy DM1A/3). The Council determines claims as part of this review rather than on an individual basis with the aim of dealing with them as efficiently as possible. Accordingly, new claims which

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

arise in a parish where the review has already been completed are deferred until completion of the review as a whole, subject to exceptions in line with specified criteria (Policies DM1B/2 and DM1C/3). As regards the present case, the review of the parish of Newton Abbot was carried out between 1991 and 1995 and, the Council says, none of the criteria for taking this application out of turn (as set out in Policy DM1B/2) are met.

3. There are currently 182 applications registered with the Council and awaiting determination. However, 149 of these (82%), it says, are not duly made. Of the duly made applications, a third are to be investigated as part of the ongoing review, leaving 24, including this application, to be deferred until the process is complete. These duly made applications will then be prioritised. The Council says it may be able to allocate staff to dealing with these applications ahead of its completion of the parish-by-parish review. However, in neither event has the Council given any indication of a likely timescale for the determination of this application.
4. The Council has lost two full-time Definitive Map Officer posts in recent years, and it believes that diverting remaining staff resources to determine this application out of turn would have a detrimental impact on the progress of its established parish-by-parish review, and ultimately the target date for its completion.
5. I note these concerns and also note that no exceptional circumstances have been given by the Applicant as to why this application should be given priority above other claims. However, 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, that period has passed and it is now some 20 months since the application was submitted. With no indication of when this application will fall to be determined by the Council, it seems more likely than not it will be some years after completion of the parish-by-parish review.
6. In the circumstances 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 some time to carry out its investigation and make a decision on the application. Taking into account the Council's target of completing its review by 1 January 2020, and noting it is anticipated that staff resources will be available to deal with deferred applications prior to this; I consider it appropriate to allow a further 20 months for a decision to be reached by the Council on this application.

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 Devon County Council to determine the above-mentioned application not later than 20 months from the date of this decision.

S Doran

Inspector