



Direction Decision

by **Helen Slade MA FIPROW**

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

Decision date: 22 November 2017

Ref: FPS/Z4718/14D/8

Representation by Mr Jonathan Adamson on behalf of the Clayton Fields Action Group

Kirklees Council

Application to add a footpath at Clayton Fields from Footpath 345 to Queens Road (Order Making Authority reference: 183.10)

- 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 Order Making Authority) to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 12 August 2017, is made by Mr Jonathan Adamson on behalf of the Clayton Fields Action Group.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 14 October 2014.
- The Council was notified of the representation on 15 August 2017 and submitted its response on 17 October 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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.
2. In this case, the application to add a footpath to the Definitive Map and Statement was made following a successful challenge to the registration of the area as a Town and Village Green. The land was subsequently de-registered and is now subject to planning consent. This representation relates to one of

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

the claimed routes only: running from the footbridge over Clayton Dike on Footpath 345 in an easterly direction to meet Queens Road near its junction with Murray Road.

3. The Council has indicated in its response to the representation from Mr Adamson that a package of footpath extinguishments and diversions has been agreed with the developer of the site, which includes the route which is the subject of this decision. The Secretary of State is therefore requested not to make a direction as the matter is in hand: a Public Path Order is being prepared under Section 257 of the Town and Country Planning Act 1990.
4. I acknowledge that it is not a necessary pre-requisite for a path or way to be shown on the Definitive Map and Statement in order for it to be the subject of a public path order. Indeed it might be argued that the very inclusion of a route in such a public path order constitutes a determination that it is a public right of way, whether or not a Definitive Map Modification Order ('DMMO') has actually been made. However, that approach in my view would undermine the requirements of Schedule 14 of the 1981 Act which set out the procedures to be followed in making such a determination.
5. 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, three years have passed since the application was submitted. No exceptional circumstances have been indicated; although it is appreciated that the matter is in hand, albeit not in the way anticipated by the applicant nor in the manner set out in Schedule 14 of the 1981 Act.
6. The Council has, effectively, decided that the claimed route is a path or way which is affected by development and needs to be stopped up or diverted accordingly. Nevertheless, no formal determination of the application has been made.
7. I have decided that there is a case for setting a date by which time the application should be formally determined and, in the circumstances, I consider that such a decision can be made with the minimum of further delay. I consider it appropriate to allow no more than a further 3 months for a decision to be made.

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** Kirklees Council to determine the above-mentioned application not later than 3 months from the date of this decision.

Helen Slade

INSPECTOR

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