



Direction Decision

by **K R Saward Solicitor**

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

Decision date: 25 February 2020

Ref: FPS/G1440/14D/22

East Sussex County Council

Application to add a footpath from Footpath 51 at Oak Wood, Wadhurst, to Footpath 45 at Beggars Roost, Wadhurst

- An application was made by David and Joanna Shairp to East Sussex County Council for an order to modify its Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
 - The Council's reference for the application is RWO 216.
 - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 19 February 2018.
 - A representation has been made by the applicants under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application.
 - The representation is dated 9 October 2019.
 - The Council was consulted about the representation on 14 October 2019 and its response is dated 21 November 2019.
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Decision

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

Reasons

2. 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'). This application is to add a public footpath to the DMS. It was supported by 42 user evidence forms.
 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 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
 4. The Council understands that 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. However, it comments that the deadline is often unworkable and given the complexity of some cases, it is often difficult to predict an exact timescale.
 5. Current guidance is contained within Rights of Way Circular 1/09 Version 2,
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- October 2009¹. This explains² 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.
6. Each case must therefore be considered in light of its particular circumstances. Concerns raised by the applicants over existing linked footpaths fall outside the ambit of my decision
 7. As of November 2019, the application was positioned at number 29 on the Council's list of applications awaiting determination. From the list, all higher ranked applications except one are already under investigation.
 8. The Council's policy is to determine 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.
 9. The application route has been unavailable since December 2017 when fencing was erected. For that reason, the applicants consider the application to be urgent. They describe the path as popular and frequently used and refer to the impact of its closure on the local community. However, there is no suggestion that any of the criteria listed above apply to warrant the application being given higher priority.
 10. Nonetheless, the application has been prioritised with a considerable amount of work already accomplished and the consultation process concluded. An exchange of comments between the landowners, applicants and statutory consultees occurred between April 2018 and April 2019.
 11. Since then progress has stalled whilst the application awaits full report writing. This is due to several Directions having been issued on behalf of the Secretary of State to determine other applications. These are usually addressed by the Council in chronological order of the determination date, where possible.
 12. The Council expects to determine this application once the current cases which have received Directions have been completed. In November 2019 the Council indicated "this is likely to be within the next 18 months, at the very earliest".
 13. At present there are eleven applications for which a Direction has already been issued to the Council and which remain undetermined. If the Direction dates are met, then those cases should be determined by 20 September 2020. The Council warns that it may achieve a determination in 2020 for a significant proportion of those applications but is uncertain if the determination dates are realistic. A further four applications, including this one, await a decision on whether a Direction shall be issued. The Council emphasises that the number of Directions issued will equate to it being required to determine fifteen applications in a period of probably 12-18 months. This is in circumstances

¹ Published by the Department for Environment, Food and Rural Affairs.

² At paragraph 4.9

- where staff resources are limited to two Officers who also have other duties.
14. I understand the pressures placed on the Officers concerned. I also recognise that as applications are determined, appeals and Public Inquiries will follow from some cases, increasing the burden further. When Directions are issued it can disadvantage those who have been waiting longer and where user evidence could be prejudiced as time passes by.
 15. Nevertheless, the Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. 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. Therefore, it is incumbent upon the Council to put in place the resources required.
 16. The 12-month period³ has now expired. From what the Council says good progress has already been made on this application towards reaching a determination before report writing was placed on hold. Unless a Direction is given the application is at risk of being deferred further as others take priority.
 17. The applicants are entitled to expect their application to be determined within a finite and reasonable period. No exceptional circumstances have been advanced by the Council. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. Another eighteen months is too long to expect the appellants to wait especially when the investigation stage is already complete. In all the circumstances of the case, a further period of 9 months has been 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 9 months from the date of this decision.

K R Seward

INSPECTOR

³ 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