



Direction Decision

by **K R Saward Solicitor**

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

Decision date: 5 February 2021

Ref: FPS/K2800/14D/10

Application to add a Footpath from Prospect Avenue to the Greenway and to Shirley Road, Rushden

- An application was made by George Dowsett to Northamptonshire County Council for an order to modify its Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
 - The Council's reference for the application is DM/300419-02.
 - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 30 March 2016.
 - A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application.
 - The representation is dated 7 February 2020 (received 13 February 2020).
 - The Council was consulted about the representation on 26 February 2020 and its response is dated 12 January 2021.
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Decision

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

Procedural Matter

2. An extension of time was given to the Council to respond to the representation in light of restrictions due to the outbreak of the COVID-19 virus.

Reasons

3. 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 ('a DMMO').
4. 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.
5. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009¹. This explains² 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

¹ Published by the Department for Environment, Food and Rural Affairs.

² At paragraph 4.9

- 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. Each case must therefore be considered in light of its particular circumstances.
 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 months³ under normal circumstances. The application in this case was made almost 5 years ago. It seeks a DMMO to add a public footpath from the end of Prospect Avenue to the Greenway and to the top of Shirley Road.
 8. Prior to 1 April 2020 the Council had prioritised applications by applying scoring criteria. Those applications given a high score were investigated ahead of those with a lower prioritisation score. This application scored 24 composed of 20 points for 20 user evidence forms and 4 points for wider community support benefits, namely avoiding roads or road crossings and connecting people with local services or the wider rights of way network. The Council now prioritises DMMO applications in order of receipt. In consequence, and as of 12 January 2021, the application was positioned at number 10 out of 73 DMMO applications on the Council's list awaiting determination.
 9. With effect from 1 April 2021 Northamptonshire County Council will cease to exist. The parish of Rushden, where the claimed route falls, will come within the administrative boundaries of the new North Northamptonshire unitary authority. When that happens, the application will rise to place 7 on the list of outstanding applications. There is still no indication as to how long it might take for the application to be determined.
 10. Inevitably, the ongoing pandemic and restrictions imposed including national lockdowns will have caused major disruption to the operation of the Council and its staff and must be expected to continue to do so. In particular, the Council flags up the lack of accessibility of its offices. No doubt there will have been impact upon the ability to conduct research routinely undertaken in rights of way cases. These unprecedented factors must be taken into account.
 11. The application relies upon evidence of use by members of the public. The Council further emphasises that it is the usual working practice in such cases to visit and interview a selection of witnesses who completed user evidence forms. The Council fears that a final decision may not be as robust if a direction is given which does not allow for this process.
 12. Clearly, face-to-face interviews cannot happen in the current circumstances. However, that does not preclude the use of other means to conduct interviews such as the use of technology for virtual meetings or by telephone. There is also no apparent reason why any points of clarification could not be addressed through other forms of communication, including email or post.
 13. Where an application is reliant upon user evidence, that evidence can be prejudiced through the passage of time. Indeed, the applicant states that one user who was regarded as a key witness has now passed away without being interviewed by the Council.

³ The 12 month period commences on the date a valid certificate is submitted to the authority in accordance with paragraph 2(3) of Schedule 14

14. The applicant advises that the bulk of the claimed path has been blocked off by fencing since November 2019. Concerns are expressed over the possible permanent loss of the route from a large scale housing development which is under consultation pending a planning application. Whether an application will emerge, in what form and when that might occur is unclear and there is no guarantee that planning permission will be granted. From the information before me there does not appear to be an imminent threat to the claimed path although that may possibly change.
15. Due to the restrictions arising from the global pandemic, exceptional circumstances have arisen which could not have been foreseen. Even so, the 12 month period had long expired before the pandemic. The Council remains under a statutory duty to keep the Definitive Map and Statement up-to-date. Of course, there are other older applications in the Council's list which would be disadvantaged by the issue of a direction. However, despite the current restrictions the application appears capable of determination without face-to-face interviews given the alternative means available to clarify evidence. As noted above, there may be threat from development although the position is currently unclear.
16. In the circumstances I am satisfied that there is a case for setting a date by which time the application should be determined. Clearly, some time will be required to conduct the investigation and complete the decision making process which will no doubt involve the new Council. This is in circumstances where Officers will be working in a restricted climate which may well make progress slower than usual. The Council seeks a period of 12 months but I am mindful of the further time that has elapsed during the course of this process.
17. Taking into account the circumstances as a whole, a further period of 10 months shall be allowed. That does not prevent the Council from making an earlier determination should a threat of permanent loss to the claimed route make the application more pressing.

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 Northamptonshire County Council to determine the above-mentioned application not later than 10 months from the date of this decision.

K R Seward

INSPECTOR