



Direction Decision

by **K R Seward Solicitor**

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

Decision date: 5 February 2019

Ref: FPS/E0535/14D/2

**Representation by Alison Balfour-Lynn
Cambridgeshire County Council**

Application to upgrade to a bridleway the footpath (Houghton and Wyton 9 and St Ives 10) from bridleway Houghton and Wyton 11 to the junction with 'The Thicket Footpath'; to add the bridleway from the junction of footpath St Ives 9 and the route shown on the adopted roads map as 'The Thicket Footpath' along 'The Thicket Footpath' to Westwood Road (St Ives and Houghton)

- An application was made by Alison Balfour-Lynn on behalf of the British Horse Society to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
 - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 15 November 2017.
 - The Council's reference for the application is M063.
 - A representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to Cambridgeshire County Council to determine the application.
 - The representation made by Alison Balfour-Lynn is dated 2 December 2018.
 - The Council was consulted about the representation on 4 December 2018 and its response is dated 21 January 2019.
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Decision

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

Reasons

2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement.
 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.
 4. 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.

5. The application was made on 20 March 2017 although it was not until 15 November 2017 that the applicant certified that the application had been served upon the landowners and occupiers of the land crossed by the route. Just over a year has now expired since the date of the certificate. 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.
6. Applications are dealt with by the Council in chronological order unless any of the three exceptional circumstances apply as set out in the Council's Statement of Priorities. Those exceptions are where: (a) the route is likely to become permanently obstructed as a result of development (b) the route has been physically obstructed, causing significant community severance and the application is contentious locally, and (c) the documentary evidence supporting the application pre-dates 1949 and any unrecorded public rights might therefore be vulnerable to extinguishment on 1 January 2026. There is no suggestion that any of those exceptional circumstances apply for the application to be given greater priority. Nor is there cause to believe that the system adopted by the Council is unreasonable.
7. Instead, the applicant submits that there are special reasons for the application being taken out of turn connected with a Public Inquiry that took place in 2017. The Inquiry concerned a Cycle Tracks Order to which the British Horse Society objected. It is submitted that the aims of that Order to correctly reflect the legal status and use of the route along with its maintenance as public highway would be achieved by recording the route as a bridleway.
8. However, my role is confined to deciding if there are grounds to direct the Council to determine the application for a definitive map modification order. It is not concerned with the merits of the application or those of an entirely separate Order.
9. The application relies upon contemporary user evidence only. Part of the route is currently a public footpath in regular daily use. The route in its entirety is unobstructed. As the Council points out the route is not at risk of being extinguished on the cut-off date of 1 January 2026.
10. The Council acknowledges that it does not have large numbers of applications, but says that those currently under investigation are very time consuming. At present, this application is ranked at number 14 in the queue out of a total of 17 applications awaiting determination. In addition it has a number of applications for Public Path Orders arising from development. The Council is currently processing applications at a rate of 6-8 per year and so anticipates this application reaching the front of the queue within 2 years.
11. According to the applicant no estimated timescale had been given prior to a direction being sought although I note the Council says it has now done so.
12. To issue a direction to make a determination would disadvantage those who have been waiting longer or whose applications warrant greater urgency under the Council's prioritisation system. That in itself does not justify a direction not being given when the 12 month period has now expired.

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

13. If a direction is made, the Council is concerned there will be adverse effects on its ability to process applications in need of prioritisation. These include specific cases where public rights of way could be permanently obstructed.
14. Whilst the Council may well be dealing with cases where delays could cause detrimental effects in a variety of ways its concerns appear to stem from under-resourcing. The Council explains that it has only a small Definitive Map team undertaking a range of duties. It has struggled to recruit appropriately qualified staff resulting in unfilled vacancies over recent months. A current recruitment exercise is not anticipated to be complete until March 2019. The applicant considers that the Council is failing to make good progress in clearing its backlog and I daresay that these staffing issues will not have helped.
15. Whilst I am sympathetic to its resourcing issues, the Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Difficulties complying with that duty due to lack of resources is not sufficient reason to delay an application and cannot be considered as an exceptional circumstance. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
16. The applicant has not advanced any compelling arguments for priority to be given to this case. If the Council keeps to its estimated timescale then it will start to investigate the application in another 2 years. By that time the application will have been awaiting determination for over 3 years. In the meantime more applications could be received which are ranked higher in priority particularly as the 1 January 2026 deadline approaches.
17. In my view the predicted 2 year delay is not reasonable and it could be liable to slippage. Whilst I am mindful of the potential impact on the Council's ability to determine pressing applications, it has a responsibility to ensure that adequate resources are available. In the circumstances I consider that there is a case for setting a date by which time the application should be determined.
18. Clearly, the Council will need time to carry out its investigations and make a decision on the application. Taking into account that the period of 12 months has only recently lapsed and that the Council has a plan of action, subject to staffing, and with a recruitment exercise in progress, I consider that a further period of 18 months would be reasonable in the particular circumstances of this case.

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** Cambridgeshire County Council to determine the above-mentioned application not later than 18 months.

K R Seward

INSPECTOR