



Direction Decision

By Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 14 October 2019

Ref: FPS/M4320/14D/1

**Representation by Formby Parish Council
Sefton Council**

Application to add Byways Open to All Traffic:

- **St Luke's Church Road (Bushby's Lane to junction with Alexandra Road and Cambridge path No. 38);**
- **The short path from Beechwood Drive to St Luke's Church Road;**
- **St Luke's Church Road (Junction of Alexandra Road to Range Lane);**
- **Alexandra road (including signposted access path to the beach);**
- **Albert Road (From junction with Alexandra Road to the beach);**
- **Range Lane (Junction with St Luke's Church Road to Stapleton Road/Jubilee Road and Footpath 37 to shore);**
- **St Luke's Church Road (Range Lane to footpath from Hogg's Hill level crossing Footpath 35 then to the beach).**

(OMA ref. 003705/00520592)

- 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 Sefton Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Formby Parish Council, dated 5 March 2019.
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 13 February 2018.
 - The Council was consulted about the representation on 10 May 2019 and the Council's response was made on 20 June 2019.
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Decision

1. The Council is directed to determine the above-mentioned application not later than 12 months from the date of this direction.

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
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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. This application was made in 2017 but not fully completed until April 2018. I also note that a previous application for the same routes was made in 1991 by Formby Civic Society but had not been determined and the Parish Council therefore chose to make this new application. However, I have not seen the previous application and, in any event, am only able to consider the current application.
4. This is a complex application relating to 7 routes crossing land in the ownership of 4 landowners. The council has sought to negotiate dedication agreements with the landowners regarding the claimed routes with a view to routes that could be achieved by this method being removed from the application and any remaining routes then being considered for inclusion in a modification order. It is said that the parish council agreed this course of action in April 2018.
5. This process has been delayed as a result of staffing issues but to date one landowner has signed a deed of dedication in respect of a Restricted Byway over one of the claimed routes. Another landowner has agreed in principle to dedicate most of the other routes but has requested limitations on some of them and two other owners are still considering the proposal.
6. On behalf of the parish council it is stated that no information regarding progress with the determination of the application has been received and they are concerned that there will be further delay.
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. The council appears to have made some progress towards securing the dedication of the claimed routes by voluntary agreement with the landowners and there may well be some benefits in choosing such an approach rather than risking the possible delay and uncertain outcome of the modification order process. Nevertheless, applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. On behalf of the applicant it is requested that the council be directed to determine the application within 6 months. However, in view of the complexity of the application and in order to allow a reasonable time for ongoing negotiations with landowners to be completed, I propose to allow a further period of 12 months for a decision to be made.

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

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 Sefton Council to determine the above-mentioned application not later than 12 months from the date of this direction.

Barney Grimshaw

INSPECTOR