



## 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: 2 October 2020

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**Ref: FPS/Z4718/14D/17**

**Representation by Scape Community Group**

**Kirklees Council**

**Application to add a Public Footpath from Old Lane to Taylor Lane, Scapegoat Hill in the District of Colne Valley (OMA ref. D105-65)**

- 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 Kirklees Council to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made on behalf of the Scape Community Group, dated 9 June 2020.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 December 2018.
  - The Council was consulted about the representation on 30 July 2020 and the Council's response was made on 9 September 2020.
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### 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 applicant<sup>1</sup>.
3. In this case, the Council states that applications are dealt with in accordance with a council approved priority scoring system. This application is currently in position 121 out of 176 awaiting a decision. In these circumstances the council states that it is not able to estimate how long it will be before the current application is determined.

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

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4. The council further states that an additional officer was appointed in September 2019 to improve its ability to determine applications and it is hoped that more staff will be appointed as resources allow. The Secretary of State is requested to allow a minimum of twelve months for this application to be determined if a direction is made.
5. Despite the council's appointment of additional staff, it appears that it could be a considerable time before a decision is made on this application despite the council making efforts to improve its performance. 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 20 months have already passed since the application was submitted and no exceptional circumstances have been indicated other than the Council's failure to deploy sufficient resources to the determination of such applications. This is not an acceptable situation. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
6. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I also take into account the efforts being made to improve the speed of determining applications and I further recognise that restrictions currently in place as a result of the coronavirus outbreak might have a significant impact on all rights of way work. Accordingly, although under normal circumstances I would have allowed a period of 6 months for a decision to be made, 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 Kirklees Council to determine the above-mentioned application not later than 12 months from the date of this Direction.

*Barney Grimshaw*

INSPECTOR