



Direction Decision

by Sue Arnott FIPROW

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

Decision date: 19 June 2017

Ref: FPS/Q2371/14D/1-4

Representation by Mrs G Chester

LANCASHIRE COUNTY COUNCIL

Application to record four footpaths at Glasson Canal Basin near Lancaster

Refs. 804-555 / LSG4/MB3/5.51136

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Lancashire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 9 January 2017, is made by Mrs G Chester.
- The certificate under Paragraph 2(3) of Schedule 14 was confirmed as complete on 27 October 2015.
- The Council was notified of the representation on 9 February 2017 and submitted its response on 20 March 2017.

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

Reasons

1. Mrs Chester made two applications to Lancashire County Council (LCC). The first¹ was made in 2011 and related to a claimed footpath from Tithebarn Hill to the exit on School Lane at Glasson Canal Basin near Lancaster. Her second application was made in 2014 and sought the addition to the definitive map and statement of four public footpaths, including the route that was the subject of the 2011 application (referred to as Route 1). The 2014 application also claimed public rights of way along Route 2 (from School Lane to the exit of the Marina driveway on School Lane via the Basin edge footpath), Route 3 (from the entrance of the Marina driveway on School Lane to Brows Bridge) and Route 4 (from Brows Bridge to Glasson Village at Tithebarn Hill).
2. 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

¹ Reference 804-519 - LSG4/MB3/5.43923

- 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 applicant².
3. The twelve month period referred to above commences from the date of receipt of the relevant certificate. In this case no copy of the certificate has been provided (for either the application made in 2011 or 2014). However a letter to the applicant from Lancashire County Council dated 27 October 2015 referring to the 2014 application confirms that it is satisfied notice has been served. I have therefore addressed only the 2014 application in this decision although that may be somewhat immaterial since this also includes Route 1.
 4. This application was submitted on 28 January 2014. After some delay, in its letter of 27 October 2015 confirming notice had been served, LCC advised that *"The next stage is for the Council to continue to prepare the report that will go to one of the County Council's Regulatory Committee meetings in due course."* That is now more than three years ago (and almost two years since the certificate was acknowledged).
 5. Mrs Chester has drawn attention to Article 6 of the European Convention on Human Rights: *"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"*. She argues that this should apply to her application and therefore it should be determined *"within a reasonable time"*.
 6. Meanwhile, Mrs Chester is concerned that a part of Footpath 1 and the full lengths of Footpaths 2, 3 and 4 are deteriorating. As a consequence, both residents and visitors must use alternative routes via public roads which are inherently unsafe for pedestrians. Also, there have been planning applications made for developing the land which would affect these footpaths. It is therefore important that the status of these ways is established before further proposals are submitted.
 7. Lancashire County Council has advised that all applications for definitive map modification orders are processed in chronological order of receipt unless given greater priority because of special factors. These are set out in its 'Statement of Priorities'. The list of outstanding applications is reviewed regularly and prioritised with reference to the five special factors identified. When the present application was assessed against these criteria, it was decided that it should not be prioritised and investigated out of order.
 8. On receipt of the application in 2014, the Council carried out land ownership checks and undertook informal consultations with landowners, occupiers, the District and Parish Council and others interested parties. A draft report has been prepared but this is awaiting a detailed site inspection and a full investigation of the map and documentary evidence. With only one full-time officer carrying out the necessary research work, and 29 applications yet to be determined (plus 106 cases ongoing), the Council will endeavour to complete investigations into Mrs Chester's application within the next twelve months.
 9. However, 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. This deadline has long since passed. The

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

applicant has highlighted two factors which might have raised the degree of priority given to the case but it is not entirely clear whether or not the Council took this into account when it first assessed the priority to be afforded to this application. Although work has started on the case, the Council will need to allocate time and resources to complete its investigation and make a decision on the application.

10. 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 6 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 Lancashire County Council to determine the above-mentioned application not later than 31 December 2017.

Sue Arnott

Inspector