



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 16 May 2019

Ref: FPS/Q2500/14D/4

Representation by Mr P Watmough

Lincolnshire County Council

**Addition of a Bridleway at Lincoln Lane (Parishes of Heapham and Upton)
(OMA ref. Heapham DMMO 350)**

- 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 Lincolnshire County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mr P Watmough, dated 18 October 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 of the 1981 Act is dated 2 December 2011.
 - The Council was consulted about the representation on 24 December 2018 and the Council's response was made on 4 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 applicant¹.
3. 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 this case, 7 years have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act. It is unreasonable for an application to take 7 or more years to be determined

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

and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.

4. It is reasonable for the Council to determine applications in accordance with its Statement of Priorities and the application is now ranked number four on the priority list and is currently under investigation. The Council advise that, unless further legal opinion is required, the application should be determined within 6 months of their response (by 4 July 2019). However, should further legal opinion be required then the Council indicate that this may make a timescale for progress difficult to determine.
5. The Secretary of State notes the progress being made in determining the application. However, given the delay and an apparent element of uncertainty in the event that further legal advice is required I have decided that there is a case for setting a date by which the application should be determined. It is appreciated that the Council will require time to conclude its investigations on the application but a direction will provide some certainty and prevent further delays. A further 6 months from the date of this Direction Decision is considered appropriate.
6. The applicant identifies that an issue has arisen in respect of adverse possession. Any such possession will not remove any pre-existing highway rights in the event that such rights are shown to exist.

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

Martin Elliott

INSPECTOR