



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: 16 APRIL 2020

Ref: FPS/P2745/14D/5

**Representation by Cath Hainsworth and Mr & Mrs Andy Hedgecock
North Yorkshire County Council**

**Application to add to the Definitive Map a Public Footpath at the north of
Beacon Road, Seamer, Scarborough (OMA ref. SCAR/2016/02/DMMO)**

- 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 North Yorkshire County Council ('the Council') to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Cath Hainsworth and Mr & Mrs Andy Hedgecock ('the Applicants'), dated 28 November 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 1 August 2016.
 - The Council was consulted about the representation on 24 December 2019 and the Council's response was made on 12 February 2020.
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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 Applicants¹.

Reasons

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

4. The Council does not have a published Statement of Priorities and works to an in-house team plan which is reviewed annually. Applications for definitive map

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

- modification orders are prioritised on receipt using a points system where acknowledgement is given to (a) the quality of the evidence submitted based on evidence of use and / or historic documentary evidence; (b) the value of the claimed route to the network in terms of providing access to local services / schools / shops and so forth, and providing local circular routes near to small communities; (c) higher status routes, such as bridleways and restricted byways, are allocated more points than footpaths; (d) recently obstructed routes are given a higher priority.
5. Applications are investigated in order of priority according to the scoring system adopted as opposed to being investigated in order of receipt. The Council states that the system it has adopted is not inflexible but only very occasionally is a formal decision made to investigate an application 'out of turn'.
 6. The Council submits that North Yorkshire is a very large county and the Definitive Map team receives more applications on an annual basis than it can deal with; there are currently 97 applications on file which have yet to be determined. As noted above, the Council has prioritised all the applications made to it and will investigate them in order of priority. The Council currently has several opposed Definitive Map Modification Orders ('DMMO') which it is dealing with, 6 of which are currently awaiting determination by the Secretary of State, with another 14 waiting to be sent for determination.
 7. The application was initially assessed on receipt and scored 26 points, placing it in 10th place out of the 103 applications then extant. The application was reconsidered recently due to it being obstructed with it being elevated to 5th place in the priority list. The Council submits that the Applicants were advised of the backlog at the time.
 8. I am satisfied that the Council has developed a system whereby the resources available to it can be allocated in such a way to meet the aims of its in-house team plan. However, although the Council has established a priority ranking system, this does not alter the statutory duty on the authority to investigate the matters stated in the DMMO application as soon as is reasonably practicable following the receipt of the paragraph 2(3) certificate.

The actions or intended actions of the Council

9. The Council notes that the application has been reassessed in the light of the development being undertaken on the site crossed by the claimed footpath which has resulted in it moving up the priority list.
10. The Council says it has taken on board recent comments from user groups about the apparent lack of progress on outstanding DMMO applications and for the past 18 months it has been focussed on clearing the outstanding opposed DMMOs, dedicating two full-time officers to this task with the remaining three officers attending to other definitive map and public path order work.
11. As a result of the work already undertaken, and as the backlog of opposed DMMOs is being cleared, officers have commenced the processing of those applications at the head of the priority list. The developer of the site has been reminded about the application and given the recent obstruction of the claimed path and its current prioritisation score it is expected that the application will be determined within the next 6 months.

12. The scale of the task facing surveying authorities dealing with DMMO and other rights of way casework is recognised and understood. It is also acknowledged that the Council has limited resources available to it with which to undertake such work and that the Council has sought to prioritise those DMMO applications which it has received. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to investigate an application as soon as is reasonably practicable after the receipt of the paragraph 2(3) certificate.
13. If determination of the application is to take another 6 months, it will mean that almost four years will have passed since the application was first made. Notwithstanding this delay, the re-assessment of the application as a result of the recent obstruction of the claimed path has resulted in the application rising up the Council's priority list to a point where determination of it appears to be a realistic prospect in the near future. Given that a direction to the Council would normally require it to determine the application within a six-month period, directing the Council to determine the application within a period which accords with its own projected timescale is unlikely to be justified.

The circumstances of the case and views of the Applicants

14. The claimed footpath crosses a parcel of land being developed for new housing. Development is now proceeding which affects the claimed route. The Applicants submit that three years have passed since the application was made; this is considered unacceptable and the Council should be directed to expedite the application.
15. It is requested that special consideration be given for a speedy decision to be made on the application, as despite the developer being informed of the application during the planning process the claimed path has been obstructed. The land crossed by the claimed path has been incorporated into the garden areas of new houses. Permanent fencing has also been erected at the former entrance to the path and despite neighbouring properties having gates in the fences to access the footpath the developer has warned residents against trespass onto the land.
16. The development did not start until May 2019, and it is considered that the Council should have prioritised this application once they were aware of the plans to develop the land. It is felt that if a decision is not made soon, it will be too late as new permanent fencing will block off access to the path.

Conclusion

17. 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. I have taken into account the Council's current work programme and its estimated timescale of being able to determine this application within the next 6 months.
18. In ordinary circumstances, I would consider that it would not be justified to set a timescale for the determination of the application which would accord with the Council's own estimate. However, the exceptional circumstances of the current coronavirus outbreak may limit the Council's ability to adhere to its estimated timescale of determining the application in the next 6 months.
19. Accordingly, and to give the Applicants some certainty that this application will be determined in the near future, I have decided that there is a case for setting

a date by which time the application should be determined. I consider it appropriate to allow the Council a period of 12 months for a decision to be reached.

Direction

20. 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 North Yorkshire County Council to determine the above-mentioned application not later than twelve months from the date of this decision.

Alan Beckett

INSPECTOR