



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: 4 August 2017

Ref: FPS/G3300/14D/22

Representation by Carol Garrett

Somerset County Council

Application to add a Footpath which runs from Point C at the junction of Moor Road to Point A1 at the junction with BW 21/6 (Parish of Moorlinch) [RW/717M/ED]

- 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, dated 13 April 2017, is made by Carol Garrett.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 20 July 2011.
- The Council was notified of the representation on 2 May 2017 and submitted its response on 8 June 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. The applicant acknowledges that in the years between making the application and seeking a direction from the Secretary of State the application has climbed the Council's list of priorities but the lack of progress was extremely concerning. Although it was understood that the legislation provided that the application should be determined within twelve months, almost six years have passed since the application had been made.

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

3. The applicant considers that the application should be prioritised as newer residents of the village are not confident of the entitlement to use the claimed footpath; relatively new wooden gates stand on the footpath and a number of 'private' signs are intimidating to those less familiar with the village and its history. The applicant submits that the claimed footpath has historically been used to access Moorlinch Church and Church hall and the network of footpaths to the west of the churchyard.
4. Within this climate of uncertainty the applicant states that both more recent residents and those of long-standing continue to use the road as an alternative; a road which has a blind bend, has no pavement and which is used by larger and wider tractors. It is submitted that the application should score higher than it originally did on safety in the Council's scoring scheme. The applicant contends that the circumstances surrounding the application have changed considerably since the application was made and it should now be treated as a priority.
5. The Council responded that the application would not score any differently today under its published criteria that it did when the application was made; Moor Road is and was a B or C class road and the points awarded during the scoring process when the application was first assessed in 2011 remain the same. Although the applicant considered that traffic volumes and the size of vehicles using Moor Road had increased, the number of points awarded regarding safety would be the same if the application had been assessed in 2017.
6. The Council states that applications received between 2008 and 2001 were scored in 2011 and a priority list was compiled as a result of that scoring process; the application is number 23 on that list. Applications made before 2008 are being dealt with on a chronological basis and the investigation of those pre-2008 applications has diverted resources away from those applications on the 2008-2011 priority list. However, the Council says that it has determined 11 of the applications on the 2008-2011 priority list which were ahead of the application at issue; consequently it was anticipated that work would commence on the current application within 2 years.
7. The Council also submits that it has a significant backlog of cases which have been waiting longer than twelve months and for which the same arguments put forward for this application to be taken out of turn could be made; it is considered that no special circumstances have been identified as to why this application should take priority over others on the priority list. In determining this appeal, consideration should also be given to the cumulative effect of directing the Council to determine 18 other cases by the end of 2021; it is estimated that the effect of directing resources towards these cases will be to delay consideration of this application by approximately 2 years.
8. The Secretary of State recognises the scale of the task facing all surveying authorities dealing with definitive map modification order applications and other rights of way casework and acknowledges that the Council has limited resources available to it. He recognises that the Council has developed a prioritisation scheme to assist in the allocation of those scarce resources and that the Council approaches the review of the definitive map in accordance with that scheme.
9. It is for the Council to determine which factors to take into account in setting out its priorities in allocating the resources available to it. However, these are

not matters to be taken into consideration when determining whether a right of way has come into existence through long use. Whilst nothing is apparent to suggest that the adopted policy is unreasonable, the limited resources available to the Council means that there is uncertainty for applicants regarding when a decision is likely to be reached.

10. The applicant considers that the safety of users wishing to access the public rights of way network to the west of Moorlinch Church is put at risk by the characteristics of Moor Road. Whereas the Council does not consider this to be exceptional as the points allocation under the priority scheme would remain the same, those who are uncertain of the status of the claimed route have waited almost six years for the application to be determined and will be required to negotiate the road for at least such time as it takes for the Council to arrive at its decision; on the Council's estimate another 2 or possibly 4 years may elapse before an investigation of the application is commenced.
11. The Council's submissions regarding the number of applications which it has recently been directed to determine is noted, but is not a factor which can attract significant weight in the determination of this application for a direction must be considered on its own merits. 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. It is not considered reasonable for 6, 8 or 10 years to elapse between an application and its determination. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application.
12. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 12 months for a decision to be reached.

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 Somerset County Council to determine the above-mentioned application not later than 31 July 2018.

Alan Beckett

INSPECTOR