



# Direction Decision

by **Rory Cridland, LLB (Hons), Solicitor**

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

Decision date: 7 February 2019

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**Ref: FPS/R0660/14D/4**

**Representation by Alan Wrench**

**Cheshire East Council**

**Addition of a Public Footpath from Newcastle Road (A34) to Padgbury Lane, Congleton (OMA ref. CO/8/40)**

- 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 Authority") to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by Mr Alan Wrench, dated 25 August 2018.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 30 July 2014.
  - The Authority was consulted about the representation on 12 September 2018 and the Authority's response was made on 5 November 2018.
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## Decision

1. The Authority 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 Authority has confirmed that the application is at the top of its List of Priorities (LoP) and will be next to be investigated. Furthermore, their response to the representation indicates they expect a decision on whether or not to make an order will be made by their Public Rights of Way Committee in June 2019. They essentially argue that there would be no benefit to the applicant, nor any other party, in the issuing of a direction in these circumstances as it would not be able to determine the application any sooner.

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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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4. I accept that the Authority will require some time to determine the application and their time estimate of five months, while optimistic, is not unreasonable. Furthermore, I agree that directing them to determine the application any sooner would achieve little. However, while the timescale proposed is not unreasonable, it is unreasonable, given the expectation of a determination within twelve months, for the determination of the application to have taken more than four years.
5. No exceptional circumstances have been put forward by the Authority as to the cause of any delay in determining the application and the appellant's evidence indicates that it has been high on the Council's LoP for some time. Furthermore, while I note the LoP makes provision to take account of the age of the applicant and witnesses, many of those involved are now of quite advanced age. While I see little benefit in directing the Authority to determine the application in a period shorter than its stated target, I consider there is a case for setting a date by which the application should be determined in order to guard against any further delays and the clear potential for a loss of evidence.
6. Accordingly, I find that there is a case for setting a date by which the application should be determined. I consider a period of nine months would provide some certainty to the applicant while also ensuring the Authority has sufficient time to deal with any unforeseen circumstances.

### **Other Matters**

7. The representation refers to Article 6(1) of the Human Rights Act 1998. However, my decision as to whether the Authority has investigated and determined this application as soon as reasonably practicable does not amount to a decisive determination for the applicant's civil rights and obligations. As such, I do not consider Article 6(1) is applicable. Similarly, the matters raised in respect of age discrimination do not fall within my jurisdiction.

### **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** Cheshire East Council to determine the above-mentioned application not later than nine [9] months from the date of this Direction Decision.

*Rory Cridland*

INSPECTOR