



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 30 JANUARY 2020

Ref: FPS/G1440/14D/21

Representation by Christopher Smith

East Sussex County Council

Application to add a Footpath from an end-on junction with Footpath Tarring Neville 1 at the parish boundary at grid reference 544395 103008 to the riverside path South Heighton 17 at grid reference 544391 102555 (Parish of South Heighton) (OMA Ref: RWO/225/sc14)

- 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 East Sussex County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Christopher Smith dated 15 September 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 September 2018.
 - The Council was consulted about the representation on 18 September 2019 and the Council's response was made on 15 November 2019.
-

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. The Council's policy is to investigate applications for definitive map modification orders in sequence of receipt unless there are exceptional circumstances which would justify prioritisation. The current Priority Statement is in the process of being updated. The Council say that the application is based on historical evidence and is deemed not to fall within any of the priority groups. The application is number 38 on the current list and the Council say that they

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

expect to complete the application after cases subject to directions and those which meet the necessary criteria for priority investigation have been completed. It is likely that the application will be completed within the next 24 to 36 months.

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. Although just over 12 months has elapsed since the application, its determination is likely to be another two or three years. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application. Whilst it is reasonable for the Council to determine applications in accordance with its approved policies, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take up to three to four years.
5. I recognise that the Secretary of State has issued a number of Directions and I note the progress of the Council in determining those applications with the current staffing resource. I also appreciate the concerns in respect of the effect of any further directions on existing applications subject to directions and whether determination dates are realistic. Nevertheless, an applicant expects the determination of an application in a reasonable timescale. Circular 1/09 makes it 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. It is the duty of the Council as surveying authority to investigate applications for definitive map modification orders as soon as reasonably practicable. A delay of three to four years is not reasonable.
6. Taking all factors into consideration 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 investigations and make a decision on the application. I consider it appropriate to direct the Council to determine the application in 6 months.

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** East Sussex County Council to determine the above-mentioned application not later than 6 months from the date of this Direction Decision.

Martin Elliott

INSPECTOR