



## 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: 21 October 2020

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**Ref: FPS/L3055/14D/15**

**Representation by Stephen Parkhouse for Nottinghamshire Ramblers  
Nottinghamshire County Council**

**Application to add a Footpath running from Edingley Footpath No. 1  
(SK676566) to Southwell Road, Kirklington (SK 677572) (Parish of  
Edingley / Kirklington) (OMA ref. 1084)**

- 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 Nottinghamshire County Council (the Council) to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by Stephen Parkhouse on behalf of Notts Area Ramblers (the Applicant) and is dated 18 May 2020.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 2 January 2011.
  - The Council was consulted about the representation on 19 May 2020 and the Council's response was made on 5 July 2020.
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### Decision

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

### 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.
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 Applicant<sup>1</sup>.

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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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## **Reasons**

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

4. The Council's Rights of Way Management Plan (2018 – 2026) sets out its Statement of Priorities at Policy A5-2. This policy provides for Definitive Map Modification Order (DMMO) applications to be investigated in chronological order of receipt with provision made for applications to be investigated out of turn if certain exceptions are applicable.
5. These exceptions are:(a) where the public benefit is of more than limited impact, for example where an order could result in a positive impact on the network such as adding a bridleway to complete an 'off-road' network for horse riders; (b) where a claim affects a householder in proving the existence or non-existence of a right of way, for example a route that passes close to residential buildings and dwellings; (c) a claimed route triggered by an event such as fencing-off the line of a regularly used path; (d) where an application is claimed on 20-years use the personal circumstances of path users will be taken into account, for example, the witness's age, health and possible relocation; (e) where a claimed route is under threat due to development or major road schemes, for example the dualling of the A46 trunk road or the widening of the M1 motorway.
6. The Council submits that it does not rank the applications it has received against the criteria of Policy A5-2, but officers may apply the policy in order to expedite a particular case ahead of others where it is considered that the circumstances of the case meet the exceptions set out in the policy. The Council is currently investigating 7 applications which have been considered to merit being taken out of turn.
7. The Council notes that the representation for a direction was made by Mr Parkhouse when the original application had been made by Mr Thompson. Although both Mr Thompson and Mr Parkhouse are members of Notts Area Ramblers, there has been no written evidence of responsibility for the application having been transferred to Mr Parkhouse. Schedule 14 (3) (2) to the 1981 Act refers to 'the applicant' making a representation to the Secretary of State; clarification was sought as to whether a direction was being sought by a person other than the applicant.
8. The Council's Statement of Priorities sets out the approach it will take with regard to the consideration of applications and identifies several factors which could lead it to conclude that an application could be considered 'out of turn', but that otherwise applications would be dealt with in chronological order of receipt. Whilst there is nothing before me to suggest that the approach taken by the Council for bringing and keeping the Definitive Map and Statement up to date is unreasonable, that does not alter the statutory duty placed on the Council to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

### ***The actions or intended actions of the Council***

9. The Council has 152 DMMO applications outstanding in its register of applications. The application which is the subject of this representation stands at no 23 in the register and is listed as 'awaiting determination'. The Council employs two Common Land / Definitive Map Officers who are currently

engaged on DMMO applications which are either (a) considerably older than the application at issue; or (b) require expediting in line with Policy A5-2; or (c) cases where the Secretary of State has previously given a direction to determine an application.

10. It is the Council's view that the application at issue only meets one of the criteria set out in Policy A5-2 and it does not consider that the application should be expedited as this would result in other, earlier applications being further delayed. With only two members of staff assigned to this work, consideration of the application would take a minimum of five years at current rates of progress. Following the outbreak of Covid-19, the Council's offices have been closed apart from access to critical services. Whilst the local records office remains open, the restricted viewing of documents does not include access to the type of material usually consulted when investigating a DMMO application. The National Archives remain closed and the relevant Committee of the Council is currently under restricted working. The Council considers it unlikely that it will be able to determine an application within the next 6 to 12 months if a direction with such a time period is given.

