



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 13 June 2018

Ref: FPS/Z4718/14D/9 & 10

Representations by Mr William J Magee

Kirklees Council

Application to add a Footpath from Halifax Road to Birkby (OMA ref. 872/7/MOD/30/GC) and Application to add a Footpath from Edgerton Road to Queen's Road/Murray Road (OMA ref. 872/7/MOD/31/GC)

- The representations are 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 to determine two applications for an Order, under Section 53(5) of that Act.
 - The representations are made by Mr William Magee, dated 2 February 2018.
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 14 August 1996 and 22 September 1996.
 - The Council was consulted on the representations on 20 March 2018 and the Council's response was made on 21 March 2018.
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Decision

1. The Council is directed to determine the above-mentioned applications.

Preliminary matters

2. Following my appointment to determine the representations I received further correspondence from Mr Magee. This did not raise any issues which I am able to take into account. The correspondence was copied to the Council who made further submissions. Subsequently a response to the Council's submissions was made by a representative for Mr Magee (copied to the Council for information). The further submissions of the Council and subsequent correspondence on behalf of the applicant did not raise any issues material to my determination. I do however note that the representative of Mr Magee has taken over the applications.

Reasons

3. 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
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expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.

4. The applications in this case were made nearly 22 years ago. It appears that the Council held the applications in abeyance following the registration of the land over which the claimed footpaths run as a town and village green in 1997. However, the land was de-registered in 2014. Whilst the applications were held in abeyance they still require determination and 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. The Council acknowledge that in the circumstances a direction may appear appropriate and it is noted that the landowner and prospective developer are concerned about the effect of the alleged paths on the site. An application has been made under section 257 of the Town and Country Planning Act 1990 to extinguish paths within the site. The claimed paths are preventing commencement of the development of the land.
5. The Council indicate that they intend to take reports in respect of the applications to the relevant sub-committee within six months. However, given the delay in determining the applications and the effect this may be having on the landowner and prospective developer I consider that it is appropriate to set a date by which time the applications should be determined. To set a date will provide some clarity as to when the applications will be determined. The Council may need to carry out further investigations although it would appear that these will be completed within six months. Consequently I propose to allow a further six months to determine the applications.
6. Correspondence from Mr Magee refers to provisions contained in the Deregulation Bill. However, the provisions relating to rights of way in the Act, which received Royal Assent on 26 March 2015, are not yet in force and are therefore not relevant to my consideration.

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 applications not later than six months from the date of this direction decision.

Martin Elliott

INSPECTOR

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