



Direction Decision

by Alan Beckett BA MSc, MIPROW

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

Decision date: 30 December 2019

Ref: FPS/U3100/14D/10

**Representation by Chadlington Parish Council
Oxfordshire County Council**

**Application to add footpath from Brook End, Chadlington to Boot Cottage
(OMA ref. 03481)**

- 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 Oxfordshire County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by the Clerk to Chadlington Parish Council ('the Applicant'), dated 2 September 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 24 August 2018.
 - The Council was consulted about the representation on 1 October 2019 and the Council's response was made on 31 October 2019.
-

Decision

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

Statutory and policy context

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 based on 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.
3. 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.

Reasons

The Council's Statement of Priorities and the reasonableness of its priorities

4. The Council published its revised Statement of Priorities in November 2018. In this revised Statement the Council acknowledges that it is in a similar position to many Surveying Authorities where the volume and complexity of definitive

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

map modification order ('DMMO') applications makes it unsustainable to determine them all within the required 12-month period. The Council acknowledges that its current backlog is such that the waiting list for new applications to be dealt with is around 10 years and that this does not reflect the level of service it expects to provide.

5. The Statement further notes that a recent restructuring of the Council's duties and responsibilities has resulted in additional resources being allocated to this work and sets out an intention to address its caseload and to introduce greater flexibility and discretion where this would lead to an improvement in its overall serviced to customers.
6. The Council's priorities are firstly, to process applications for DMMOs and secondly, to update and maintain the definitive map and statement, including addressing anomalies and errors. The Council maintains a register of applications which remain outstanding and has determined under the new Statement of Priorities to investigate those applications in chronological order of receipt. This, the Council considers, is the fairest means of prioritising where no application is considered to be more important than another.
7. However, the Council intends to exercise its discretion in regard of any given application if it considers that the circumstances of the case merit it being taken out of turn.
8. The copy of the application register submitted by the Council shows that its caseload currently stands at 78 applications. Of these, 33 applications are either currently under investigation or have been determined. The application at issue in this representation is numbered 70 out of 78 and has 37 applications ahead of it which are yet to be investigated.
9. I note that of those applications which have not yet been investigated the oldest is dated 2007 whereas the bulk of applications outstanding date from 2010. The application register also demonstrates that the Council is investigating applications made as recently as 2017. I consider that the application register shows that the Council is acting to keep the definitive map and statement under review and to reduce the backlog of applications which are yet to be determined, taking applications out of turn if considered necessary.

The actions or intended actions of the Council

10. The Council states that major progress has been made in the last twelve months in attending to its backlog of DMMO applications, and that the overall number of applications outstanding has been reduced from 109 to the current 78. The Council further states that the current year's programme contains 54 cases which are currently being worked on, and that 11 Modification Orders are shortly to be made and advertised.
11. It is accepted that the Council had hoped to deal with the recording of the application path in a way other than by a DMMO. However, this application is one of the 54 in its current programme despite it being number 71 on the register. It is not considered that there are any exceptional circumstances in this case, other than the Parish Council interest; the claimed path is open and in use and does not appear to be under any specific threat. A decision is expected on this application by the end of this financial year, possibly sooner.

12. The Council does not accept the Parish Council's claim that the backlog will take more than 100 years to clear. Considerable progress has recently been made and the Council anticipates that it will be able to clear its current backlog in 5 years.
13. The investigation of section 53 applications is a statutory duty placed on the Council and the Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate. Although the Council states that the application is part of the programme of works which it is undertaking this year, there is no indication on the application register (updated 4 November 2019) that any action is being taken regarding this application.
14. Whereas the Council's actions and intended actions are consistent with its statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice, and although the Council 'expects' that a decision will be made on the application by April 2020, there remains a degree of uncertainty for the Applicant that the application will be determined in the near future. In such circumstances directing the Council to determine the application before the expiration of a given period is likely to be justified.

The circumstances of the case and views of the Applicant

15. The Applicant states that the application is supported by evidence of use supplied by 13 individuals. An application had been prepared in 2013 but was shelved as the Council considered that the extension of footpath 9 could have been dealt with by dedication by the frontager. Five years later nothing had happened and with the 2026 cut-off date approaching the application was submitted. The Applicant submits that Boot Lane is one of the most used sections of Chillington's rights of way network, is crucial to many short circular walks in the village and has been in use as a public footpath throughout living memory.
16. The application was also supported by documentary evidence. Of this the Applicant submits the Finance Act 1910 records and current Land Registry records demonstrate that Boot Lane has been excluded from any meaningful claim to ownership for over a century. Boot Cottage has been in the ownership of the same family since 1922; no living member of the family can remember a time when there was not a public footpath running past the cottage.
17. The Applicant considers that the delay in dealing with this application is unacceptable and that the Council is ignoring its obligations. Concern is expressed that the backlog the Council faces may take 100 years to clear as recently it was only dealing with one application per year.
18. I am unaware of any exceptional circumstances which are applicable in this case, and the Applicant has not raised any points in this regard. From the Applicant's brief description of the circumstances of this case, it appears that this may be a relatively straightforward application which the Council should be able to determine reasonably quickly. However, I accept that what may appear to be straightforward may turn out to the contrary.
19. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of their application within 12 months under normal circumstances, and I have taken into account that the Council has

stated that the application forms part of its current workload and that it expects to be able to determine the application by the end of the current financial year.

20. Nonetheless, nineteen months will have passed between the application being made and its determination if the Council is able to meet its expected deadline. Setting a date by which the Council should determine the application would give the Applicant a degree of certainty which is currently lacking.
21. In the circumstances I consider that there is a case for setting a date by which 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 and I consider it appropriate to allow a further 6 months for a decision to be reached.

Direction

22. 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 Oxfordshire County Council to determine the above-mentioned application not later than six months from the date of this decision.

Alan Beckett

INSPECTOR