



## Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 9 April 2020

---

**Ref: FPS/X2600/14D/5-15**

**Representations by Ian Witham**

**Norfolk County Council**

**Applications:**

**(see table overleaf for list of relevant applications)**

- The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 ('the 1981 Act') seeking directions to be given to Norfolk County Council to determine several applications for Orders, under Section 53(5) of that Act.
  - The representations are made by Mr Ian Witham and are dated as shown in the table overleaf.
  - The certificates under Paragraph 2(3) of Schedule 14 are dated as shown in the table overleaf.
  - The Council was consulted about the representations on 23 September 2019 and the Council's response was made on 1 November 2019.
- 

### Decision

The Council is directed to determine the applications described overleaf.

### Reasons

1. 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 applicant<sup>1</sup>.
2. The Council has submitted a statement setting out its policy in relation to the prioritisation of applications made under Section 53(5) of the 1981 Act. This states as follows:

---

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

---

OMA REF	PINS REF	APPLICATION	CERTIFICATION DATE	REPRESENTATION DATE
54357/HP337/6	FPS/X2600/14D/5	To add a restricted byway from Knaption Road, Mundesley, to Stow Hill and then continuing towards the cliffs, Paston	3/6/2017	17/8/2019
52068/HP337/5	FPS/X2600/14D/6	To add a restricted byway from the Mundesley Road towards the cliffs in Paston	1/10/2016	21/8/2019
55025/HP325/3	FPS/X2600/14D/7	To upgrade to a restricted byway the footpath from the Trimmingham Road in the parish of Southrepps to the Southrepps Road in the parish of Northrepps	7/10/2017	16/8/2019
15/55219/HP408/2	FPS/X2600/14D/8	To add the restricted byway from Sandy Lane to the Thorpe Road in the parish of Southrepps	7/10/2017	16/8/2019
15/55221/HP305/5	FPS/X2600/14D/9	To upgrade to a restricted byway the footpath from Cromer Road to the top of the coastal slope in the parish of Mundesley	7/10/2017	16/8/2019
55026/HP325/2	FPS/X2600/14D/10	To add the restricted byway from the west end of Pit Road to the grid ref TG 2419 3877 in the parish of Northrepps, and upgrade to a restricted byway the footpath from TG 2419 3877 to Crossdale Street, and from grid ref TG 2304 3887 to Crossdale Street in the parish of Northrepps	7/10/2017	16/8/2019
ML/53958/HP521/3	FPS/X2600/14D/11	To add the restricted byway from the Manor Farm Road U19666, grid ref TG 3360 3131, to meet the Manor Farm Road, grid ref TG 3353 3130, in the parish of Witton	7/4/2017	16/8/2019
15/54514/HP477/7	FPS/X2600/14D/12	To upgrade to a restricted byway the footpath from the junction of Bradfield Road with Chapel Lane and Wrights Loke to the yard of Warren Farm to join the unclassified road number 19205, and to the Bradfield Road on a bend beside a concrete hardstanding, in the parish of Trunch	7/10/2017	16/8/2019
MG/54302/HP521/4	FPS/X2600/14D/13	To add the restricted byway from the Kitling's Beck Road, in the parish of Witton, to the commencement of the Honing footpath No 7	22/5/2017	16/8/2019
51891/HP21/5	FPS/X2600/14D/14	To upgrade to a restricted byway the footpath from the Walcott Service Road to grid ref TG 3468 3352 in the parish of Bacton, and to add the restricted byway from grid ref TG 3468 3352 to grid ref TG 3473 3351, and the restricted byway from the Walcott Road at grid ref TG 3472 3346 to the sea wall at Watch House Gap, grid ref TG 3498 3363 in the parish of Bacton	24/3/2017	16/8/2019
ML/52472/HP21/6	FPS/X2600/14D/15	To add the restricted byway from the Church Lane U19683, to meet the Bacton footpath No 7 in the parish of Bacton	28/10/2016	16/8/2019

*"The County Council deals with applications for Orders on a first come, first served basis. However, should the need arise in a specific case or due to an increase in applications, especially as the 2026 cut-off deadline draws closer, a system of prioritisation may be introduced. At present priority may be given if:*

- *A route is threatened by developers;*
  - *Processing a case will significantly progress a specific target within the NAIP;<sup>2</sup>*
  - *Where the evidence is based largely on users who may not be available to give that evidence if a long time elapses;*
  - *Where there is an overriding operational need to do so"*
3. The applications which are the subject of these representations are near to the top of the list and, in accordance with the prioritisation policy, are next in the queue to be resolved. Any direction issued in respect of these cases would have very little effect on the order in which these applications are dealt with. It is expected that decisions will be reached on all these applications within 6 months.
  4. Before any direction is given, the Council asks that consideration be given to the many other applicants who have submitted applications to modify the Definitive Map and Statement. Prioritising the applications which are the subject of this representation will further delay other people's applications.
  5. Mr Witham comments in general that 12-24 months has followed since his applications, and that he is concerned that the approach of the year 2026 will result in even more applications, increasing the backlog and trapping his own applications as a consequence. He comments more specifically with regard to the individual claims as follows:

