



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: 30 August 2019

Ref: FPS/Z4718/14D/12

Representation by Mr J. Parkinson

Kirklees Council

Application for the Addition of a Footpath Between Deal Lane and Handel Street, Golcar

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") seeking a direction to be given to the Kirklees Council ("the Council") to determine an application for an order, under Section 53(5) of that Act.
 - The representation, dated 16 January 2019, is made by Mr Parkinson.
 - The certificate under Paragraph 2(3) of Schedule 14 was served on 16 December 2017 and 13 April 2018.
 - The Council was consulted on the representation on 12 March 2019 and the Council's response was made on 16 April 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. As outlined above, the applicant re-served the certificate under Paragraph 2(3) of Schedule 14 to the 1981 Act. The application for a direction was submitted only 9 months after the second certificate was served. Nonetheless, a period in excess of 12 months has now elapsed since the service of the second certificate and the applicant has expressed his desire to continue with the request for a direction.

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

4. The applicant points to the high number of elderly witnesses who have provided evidence. In such circumstances, there is a risk that valuable evidence will be lost if decisions are not made reasonably promptly. He also considers the obstruction of the route to pose a safety risk for the public.
5. The Council has adopted a scoring system for prioritising applications to modify the definitive map. This application is currently positioned at 96 out of the 134 applications to be determined. The Council is unable to provide an estimate of when the application will be determined, but the number of cases awaiting determination suggests that it could be a significant period of time.
6. There is nothing to suggest that the Council's policy for prioritising applications is unreasonable. The application was also submitted relatively recently when compared with many of the applications awaiting determination. 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. Further, the applicant's concerns regarding the delay in determining the application appear to be well founded.
7. In the circumstances, 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 reaching my decision I have had regard to the Council's request regarding the timeframe of any direction given. I therefore take the view that a further period of 8 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 Kirklees Council to determine the above-mentioned application not later than 8 months from the date of this decision.

Mark Yates

INSPECTOR