



Direction Decision

by **Susan Doran BA Hons MIPROW**

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

Decision date: 23 September 2019

Ref: FPS/Q2500/14D/5

Representation by Christopher Heneage

Lincolnshire County Council

Application to delete part of Footpath 9 in the Parish of Benniworth (OMA ref. Benniworth DMMO 357/KJB)

- 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 dated 16 July 2019 is made by Mr C Heneage.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 23 July 2012.
 - The Council was consulted about your representation on 13 August 2019 and the Council's response was made on 15 August 2019.
-

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 applicant seeks to expedite determination of the application which he considers should have been given greater priority by Lincolnshire County Council as, he says, they have acknowledged the path was included in the Definitive Map and Statement in error in the 1950s. The matter was raised in the 1980s, and again in 2012.
4. The Council processes applications on a date received basis unless they fulfil one or more of 8 agreed criteria forming its priority system for processing

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

applications. This application² currently stands at number 133 of 154 cases on the Council's priority list. The system prioritises cases where severe disruption to the life of the community will reduce; where there is a significant threat to a route; where processing a case will discharge the Council's duty to an Ombudsman's decision; where legal proceedings are instigated against the Council; where there is a risk to children on Council land or the route would provide a safer alternative; where there is a significant financial saving; where the evidence or application relates to an existing claim, they will be dealt with together; and where a route will significantly assist in achieving a Rights of Way Improvement Plan objective or statement of action. As the Council considers this application does not meet any of the agreed policy criteria, they are unable to provide a meaningful timescale for its determination.

5. Notwithstanding the Council's priority system, 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 7 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council for its non-determination. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation of it being addressed within 12 months, for the determination of the application to take a further unspecified number of years.
6. 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. A further period of 6 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 Lincolnshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

Inspector

² File reference 357