



Direction Decision

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 15 January 2021

Ref: FPS/R0660/14D/7

Representation by David Nixon

Cheshire East Council

Application to add a Bridleway from Plant Lane to Dragons Lane, Moston Sandbach (OMA ref. CO/8/39)

- 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 Cheshire East Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by David Nixon, dated 20 October 2020.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 29 August 2014.
 - The Council was consulted about your representation on 26 October 2020 and the Council's response was made on 11 December 2020.
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Decision

1. The Council is directed to determine the above-mentioned application by 31 July 2022.

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. The Council indicates that applications are dealt with in accordance with a published Statement of Priorities for Definitive Map Modification Orders. There were, as at 11 December 2020, 38 outstanding Definitive Map Modification Order applications. This application was ranked 12 of the 38.
4. A review of the Statement of Priorities² is due to be carried out soon and that this may alter the ranking of the application. The appellant indicates that the ranking has altered since the application was made in 2014, being between

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

² A Revised Statement of Priorities 2020 was submitted

- number 9 and number 15 at various times. There is no guarantee that the review would improve the ranking. This is understandable, as other cases may be more urgent, depending on circumstances.
5. I understand that the appellant was informed that the application would be determined in 2 – 3 years when it was first submitted, which would be in the period 2016 – 2017. The Council indicate that due to current staffing levels the application would be considered in 2 – 3 years from now, that is 2023 – 2024, potentially up to ten years since the application was submitted.
 6. It appears from the application form that it relies, at least in part, on user evidence to support the case. I note that the Council say that the claimed route remains open and available for public use, although the appellant says that local people have stopped using it due to recent changes in the area. Where reliance is placed on user evidence the longer period between the date of calling into question, which may be the date of the making of the application or some earlier event, until such time as determination of the case the more difficult it becomes to get to the truth of the matter. I note that the Revised Statement of Priorities gives additional weight where the applicant or witnesses are over 70 years of age, which is helpful. Nevertheless, witnesses and evidence on both sides are lost, whether through age or moving location, the longer a case takes; this has an effect, whether relying on the statute or common law.
 7. 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 twelve months under normal circumstances. In your case, more than six years have passed since your application was submitted and it appears that it could be at least ten years before it is determined. I do not consider this to be reasonable in relation to the statutory duty of the Council to determine such applications.
 8. It is appreciated that the Council will require some time to carry out its investigation and determine the application. It is also appreciated that at this particular moment in time there are exceptional circumstances with regard to the COVID-19 pandemic, affecting the way in which people are able to carry out their usual and expected duties. As such a further period of 18 months has been allowed.
 9. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

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 Cheshire East Council to determine the above-mentioned application not later than 31 July 2022.

Heidi Cruickshank

INSPECTOR