



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: 12 AUGUST 2020

Ref: FPS/Z4718/14D/16

**Representation by Ms Frances Mary Holmes
Kirklees Council**

Application: To add a public footpath in the District of Kirkburton which starts at the Bowling Club drive to Woodsome Road and ends at KIR/55/10 thereby creating a circular walk (Farnley Tyas) (PLA/HG/D105-164)

- 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 ('the Council') to determine an application made for a Definitive Map Modification Order ('DMMO') under Section 53(5) of that Act.
 - The representation is made by Ms Frances Mary Holmes ('the Applicant') and is dated 2 June 2020.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 3 April 2019.
 - The Council was consulted about the Applicant's representation on 15 June 2020 and the Council's response was made on 14 July 2020.
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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 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.
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 applicant¹.

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

Reasons

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

4. The Council's priority matrix scoring system was approved by the Council's Cabinet in February 2012. The priority themes identified within the Council's scheme are, amongst other things, paths under threat, paths which would provide a range of public benefits, and the age of both applications and witnesses. The Council's prioritised list of applications was last updated in June 2020; however, a number of applications have been received since that date which are yet to be assigned a priority score and are not yet included in the list. Currently the Council has 165 applications listed; the application at issue is number 87 on the list.
5. The scoring system allocates points to each of the criteria as set out in the score sheet matrix. Those cases which return the same score will be dealt with in chronological order of receipt. The application at issue is one of 21 applications which have scored 7 points and within that group, the application is number 19 of 21.
6. Whilst there is nothing before me to suggest that the approach taken by the Council for bringing and keeping the Definitive Map and Statement up to date is unreasonable, that does not alter the statutory duty on the authority to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

The actions or intended actions of the Council

7. As noted above the application in June 2020 stood at number 87 in the register of applications. The Council submits that since June 2020, further applications have been received which have yet to be assessed against the priority scoring system. It is possible that one or more of these additional applications may be given a higher score and therefore be allocated ahead of the application at issue. Given the changing nature of the priority scoring system, the Council considers it very difficult to set out a timescale in which this application will be determined.
8. The Council submits that an additional Definitive Map Officer was appointed in September 2019 to investigate and determine applications and it is hoped that further additional staff will be appointed as resources allow to improve the Council's performance in relation to DMMO applications.
9. The Council has not commenced an investigation of this application and recognises that it may be directed to determine the application by the Secretary of State. If a direction were to be given, a request is made that the time allowed for determination is not less than six months.
10. The scale of the task facing all surveying authorities dealing with DMMO 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 its staffing levels have recently increased to address the backlog of casework which has developed.
11. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate. Although only 16 months have elapsed since the application was

made, it is not considered reasonable for the Council to be unable to state when the investigation of this application will commence. Deferring the investigation of the application for an unspecified length of time is, on the face of it, wholly inconsistent with the Council's statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice and means that there is uncertainty for the applicant as to when a decision is likely to be reached.

12. The lack of action by the Council and its failure to set out any firm intended action, would justify making a direction that the application is determined before the expiration of a given period.

The circumstances of the case and views of the Applicant

13. The Applicant submits that the footpath at issue has been in constant use for longer than living memory by the residents of Farnley Tyas to avoid walking along a busy main road. It is said to be a path through woodland which gives views towards the Jubilee Tower which stands on the nearby Castle Hill and provides the opportunity to undertake a circular walk from the village as it links to other nearby public footpaths.
14. In support of the application, evidence of use was provided by 30 witnesses. The Applicant states that the recent restrictions on movement imposed by the Government's response to the Covid-19 pandemic has meant that this convenient local walk has been greatly missed by dog walkers and young families following its obstruction by barbed wire in January 2019.
15. The Applicant submits that the Council should be directed to determine the application.

Conclusions

16. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances. I have taken into account the Council's current backlog of DMMO applications and that a recent increase in staff resource should allow it to attend to that backlog with greater speed in the future. However, the Council is unable to indicate when it will be able to commence an investigation of this application and it appears that an investigation is unlikely without intervention.
17. In the circumstances I consider that there is a compelling case for setting a date by which the application should be determined. The Council has acknowledged that a direction may be given and requested a period of at least six months in which to undertake its investigation and determine the application. In ordinary circumstances, I would consider that the Council should determine the application within six months of a direction being given. However, I also consider that the impact of the current coronavirus outbreak on local authorities may limit the Council's ability to adhere to a six-month timescale.
18. Accordingly, and to give the Applicant some certainty that this application will be determined in the near future, I consider it appropriate to allow the Council a period of 12 months for a decision to be reached.

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 Kirklees Council to determine the above-mentioned applications not later than twelve months from the date of this decision.

Alan Beckett

INSPECTOR