



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: 29 March 2019

Ref: FPS/Z4718/14D/11

Representation by Peak and Northern Footpaths Society

Kirklees Council

Application to add a footpath and bridleway at Moorvale and Old Woodyard, Marsden, West Yorkshire (OMA ref. 872/7/MOD/2/Moorvale/GC [File 150])

- 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 to determine an application for an Order, under Section 53(5) of that Act.
 - The representation dated 22 August 2018 is made by Terry Norris on behalf of Peak and Northern Footpaths Society.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 7 April 2009.
 - The Council was consulted about the representation on 5 October 2018 and the Council's response was made on 14 November 2018.
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Decision

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

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. Peak and Northern Footpaths Society (PNFS) recognises that the Council's statement of priorities for bringing and keeping the Definitive Map up to date is a reasonable and sensible basis for prioritising applications. However, this is subject to there being adequate staffing levels to determine applications within a reasonable period. This application has been awaiting determination for 9 years and this is unreasonable. Given its position in the Council's priority list and current staffing levels, even on an optimistic assessment, PNFS considers

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

the application may not be determined until 2024. Further, the application offers a number of public benefits in an area with few bridleways, but that obstructions and maintenance issues are only likely to be addressed if its public status is resolved. The claim is based on user, and the availability of witnesses is likely to be adversely affected by the passage of time.

4. Kirklees Council's priority matrix scoring system was approved in 2012 following consultation and in line with its Rights of Way Improvement Plan statement of action. Priority themes include paths under threat, those providing a range of public benefits, and the age of both applications and witnesses. This application scores highly, is listed as 23 out of 129 in the priority statement and is currently under investigation. The Council recognises the merit of the applicant's representation and considers that if a direction is made, then determination within 6 months, as suggested by PNFS, is acceptable.
5. 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 the present circumstances and having regard to the fact that investigation of the application by the Council is already under way, I have decided that there is a case for setting a date by which time the application should be determined.
6. It is appreciated that the Council will require some additional time to carry out its investigation and make a decision on the application. A further period of 6 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 Kirklees Council to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

Inspector