
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/L3055/14D/11

Nottinghamshire County Council

Application to add a bridleway situated in the parish of Mansfield Woodhouse and running from the end of the public road, Common Lane to Outgang Lane, Pleasley (the County Boundary); and

to add a bridleway situated in the parish of Mansfield Woodhouse and running from Common Lane opposite Top Row, Pleasley Vale, to the bridge (County Boundary) and through the former sewage works site to Mansfield Woodhouse footpath 8; and

to add a bridleway situated in the parish of Mansfield Woodhouse and running from Railway bridge on Littlewood Lane to the bridge over the River Meden (County Boundary).

- Applications were made by Stephen Parkhouse on behalf of Nottinghamshire Ramblers to Nottinghamshire 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 applications is 1170.
 - The certificate attached to each application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, was completed on 4 October 2012.
 - A representation has been made by the applicant 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 applications.
 - The representation is dated 10 October 2019.
 - The Council was consulted about the representation on 14 October 2019 and its response is dated 19 November 2019.
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Decision

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

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').
 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. 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. Each case must therefore be considered in light of its particular circumstances.

5. In this instance, three application forms were submitted on the same date to add three linked routes as bridleways to the DMS. The Council allocated a single reference number for the applications which were supported by documentary evidence and 65 user evidence forms. According to the applicant, many of the users were elderly when the application was made over 7 years ago. It is feared that some users may not be able to give evidence as time passes by.
6. 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 November 2019, the applications were positioned at number 79 out of 130 on the Council's list of applications awaiting determination.
7. The Council determines applications in accordance with Policy A5-2 of its Rights of Way Management Plan (2018-2026). This provides that applications for Definitive Map Modification Orders will be processed chronologically by order of receipt. The policy identifies five exceptions which are expressed to be listed in no particular order. They are: (i) where the public benefit to be gained is of more than limited impact (ii) where a claim affects a householder in proving the existence or non-existence of a right of way (iii) a claimed route is triggered by an event such as fencing off the line of a regularly used path (iv) where an application is claimed on 20-year use the personal circumstances of path users will be taken into account, and (v) where a claimed route is under threat due to development or major road schemes.
8. The Council does not rank its applications against the exceptions listed within Policy A5-2. Instead, where the circumstances appear to be exceptional, Officers may apply the policy in order to expedite a particular case.
9. It is acknowledged that these three applications would certainly be of public benefit to meet the first criterion as they would extend an off-road circuit for horse riders and cyclists when used in conjunction with existing recorded bridleways. The Council mentions a possible issue over the existence of a kissing gate but suggests that the third criterion is not met. The application is claimed on 20-year use. Whilst the Council accepts that some of the claimed users are elderly it has been unable to verify their personal circumstances to establish if the fourth criterion is met. The conclusion drawn by the Council is that possibly only two of the five criteria are met.
10. There is nothing in the policy to require all criteria to be met. The way it is drafted any one criterion could suffice to trigger an application being given priority status. That appears to reflect the approach taken from the examples provided by the Council of current applications which have been taken out of

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

² At paragraph 4.9

sequence. Two of those applications involve in excess of 200 user evidence forms and where the path would either have a positive impact on the network or multiple routes. Another example is where a landowner has formally dedicated the application route.

11. It is not unreasonable for the Council to take applications in order of submission date with provision to expedite those where there is justification in line with Policy A5-2.
12. Based on current staffing levels and Officer time dedicated to this type of casework, the Council estimates it will take a minimum of about 10 years before a decision is taken on these three applications if they wait to reach the top of the list. By that time, the application will have been pending for 17 years. That is not reasonable particularly where there is user evidence which could be prejudiced by such a long delay with some users known to be elderly.
13. I recognise that the Council has a large number of outstanding applications. 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.
14. There are many other applications ranked higher in the Council's list. 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 the Council's prioritisation system.
15. However, those factors do not justify a direction not being given in this instance when the 12-month period³ has now long expired. Moreover, it seems to me that there would be reason to expedite these applications under the Council's policy. Furthermore, the applicant is entitled to expect his application to be determined within a finite and reasonable period. 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 applications. A further period of 6 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 Nottinghamshire County Council to determine the above-mentioned applications not later than 6 months from the date of this decision.

K R Saward

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