



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 30 JANUARY 2020

Ref: FPS/G1440/14D/20

Representation by Christopher Smith

East Sussex County Council

Application to upgrade Lewes Footpath 13b to Bridleway from commencement at grid reference 542329 110200 (point A) to grid reference 542872 110011 (point C)

To add a Bridleway from grid reference 542872 110011 (point C) to Saxon Cross at grid reference 544202 110517 (point D)

To upgrade Glynde Footpath 1 to Bridleway from Saxon Cross at grid reference 544202 110517 (point D) to junction with Footpath Ringmer 21c at grid reference 544629 110549

To upgrade Ringmer Footpath 21c to Bridleway from grid reference 544629 110549 to junction with Ringmer to Glynde Road at grid reference 544908 111037

- 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 East Sussex County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Christopher Smith dated 10 September 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 3 September 2018.
 - The Council was consulted about the representation on 19 September 2019 and the Council's response was made on 29 October 2019.
-

Decision

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

Preliminary Matter

2. The Council questions why the applicant has applied for the direction using his own name and address whereas the application was submitted on behalf of the Open Spaces Society. Although I note the issues raised it is clear from the correspondence before me that Mr Smith remains the Open Spaces Society correspondent for Lewes District and that he made the original application and the application for a direction. There is nothing before me to indicate any impediment to Mr Smith making an application for a direction.

Reasons

3. 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.

4. The Council has concluded its initial investigation into the claim and it is noted that representations have been made by some of the landowners. Nevertheless the application awaits its turn for determination. Applications are normally investigated in chronological order unless they meet one of the exceptional circumstances listed in the Council's Priority Statement. In this case the application does not meet any of these circumstances. The application is ranked at 47 on the Council's current list and the Council say that it is not realistically possible to give an accurate timescale as to when the application will be determined.
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. In this case, more than 12 months have passed since the application was submitted and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application. Whilst it is reasonable for the Council to determine applications in accordance with its approved policies, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take in excess of that time. In this case the Council have been unable to give any indication as to when the application will be determined.
6. Having regard to the above, an application awaits determination and there is no indication as to when this might be. As noted above it is unreasonable for an application to take in excess of 12 months to be determined and applicants should expect a decision in a finite and reasonable timescale. It is acknowledged that some cases take longer to investigate nevertheless Circular 1/09 makes it 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.
7. I acknowledge that to issue a direction may have adverse consequences on other applications which meet the criteria for priority determination. I also note the concerns as to whether or not the determination dates are realistic and the request from the Council that any direction given should not 'jump ahead' of other applications for which directions have been given. In respect of this latter point I have no information before me as to whether these should be given priority over the application before me.
8. Taking all factors into consideration 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 investigations and make a decision on the application. It is also acknowledged that the Council is dealing with other applications for which Directions have been given. Nevertheless I consider it appropriate to direct the Council to determine the application in 6 months.

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

9. It is noted that the applicant is a member of the 'Don't Lose Your Way' Group and that group members understood that applications may take longer than 12 months to determine. The Council suggest that the stance to applications has changed. Whilst this may be the case there is provision in the 1981 Act for any applicant to seek a direction for the determination of an application after the expiration of 12 months from the date of receiving a certificate under paragraph 2(3) of Schedule 14 of the Act.

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** East Sussex County Council to determine the above-mentioned application not later than 6 months from the date of this Direction Decision.

Martin Elliott

INSPECTOR