



## Direction Decision

by **K R Saward Solicitor**

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

Decision date: 16 OCTOBER 2019

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**Ref: FPS/G1440/14D/13**

**Representation by Christopher Smith**

**East Sussex County Council**

**Application to add a footpath from De Montfort Road at grid reference 540698 110110 to Western Road at grid reference 540692 110088**

- An application was made by Christopher Smith (for and on behalf of the Ramblers Association) to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
  - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 13 March 2018.
  - The Council's reference for the application is RWO217.
  - A representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to East Sussex County Council to determine the application.
  - The representation made by Christopher Smith is dated 10 April 2019.
  - The Council was consulted about the representation on 23 May 2019 and its response is dated 3 July 2019.
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### Decision

1. The Council is directed to determine the above-mentioned application.

### Procedural matter

2. The original application was made by Mr Smith for and on behalf of The Ramblers Association utilising its London address. The Council queries whether The Ramblers Association has been informed of the application for a direction under Schedule 14 of the 1981 Act because it was made by Mr Smith in his sole name and under his private address. Given that Mr Smith made the application for a Definitive Map Modification Order on behalf of The Ramblers there is no reason to believe that he has acted without authority or that any separate notification is required.

### Reasons

3. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement ('DMS').
  4. 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 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
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5. 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. As of July 2019, the application was ranked at number 35 on the waiting list out of 56 active applications.
6. The Council determines applications in the order of receipt unless there are exceptional circumstances to justify prioritisation. Those exceptional circumstances are where; (1) A successful order would significantly enhance public safety (2) The claimed route is threatened by imminent development, and (3) Demand for the claimed route is particularly high or would form part of a recognised strategic link in the network.
7. The route is currently open for use. The landowner is the developer of the surrounding properties and whose intentions the applicant says are unknown. However, the Council confirms there is a legal agreement in place<sup>1</sup> in which the landowner covenants to keep the footpath open for public access. That being so, there cannot be any threat to the claimed route by imminent development. Thus, there is no basis to conclude that any of the Council's criteria apply to warrant the application being given higher priority under its policy.
8. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009<sup>2</sup>. This explains<sup>3</sup> that 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 applicant.
9. Each case must therefore be considered in light of its particular circumstances.
10. According to the Council it has determined eleven applications during the last two years. I note from the copy register supplied that the current status of all applications which are placed higher on the list are identified as already under investigation, completed or subject to appeal. This should indicate that the application is next in line for investigation to commence.
11. The Council points out that fourteen Directions from the Secretary of State have been sought since July 2018. It is irrelevant that they are all from the applicant. Three applications await a Direction decision and of the seven remaining to be determined by 29 March 2020, the Council anticipates achieving the determination date 'for the majority of the applications'.
12. The Council expects to complete this application after the cases which have already received Directions which is likely to be within the next 18-24 months.
13. I recognise that the Council has many outstanding applications including those for which a Direction has already been given. There are other applications ranked higher in the Council's list and it is not unreasonable to determine applications in chronological order. To issue a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under

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<sup>1</sup> Made under section 106 of the Town and Country Planning Act 1990

<sup>2</sup> Published by the Department for Environment, Food and Rural Affairs.

<sup>3</sup> At paragraph 4.9

the Council's prioritisation system. The Council refers in particular to those cases where witness/user evidence could be lost due to the passing of time. This application also relies upon witness evidence and the applicant fears that is precisely what could occur in this instance as people move away, become infirm or are otherwise unable to give evidence.

14. Ultimately, the Council has a statutory duty to keep the DMS up-to-date. Circular 1/09 is 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.
15. The Council may have given assurances to the applicant that all claims, such as this one, which are recorded on its register of claims will be investigated before the 2026 cut-off date after which paths created before 1949 cannot be recorded. However, neither this nor the other factors advanced justify a Direction not being given in this instance when the 12-month period<sup>4</sup> has now expired. No exceptional circumstances have been advanced by the Council.
16. 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 12 months shall be allowed to make a determination.

### **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 decision.

*K R Seward*

INSPECTOR

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<sup>4</sup> The 12-month period commences on the date a valid certificate is submitted to the order making authority in accordance with paragraph 2(3) of Schedule 14