



Direction Decision

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 10 May 2019

Ref: FPS/R0660/14D/6

Representation by Mr D. Kitching

Cheshire East Council

Application for the addition of a Footpath from the Canal Bridge at SJ 94640 82427 (leaves FP13 Lyme Handley) to Near Throstlenest Farm at SJ 95010 82390 (re-joins FP13 Lyme Handley).

Also link to FP8 Lyme Handley from SJ 94918 82392 to SJ 94918 82385

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 seeking a direction to be given to the Cheshire East Council ("the Council") to determine an application for an order, under Section 53(5) of that Act.
 - The representation, dated 24 January 2019, is made by Mr Kitching.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 27 February 2015.
 - The Council was consulted on the representation on 4 February 2019 and the Council's response was made on 13 February 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. It is apparent that the application route was previously used as an alternative to Footpath 13. The Council has spent £10,850 on improving Footpath 13 and the public can walk along this parallel path between the same termination points. Nevertheless, it is acknowledged that a decision needs to be made in respect of the application.

¹ Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09

4. I note the applicant's concern regarding the loss of evidence as some witnesses have passed away. The Council's suggested option of taking statements could preserve evidence to a certain extent. However, these applications often involve conflicting testimonies and written material is not as useful as hearing live evidence from witnesses in the event an order is made and opposed. There is a real risk that valuable evidence will be lost if decisions are not made reasonably promptly.
5. The Council has adopted a scoring system for prioritising applications to modify the definitive map. This application is currently positioned at 23 out of the 34 applications to be determined and the Council estimates it will be in a position to reach a decision on whether to make an order in 3-4 years. There is nothing to suggest the Council's policy for prioritising applications is unreasonable. However, 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, more than 4 years have passed since the application was submitted and it is estimated that the matter will not be determined for possibly another 4 years. I do not view this to be reasonable.
6. I appreciate the limited staff resources presently available to determine such applications. However, the Council has a statutory duty to keep the definitive map up to date. Lack of resources to deal with applications to modify the definitive map is not a sufficient reason for a delay in determining any application. Defra Circular 1/09 makes it 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.
7. I have decided that there is a case for setting a date by which time the application should be determined. Nonetheless, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. In the meantime, the public can use the improved Footpath 13 nearby to travel between the same points. I therefore take the view 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 to 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.

Mark Yates

INSPECTOR