



Direction Decision

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 19 February 2018

Ref: FPS/L3055/14D/3

Representation by Mr M Spark

Nottinghamshire County Council

Application to add a footpath from The Mount to Clipstone Drive, Newlands Estate, Mansfield

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 seeking a direction to be given to Nottinghamshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 11 September 2017, is made by Mr M Spark.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 23 March 2011.
- The Council was notified of the representation on 11 October 2017 and submitted its response on 20 November 2017.

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

Reasons

1. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") 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.
2. 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 and Statement 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, as set out in the Circular¹.
3. The applicant indicates that the application was made when Mansfield District Council ("the District Council") sold a plot of land for development. Apparently the claimed route was blocked and the development has now been completed, with the route not being reopened.

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

4. Nottinghamshire County Council ("the County Council") indicated that subsequent to the application a copy of a Mansfield District Council Public Path Extinguishment Order dated 5 June 1980 ("the 1980 Order") was discovered. The 1980 Order related to the southern section of the route claimed under the 2011 application, running between the boundaries of 19 and 21, The Mount. As noted by the Council the decision letter makes clear that this related to "*...part of the public right of way between The Mount and Clipstone Drive...*". An objection was made to the 1980 Order and a letter of 6 October 1983 shows that the Secretary of State determined not to confirm the 1980 Order.
5. It is County Council policy, as set out in their Rights of Way Improvement Plan (2007 – 2012) to deal with applications chronologically unless it is actively prioritised. The list of outstanding applications, updated November 2017, shows this application at 34 of 111 to be determined.
6. In the meantime the District Council have made another Public Path Extinguishment Order, dated 10 November 2017 ("the 2017 Order"), which appears to relate to the claimed route. The Explanatory Statement sets out that "*The application seeks to extinguish a public footpath running through the site from The Mount to Clipstone Drive. The path was previously located within the grounds of the former community centre.*" The 2017 Order has been advertised but it is unknown whether objections were received by the closing date of 22 December 2017.
7. The County Council argued that would be a more efficient use of resources to await the outcome of the 2017 Order before determining the application. They anticipate making a decision within:
 - 1) three months of the 2017 Order being confirmed by the District Council; or
 - 2) in the event that objections are received, within two years of the 2017 Order being referred to the Planning Inspectorate; or
 - 3) in the event that objections are received and the District Council decide not to refer the 2017 Order to the Secretary of State, within three months of the District Council not to refer the Order.
8. In allowing for applications to the Secretary of State for a direction 12 months after the certificate² is served on the surveying authority, it appears that Schedule 14 to the 1981 Act envisages a time scale in the order of a year for determination of an application. Additionally, the Department for Environment, Food and Rural Affairs Rights of Way Circular (1/09) refers to the need to "*...investigate applications as soon as reasonably practicable...*".
9. In this case the applicant has been waiting almost seven years for a decision to be made. Whilst the County Council are the surveying authority, in making not just one but two Orders to extinguish public rights associated with the claimed route, or parts thereof, the District Council appear to be recognising that such rights exist. I understand the desire of the County Council to save resources but do not consider that waiting for the outcome of the 2017 Order will achieve this. The same resources will be required to determine the application regardless of whether or not the claimed route is extinguished as the tests remain the same regardless of any legal event, although I accept that subsequent management may differ.

² Paragraph 2(3)

10. Taking account of all the circumstances I have decided that there is a case for setting a date by which time the application should be determined. I note the view of the County Council that 3 months would be sufficient time for determining the application in two of the scenarios set out in paragraph 7 above. However, to ensure sufficient time for all matters to be taken into account, I consider it appropriate to allow a further 3 months for a decision to be reached.

Direction

11. 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 Nottinghamshire County Council to determine the above-mentioned application not later than 31 May 2018.

Heidi Cruickshank

INSPECTOR