



## Direction Decision

by Alan Beckett BA MSc MIPROW

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

Decision date: 11 February 2020

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**Ref: FPS/V3500/14D/18**

**Representation by Rushmere St Andrew Parish Council  
Suffolk County Council**

**Application to add a Public Footpath from Bixley Drive (grid ref X:620376 Y:244121) to the end of Bixley Lane just below Kelvedon Drive (grid ref X:620921 Y:244198) (OMA ref. CPM 891)**

- 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 Suffolk County Council ('the Council') to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by Rushmere St Andrew Parish Council ('the Applicant'), dated 30 September 2019.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 28 July 2017.
  - The Council was consulted about the representation on 8 November 2019 and the Council's response was made on 2 December 2019.
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### Decision

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

### ***Statutory and policy context***

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 based on 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.
3. 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<sup>1</sup>.

### Reasons

#### ***The Council's Statement of Priorities and the reasonableness of its priorities***

4. The Council's Statement of priorities is contained within its Green Access Strategy 2020 which is its second Rights of Way Improvement Plan. Section

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

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- 1.1 of the Delivery Plan relates to 'recording the network' and Objective 1.1.3 is 'making orders in the public interest'. To achieve this objective, the Council will continue to prioritise definitive map casework in the public interest with the aim of delivering 'a public rights of way network that meets the needs of today's user'.
5. In prioritising definitive map casework in the public interest, the Council's officers meet six times per year to consider and prioritise new claims and public path order requests. Applications are scored using the criteria set out in its prioritising scheme scoresheet with each application being ranked on the basis of the priority score awarded.
  6. The Council's definitive map modification register shows the formal applications which have yet to be determined. The register currently has 55 applications awaiting determination arranged in chronological order of receipt. The application is currently in 41<sup>st</sup> place in the register. The Council's prioritisation scheme places the application in 8<sup>th</sup> place within its Case Progress Monitor register and has a prioritisation score of 60.2 and lies in the high priority category for future investigation.
  7. The Council states that its officers are currently working on 23 cases. Of these 6 are formal applications which have been determined and are at various of progress and 3 formal applications are under investigation but have not been determined. In addition, 13 public path order cases are in progress along with one deed of dedication.
  8. I am satisfied that the Council has developed a system whereby the resources available to it can be allocated in such a way to accord with the aims and objectives set out in its ROWIP. However, although the Council has established a priority ranking system does not alter the statutory duty on the authority to investigate the matters stated in the DMMO applications as soon as is reasonably practicable following the receipt of the paragraph 2(3) certificate.

### **The actions or intended actions of the Council**

9. The Council notes that the application has been assessed as being in the high priority category, that it scored highly for the level of public interest and the strength of the supporting evidence, and that it scored fairly highly for the claimed path to provide an improvement to the network. The Council comments that the path appears to be well-used route which should be recorded on the definitive map.
10. The Council estimates that the application is likely to be determined in 2021. Determination of the application would have been at an earlier date; however, the Council submits that consideration of this application has been delayed by six other applications which the Council has been directed to determine, despite these being of a lower priority.
11. The scale of the task facing surveying authorities dealing with definitive map modification order and other rights of way casework is recognised and understood. It is also acknowledged that the Council has limited resources available to it with which to undertake such work and that the Council has sought to prioritise those DMMO applications which it has received. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to investigate an application as

soon as is reasonably practicable after the receipt of the paragraph 2(3) certificate.

12. If determination of the application is to take another 2 years, it will mean that almost four years will have passed since the application was first made. The lack of action by the Council on what has been assessed as 'high priority' due to the public benefit to be derived from recording the route, and the uncertainty as to when in the next few years action will be taken leads to the conclusion that it is unlikely that a determination will be made in the near future without intervention. Such uncertainty for the Applicant would justify the making of a direction that the application should be determined before the end of a specified period of time.

### ***The circumstances of the case and views of the Applicant***

13. The route at issue is an important footpath within the parish which is well used by residents. It is considered important that the footpath should be formally recorded as a public right of way to ensure that it remains available for the public to use. The Council has not determined the claim, although the application had been made in 2017; it is requested that a direction be given to the Council to determine the application within the next three months.
14. The initial assessment of the application by the Council showed that the recording of the route would be of public benefit and that it was accorded a high priority for investigation. No action appears to have been taken on that high priority in the two years since the application was made, and although the Council considers that a determination may be made in 2021, there remains uncertainty as to when a decision is likely to be reached.

### **Conclusion**

15. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of their application within 12 months under normal circumstances. I have taken into account the Council's estimate of when it is likely to determine the application and that other Directions have further delayed its consideration of the application.
16. Nonetheless, four years will have passed between the application being made and its determination if the Council is able to meet its expected deadline. Setting a date by which the Council should determine the application would give the Applicant a degree of certainty which is currently lacking.
17. In the circumstances I consider that there is a case for setting a date by which 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 and I consider it appropriate to allow a further 6 months for a decision to be reached.
18. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

### **Direction**

19. 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 Suffolk County Council to determine the above-mentioned application not later than six months from the date of this decision.

*Alan Beckett*

INSPECTOR