



Direction Decision

by **Helen Heward** BSc Hons

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

Decision date: 05 November 2020

Ref: FPS/H0900/14D/7

Representation by Kirkby Lonsdale Town Council

Cumbria County Council

Application for the addition of a Footpath from the entrance of the Auction Mart Yard (from Market Square) to the exit onto Salt Pie Lane, Kirkby Lonsdale (OMA ref. 540000-362-WCA81)

- 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 Cumbria County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Kirby Lonsdale Town Council, dated 3 August 2020.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 28 November 2018.
 - The Council was consulted about your representation on 30 September 2020 and the Council's response was made on 20 October 2020.
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Decision

1. The Council is directed to determine the above-mentioned application not later than 18 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 being determined in accordance with the Council's definitive map priority criteria matrix. The matrix has seven criteria including threat to recorded/unrecorded route, level of public interest, value for money, safety, strength of evidence, resolution of outstanding matters and long-term obstructions. The Council uses the matrix to assess the priority of an application against current workload.

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

4. The application is at No. 23 on the Council's Register of Applications for Modification Orders under S53 of the Wildlife and Countryside Act 1981. The Council informs me that they are processing applications at a rate of 2-5 items per year. I note that some applications higher up on the list of priorities were lodged as long ago as 1998 and 2002.
5. Nonetheless, 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, two years have passed since the application was submitted. No exceptional circumstances have been indicated but the Council's evidence suggests that it would be roughly five years or so, and as long as ten or more years, before the application would be processed. This is not an acceptable situation. Applicants should be able to expect a decision within a finite and reasonable time and I have decided that there is a case for setting a date by which time the application should be determined.
6. It is appreciated that the Council will require some time to carry out its investigation and determine the application. Circular 1/09 makes it clear that Authorities should ensure sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way. However, I recognise that restrictions in place as a result of the coronavirus outbreak might impact on the Council's work. Therefore, although under normal circumstances I might have considered a further period of twelve months reasonable, I propose to allow a period of 18 months for a decision to be made.

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 **Cumbria County Council** to determine the above-mentioned application not later than 18 months from the date of this decision.

Helen Heward

INSPECTOR