<b>FPS/X2600/14D/5</b>	In December 2018 the Council stated that the consultations were complete and that a report was to be drafted to the Chief Legal Officer ('CLO'). No decision was issued, and in June 2019 this application did not appear to be amongst the applications being finalised for submission to the CLO. This path is open for pedestrians but otherwise blocked, and it has high amenity value as it is situated within the Norfolk Coast AONB <sup>3</sup> to which there is currently no recorded public right of way.
<b>FPS/X2600/14D/6</b>	In December 2018 the Council stated that the consultations were complete and that a report was to be drafted to the CLO. No decision was issued, and in June 2019 this application did not appear to be amongst the applications being finalised for submission to the CLO. This path is constantly being ploughed up and cannot be used, but it has high amenity value as it is situated within the Norfolk Coast AONB to which there is currently no recorded public right of way.
<b>FPS/X2600/14D/7</b>	In December 2018 the Council stated that the consultations had been undertaken and that a report was to be drafted to the CLO. In June 2019 this application was stated to be amongst the applications being finalised for submission to the CLO, but no decision has been issued. This path is signed as a footpath, which deters other users, but it occupies a key position within the local public rights of way network.

<sup>2</sup> Norfolk Access Improvement Plan

<sup>3</sup> Area of Outstanding Natural Beauty

<b>FPS/X2600/14D/8</b>	In December 2018 the Council stated that the consultations were complete and that a report was to be drafted to the CLO. No decision was issued, and in June 2019 this application did not appear to be amongst the applications being finalised for submission to the CLO. This path would offer a quiet and safer route for non-motorised users than the adjoining Thorpe Road.
<b>FPS/X2600/14D/9</b>	In December 2018 the Council stated that the consultations were complete and that a report was to be drafted to the CLO. No decision was issued, and in June 2019 this application did not appear to be amongst the applications being finalised for submission to the CLO. This path suffers from encroachment and there is a pressing need for the status and width of the path to be properly examined to enable appropriate maintenance by the highway authority.
<b>FPS/X2600/14D/10</b>	In December 2018 the Council stated that the consultations had been undertaken and that a report was to be drafted to the CLO. In June 2019 this application was stated to be amongst the applications being finalised for submission to the CLO, but no decision has been issued. This path is signed as a footpath, which deters other users, but it occupies a key position within the local public rights of way network.
<b>FPS/X2600/14D/11</b>	In January 2019 the Council stated that the consultations were complete and that further investigations were taking place to establish the potential status of the claimed way. A report was to be drafted to the CLO. By June 2019 this application still did not appear to be amongst the applications being finalised for submission to the CLO. Part of the route is now blocked off and unusable.
<b>FPS/X2600/14D/12</b>	In December 2018 the Council stated that the consultations were complete and that a report was to be drafted to the CLO. No decision was issued, and in June 2019 this application did not appear to be amongst the applications being finalised for submission to the CLO. This path is signed as a footpath, which deters other users, but it occupies a key position within the local public rights of way network where the keeping and riding of horses is popular.
<b>FPS/X2600/14D/13</b>	In January 2019 the Council stated that the consultations were complete and that further investigations were taking place to establish the potential status of the claimed way. A report was to be drafted to the CLO. By June 2019 this application still did not appear to be amongst the applications being finalised for submission to the CLO.
<b>FPS/X2600/14D/14</b>	In December 2018 the Council stated that the consultations were complete and that further investigations were taking place to establish the potential status of the claimed way. A report outlining their decision was expected shortly. In June 2019 this application was stated to be amongst the applications being finalised for submission to the CLO, but no decision has been issued.
<b>FPS/X2600/14D/15</b>	In January 2019 the Council stated that the consultations were complete and that a report was to be drafted to the CLO. By June 2019 this application still did not appear to be amongst the applications being finalised for submission to the CLO.

6. All the applications appear to rely principally on documentary evidence although the applicant indicates that witness statements were also provided to the Council in each case.
7. 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 these cases, more than 2 years have now passed

since the applications were submitted and the rate of progress indicated by the Council to the applicant appears not to have materialised. Nevertheless, the Council has indicated that all of these cases are now likely to be resolved within the next 6 months. Some of the promised reports have now been written and are with the CLO (No. 7, 10 11, and 14 in the list above). Others, however, remained to be drafted at the time of the Council's statement in November 2019.

8. It is appreciated that the Council will require a little time to complete the reports into these claims, and thereby determine the applications, but in view of the work already completed I have decided that there is a case for setting a date by which time these applications should be determined to encourage timely decisions to be made.
9. Due to the present situation of restrictions due to the outbreak of the COVID-19 virus, it would seem that exceptional circumstances have arisen which could not have been foreseen. Accordingly, and guided by the Council's own estimates, a further period of 12 months has been allowed for those cases where the reports were stated to be in preparation, and a shorter time of 6 months for those where the report is said to be with the CLO.

### **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 Norfolk County Council to determine the above-mentioned applications as follows:

FPS/X2600/14D/7, 10, 11, and 14	not later than 6 months from the date of this decision.
FPS/X2600/14D/1, 2, 3, 4, 5, 6, 8, 9, 12, 13, and 15	not later than 12 months from the date of this decision.

*Helen Slade*

INSPECTOR