



Direction Decision

By Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 19 JUNE 2020

Ref: FPS/W2275/14D/3

Representation on behalf of Mr and Mrs Wilkins

Kent County Council

Application to add particulars to record limitations to Restricted Byway AB27, Smallhythe Road to Morghew Park Estate.

(OMA ref. PROW/AS/C412)

- 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 Kent County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made on behalf of Mr and Mrs Wilkins, dated 24 February 2020.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 14 January 2019.
 - The Council was consulted about the representation on 13 March 2020 and the Council's response was made on 22 April 2020.
-

Decision

1. The Council is directed to determine the above-mentioned application not later than 12 months from the date of this Direction.

Reasons

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 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.
3. In this case, the Council states that applications are dealt with in accordance with a published policy. This states that applications are dealt with in order of receipt subject to certain exceptions, none of which apply in this case.
4. The current application is presently located at position 24 in the queue of applications to be dealt with and it is estimated that it will be 3-4 years before it is determined. The Council also states that there has been a recent increase

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

- in the number of applications received which can exceed the staff resources available to deal with them. Additional staff are being recruited but will not be able to determine applications immediately.
5. In addition, the Council has stated that the current Covid 19 restrictions have a significant impact on right of way work and should be taken into account in determining this appeal.
 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. In this case, more than 12 months have already passed since the application was submitted and it is likely to be up to 4 more years before it is determined. Prior to the current coronavirus outbreak no exceptional circumstances have been indicated other than the fact that the Council appears to have had insufficient resources to deal with such applications.
 7. This is not an acceptable situation; applicants should be able to expect a decision within a finite and reasonable time. In the circumstances, I have therefore decided that there is a case for setting a date by which time this application should be determined. However, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Under normal circumstances I would have allowed a further period of 6 months for a decision to be made but, in view of the restrictions currently in place as a result of the coronavirus outbreak, I propose to allow a period of 12 months in this case.

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 Kent County Council to determine the above-mentioned application not later than 12 months from the date of this Direction.

Barney Grimshaw

INSPECTOR