



# Direction Decision

by **K R Saward Solicitor**

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

Decision date: 16 OCTOBER 2019

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**Ref: FPS/W4705/14D/4**

**Representation by Mr Michael Tomkinson**

**City of Bradford Metropolitan District Council**

**Application to add a footpath from Chapel Street, Queensbury, via Cambridge Place and the path known as Mawksome Nick to High Street, Queensbury**

- An application was made by Mr Michael Tomkinson to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
  - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 24 February 2007.
  - The Council's reference for the application is 66660/T48.
  - A representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to the City of Bradford Metropolitan District Council to determine the application.
  - The representation made by Mr Michael Tomkinson is dated 7 March 2019.
  - The Council was consulted about the representation on 12 June 2019 and its response is dated 18 July 2019.
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## Decision

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

## Reasons

2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement ('DMS').
  3. 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 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
  4. 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. As of July 2019, the application was positioned at number 20 out of over 60 on the Council's register of applications for Definitive Map Modification Orders awaiting determination.
  5. Current guidance is contained within Rights of Way Circular 1/09 Version 2,
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October 2009<sup>1</sup>. It explains<sup>2</sup> that 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.

6. The Council determines applications in accordance with its Policy Statement for the Definitive Map contained within its Rights of Way Improvement Plan<sup>3</sup>. This provides for applications to be programmed in chronological order of receipt. Priority is given to applications where there is a potential strategic value resulting from the application, or lack of action could result in permanent loss of a route. In practice, this prioritisation is only applied once officer time becomes available to commence processing an application.
7. The Council considers that although the application route has been closed by a locked gate, it does not currently have any particular strategic value which would give it priority over applications received earlier.
8. The Council's approach of utilising a chronological system with scope for prioritisation is not unreasonable in itself. However, in this case the application has been registered on the Council's list for a period in excess of 12 years.
9. Since 2018 the Council now has a dedicated Definitive Map Officer tasked with progressing the applications. Prior to such appointment, there was slower progress than anticipated due to the limited resources available. Aside from the one dedicated officer, the Council's other Rights of Way Officers have other responsibilities which will invariably limit the support they are able to provide in determining applications.
10. I also understand that the Council wishes to be fair to all applicants in dealing with its backlog of applications. Clearly, a direction to determine this application will disadvantage those who have been waiting even longer.
11. However, those factors do not justify a direction not being given in this instance when the 12-month period<sup>4</sup> has now long expired.
12. The Council has a statutory duty to keep the DMS up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 makes clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
13. Given the backlog of applications and current resources, the Council says that a decision in this case is unlikely before 2030. That is not an acceptable position. The applicant is entitled to expect his application to be determined within a finite and reasonable period. No exceptional circumstances have been advanced by the Council.

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<sup>1</sup> Published by the Department for Environment, Food and Rural Affairs.

<sup>2</sup> At paragraph 4.9

<sup>3</sup> Adopted April 2007

<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

14. 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. A further period of 6 months has been allowed to make a determination.

**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 City of Bradford Metropolitan District Council to determine the above-mentioned application not later than 6 months from the date of this decision.

*K R Seward*

INSPECTOR