



## Direction Decision

by **Helen Slade MA FIPROW**

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

Decision date: 31 January 2019

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**Ref: FPS/R0660/14D/5**

**Representation by John Bayley**

**Cheshire East Council**

**Application for the addition of a Bridleway known as Manor Drive between Nantwich Road (A530) and Kerridge Close, Middlewich (OMA ref. CO/8/52)**

- 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 Cheshire East Council ('the Council') to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by John Bayley and is dated 4 December 2018.
  - The certificate required under Paragraph 2(3) of Schedule 14 is dated 22 November 2017.
  - The Council was consulted about your representation on 13 December 2018 and the Council's response was made on 18 January 2019.
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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 applicant<sup>1</sup>.
3. The application was accompanied by a number of documents and the applicant has subsequently contacted the Council seeking to expedite its determination. He claims that there are a number of circumstances which warrant a timely investigation by the Council including physical confrontation, inconvenience to

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

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- local residents, particularly the elderly, and the fact that the alternative route is a busy class 'A' Road with no footpath or footway. Other problems cited by the applicant are not related to the use of a public right of way but may involve private rights which are not relevant to the application.
4. The Council has a Statement of Priorities against which applications are assessed and this application (following a recent annual review) is now at number 21 on a list of 34 outstanding applications. In December 2017 it was placed at number 24. The Council estimates that with current staffing levels it is likely to be about 3-4 years before it is determined, but that position may change if other applications are made which take priority. The Council understands that, despite the claims made by the applicant, the application route is currently open and available for the public to use and no further incidents have been reported to the Public Rights of Way team. The applicant disputes this and states that reports have been made to the Middlewich Public Rights of Way team.
  5. Although the Council has submitted a copy of the list of outstanding applications, and an explanation of the scoring system, there is no information to indicate what score this application (or any other) has been given, and it is therefore not possible to see how the outstanding applications on the list relate to each other.
  6. I note the comments made with regard to staffing levels at the Council, but the legislation clearly sets out the statutory duties in relation to their function as Surveying Authority. Despite taking account of the Council's priority system, 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. In your case, 12 months have passed since your application was submitted and no exceptional circumstances have been indicated in mitigation by the Council.
  7. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined. Nevertheless, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. In the absence of any clear evidence of continuing conflict over the use of the claimed route by the public, I consider that a further period of 12 months would be reasonable.

### **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 Cheshire East Council to determine the above-mentioned application not later than 12 months from the date of this decision.

*Helen Slade*

INSPECTOR