



Direction Decision

by **Helen Slade MA FIPROW**

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

Decision date: 7 August 2019

Ref: FPS/G1440/14D/15

Representation by Mr Christopher Smith

East Sussex County Council

Application to upgrade two sections of public footpath to restricted byway (grid Reference 549044 121217 (Point A) through grid reference 548586 121607 (Point B) to grid reference 548451 121648 (Point C))

(OMA reference: RWO 218)

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to East Sussex County Council ('the Council') to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mr Christopher Smith dated 7 May 2019.
 - The certificate required by Paragraph 2(3) of Schedule 14 is dated 13 April 2018.
 - The Council was consulted about the representation on 23 May 2019 and the Council's response was made on 3 July 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. The Council has stated that it determines applications for definitive map modification orders in chronological order of receipt unless:
 - i) A successful order would significantly enhance public safety;
 - ii) The claimed route is threatened by imminent development

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

- iii) Demand for the claimed route is particularly high or would form part of a recognised strategic link in the network

The Council does not consider that the application in question meets any of the above criteria and therefore intends to determine the application in chronological order of receipt. The Council anticipates that the application will therefore be determined in a timescale of between 18 and 24 months.

4. I note that the Council's current application register give slightly different grid references for the extremities of the claimed route from those given by the applicant. I am unable to check these references as there are no numbered grid lines on the application map. I have therefore relied upon the detailed 12-figure grid references used by the applicant in his original application. For the avoidance of doubt, however, the route runs from the road at Spurlings Gate, Sandy Lane, Framfield in a north westerly direction, passing across a level crossing over a railway, to meet another road a short distance beyond.
5. I acknowledge the Council's comments about the fact that the application was made by Mr Smith on behalf of the Open Spaces Society, but the request for a direction has been made in his own name. However, I am satisfied that it is Mr Smith's signature on both documents, and do not consider that there is any impediment to his seeking a determination of his application.
6. I also note that the Council has met with members of the 'Don't Lose Your Way Project' group, of which the applicant is a member, and whom the Council say understood that applications might take longer than 12 months to process. The group was nevertheless given the assurance that the applications they made would be registered before the cut-off date in 2026, thereby ensuring that they would be safeguarded. However, this does not take account of the increasing age of either the applicants or the witnesses (although the latter does not apply to this particular case).
7. 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 12 months have passed since the application was submitted and an indication is given by the Council that it may be another 24 months before a determination is made.
8. Whilst it is not unreasonable to deal with applications in a chronological order, it is expected that authorities will allocate sufficient resources to fulfil their statutory functions. The Council's Priority Statement (in the process of being reviewed) indicates that steps have been taken to increase resources in this area of work, in acknowledgement that it has suffered from under-investment in the past, but no exceptional circumstances have been indicated to justify the delay in determination. I have nevertheless taken this remedial action into consideration in reaching my determination.
9. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Consequently, a further period of 12 months has been allowed.

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 East Sussex County Council to determine the above-mentioned application not later than 12 months from the date of this direction decision.

Helen Slade

INSPECTOR