



Direction Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 8 December 2017

Ref: FPS/G3300/14D/36

Representation by Otterhampton Parish Council

Somerset County Council

Application for the addition of a footpath running from Old Wharfe Road to Cannington Road at Combwich Ponds (Parishes of Otterhampton and Cannington) (Council ref. 507M)

- 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 Somerset County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by the Otterhampton Parish Council, dated 29 September 2017.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 21 April 2008.
 - The Council was consulted about your representation on 16 October 2017 and the Council's response was made on 24 November 2017.
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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 has a policy statement for prioritising applications under section 53(5) of the 1981 Act. This policy gives priority to those applications which, if successful, would be of most benefit to people wishing to use the wider rights of way network. The application in question is ranked 31st on a list of 146 cases. The Council estimates that it will be at least 3 years before work begins on the application.

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

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 circumstances². In this case, the applicants for the Order have waited more than 9 years before seeking a direction from the Secretary of State. The statutory duty is to investigate applications as soon as reasonably practicable. The statement by the authority setting out its priorities for bringing and keeping the definitive map up to date is only reasonable if it is able to implement those priorities in accordance with the statutory duty and, under normal circumstances, within 12 months. The Council has not indicated any exceptional circumstances as to why the application has not been determined. I have noted that the Council has a substantial backlog of applications to be determined and that there are a growing number of directions by the Secretary of State. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to recording public rights of way³.
5. In the circumstances, I have decided that there is a case for setting a date by which time 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. A further period of 6 months has been allowed.

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** Somerset County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Michael R Lowe

INSPECTOR

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

³ Paragraph 1.8, Rights of Way Circular 1/09 Version 2, October 2009