### **The circumstances of the case and views of the Applicant**

11. Mr Parkhouse acknowledges that he did not submit the application to the Council in 2011 and that it was signed and submitted by Mr Thompson who has confirmed that he is aware of the request for a direction and supports the representation.
12. Both Mr Parkhouse and Mr Thompson are members of Notts Area Ramblers (or Ramblers Association Notts Area as it was at the time of the application). The application was clearly made by Mr Thompson on behalf of the Notts Area Ramblers with the representation about the application being made by Mr Parkhouse on behalf of the same group. To my mind, the Applicant in this case is the Notts Area Ramblers with Mr Thompson and Mr Parkhouse acting on behalf of that body; I consider the representation to have been made in accordance with the requirements of paragraph 3 (2) of Schedule 14.
13. The Applicant submits that the claimed footpath would provide a link between the Southwell Trail and Kirklington village which avoids the need to walk alongside the unrestricted section of Southwell Road where there is no footway. The claimed route would connect with that section of Southwell Road which is subject to a speed limit of 30mph and deliver path users closer to the village centre; it is considered that the application meets the public benefit criteria of Policy A5-2 and that it could be justifiably taken out of turn.
14. The Applicant sympathises with the Council with regard to the current availability of staff but points out that Circular 1/09 sets out 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...*". The Applicant submits that prior to 2011, the Council managed to process many applications within a few years of receipt. The reduction in staff levels from 3 to 2 Definitive Map Officers appears to have frozen the system and has resulted in the current backlog.
15. The Applicant considers that the failure of the Council to determine this application within the specified time frame may be contrary to Article 6 (1) of the European Convention on Human Rights as the Council have failed to

determine the application within a reasonable time. The Council should be directed to determine the application.

## **Conclusions**

16. 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. The scale of the task facing all 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.
17. However, the investigation of section 53 applications is a statutory duty which the Council must carry out and the Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate. I have taken into account the Council's current commitments in relation to the work it already has in already in hand and the estimated timescale of being unable to commence its investigation of this application for at least another 5 years.
18. The Council's estimate of when it may be possible to investigate the application would mean that at least 14 years will have elapsed between the receipt of the application and its (possible) determination. It can only be concluded that the Council has taken no action on this application and would appear to have no intention of taking any action on it in the foreseeable future.
19. Deferring the investigation of the application for at least another 5 years is, on the face of it, wholly inconsistent with the Council's statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice and means that there is uncertainty for the Applicant as to when a decision is likely to be reached. The lack of action by the Council and its failure to set out any firm intended action, would justify making a direction that the application is determined before the expiration of a given period.
20. In the circumstances, I consider it highly unlikely that the Council will commence its investigation of this application without intervention and I have decided that there is a case for setting a date by which time the application should be determined.
21. I note the submissions made by the Council in relation to the limited operations of its own services and the current restrictions it faces in obtaining access to local and national archives. Notwithstanding these submissions, in ordinary circumstances, I would consider that the Council should determine the application within six months of a direction being given. However, I also consider that the impact of the current coronavirus outbreak on local authorities may limit the Council's ability to adhere to a six-month timescale.
22. Accordingly, and to give the Applicant some certainty that this application will be determined in the near future, I consider it appropriate to allow the Council a period of 12 months for a decision to be reached.
23. Representations were made to the effect that the Applicant's rights under Article 6(1) of the Human Rights Act 1998 would be violated if the authority is not directed to determine the application. Article 6(1) provides that in the determination of an individual's civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and

impartial tribunal established by law. However, my decision as to whether the Council has investigated and determined the application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a determination of the Applicant's civil rights and obligations. Article 6(1) is not applicable to this decision.

**Direction**

24. 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 application not later than twelve months from the date of this direction.

*Alan Beckett*

INSPECTOR