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| **Direction Decision** |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 May 2021** |

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| **Ref: FPS/Q2500/14D/6**  **Representation by Mumby Parish Council**  **Lincolnshire County Council**  **Application to add a Footpath from A52 at Mill Lane junction southwards and to A52 eastwards to The Red Lion Public House and Church (Parish of Mumby) (OMA ref. DMMO 410)** |
| * 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 Lincolnshire County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation dated 25 February 2021 is made by Mumby Parish Council. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 January 2020. |
| * The Council was consulted about your representation on 16 March 2021 and the Council’s response was made on 24 March 2021. |
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Decision

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

Reasons

1. 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[[1]](#footnote-1).
2. The Council ranks definitive map modification applications in accordance with its Statement of Priorities, processing them in date order unless they meet one or more of 8 exceptions, or there are other exceptional reasons for processing an application sooner. Ranked within the database are cases being actively progressed to completion by officers, these being a mix of high priority cases and those that have come to the top in date order. Below these are cases attracting a higher priority for processing out of date order of receipt, and below them cases to be processed in date order of receipt. New or existing cases that are re-prioritised fall between the active and date order cases.
3. This application is No.145 of the 152 applications currently outstanding. No progress has been made in determining it beyond prioritising and recording it on the database, notifying interested parties of its receipt, answering day-to-day enquiries about it, and considering a previous appeal against its non-determination. The Council further acknowledges that its position in the ranking is likely to be adversely affected as new applications are received and prioritised. Consequently, they estimate it is likely to be a number of years before they can determine it.
4. However, the applicant is concerned that the routes, which access a village amenity, are obstructed and that this will lead to their ultimate loss[[2]](#footnote-2). The Council considered the concerns raised by the applicant at a meeting of its Public Rights of Way Sub-Committee which decided that determination of the application should not be expedited and provided advice to them about alternative access to the village amenity.
5. Notwithstanding the Council’s priority system and consideration of the applicant’s concerns, 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, it is over a year since the application was submitted. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation of it being addressed within 12 months, for determination of the application to take a further unspecified number of years.
6. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require additional time to carry out its investigation and make a decision on the application.  Given the exceptional circumstances currently being experienced as a result of the coronavirus (Covid-19) outbreak, a further period of 12 months has been allowed.
7. The applicant requests the appeal be granted for one route (footpath (A)) and an alternative be granted for the other (footpath (B)) as the original route cannot be used. However, consideration of an alternative or diverted route is beyond the remit of this appeal process. Should public highway rights be shown to exist over the original route applied for, this would be a matter for the relevant parties to address under the appropriate legislation.

**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 Lincolnshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

S Doran

**Inspector**

1. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-1)
2. In the event a public highway is shown to exist, the surveying authority has certain powers to address such issues. [↑](#footnote-ref-2)