



Direction Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 31 January 2019

Ref: FPS/L3055/14D/5

**Representation by Mr Andrew John Campin
Nottinghamshire County Council**

Application to upgrade to a byway open to all traffic the track from Carr Lane to farmland running from Forge Cottage, Carr Lane. Also/carrying to farmland 30 metres to rear of cottage/ footpath No.8 (ref. 1171)

- 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 Nottinghamshire County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mr Andrew John Campin, dated 26 June 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 21 November 2016.
 - The Council was consulted about the representation on 6 August 2018 and the Council's response was made on 13 August 2018.
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Decision

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

Reasons

2. 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 expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
3. In this case, the application was made some two years or so ago. The application was triggered by the erection of bollards where the route joins with Carr Lane, thereby preventing vehicular access to the rear of Forge Cottage.
4. The County Council explains that, with some exceptions, Policy A5-2 of the Nottinghamshire County Council Rights of Way Management Plan 2018-2026 (the Management Plan) provides that applications for Definitive Map

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

Modification Orders are processed in chronological order. The five exceptions listed at Policy A5-2 of the Management Plan include where (2) a claim affects a householder in proving the existence or non-existence of a right of way and (3) a claimed route is triggered by an event such as fencing off the line of a regularly used path.

5. The County Council makes it clear that applications are not ranked or scored against Policy A5-2: rather, officers may apply the policy when deciding whether to expedite a particular case ahead of others. In this case, the County Council accepts that the application accords with exceptions (2) and (3) as set out in Policy A5-2 of the Management Plan, but considers that the remaining three exceptions listed in that policy are not applicable.
6. The County Council goes on to explain that, chronologically, the application sits at 98 out of 108 applications currently awaiting determination. Of those other applications, some are considerably older than this case or are already subject to Schedule 14 Directions. The County Council estimates that it will be approximately a further 5-10 years before this application is determined.
7. 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 statutory duty is to investigate applications as soon as is reasonably practicable. In this case, the application accords with two of the five exceptions set out in Policy A5-2 of the Management Plan. On that basis alone, it appears to me that the application warrants expediting. As it stands, the applicant would be unlikely to receive an outcome for many years to come. That cannot be considered reasonable by any standard, but even more so when considered against the background of the exceptions in Policy A5-2 of the Management Plan.
8. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the applications. A further period of 6 months has been allowed.

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** Nottinghamshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Paul Freer

INSPECTOR