



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: 23 September 2019

Ref: FPS/Z4718/14D/14

Representation by Ian Tidmarsh

Kirklees Council

Application to add a byway open to all traffic from Green Lane to Choppard Lane, Washpit Mills, Parish of Holmfirth (OMA ref.872/7/MOD/6/Washpit/GC/File 194)

- 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 3 July 2019 is made by Mr I Tidmarsh.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 24 May 2016.
 - The Council was consulted about the representation on 13 August 2019 and the Council's response was made on 14 August 2019.
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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. Kirklees Council prioritises definitive map modification applications according to a system approved by its Cabinet 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 10 points and currently stands at position 35 out of 139 in its priority statement. Work has not yet commenced on this application and, given the changing nature of the priority scoring system and its current position, the Council is unable to

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

- estimate a determination date. However, it is noted that the Council expects an increase in staffing levels dealing with rights of way matters in the near future.
4. Nevertheless, it is over 3 years since the application was submitted to the Council, and 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. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it cannot be reasonable, given that expectation, for determination of the application to take a further unspecified number of years. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined.
 5. It is appreciated that the Council will require some 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