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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/U1050/14D/1**  **Representation by Stephen Parkhouse**  **Derbyshire County Council**  **Application to add Bridleways from Pasture Lane, Long Eaton SK504319 to Trent Lane, Long Eaton SK494314 and from SK489314 to SK488315 at the side of Erewash Canal towpath; and to upgrade to a Bridleway the Footpaths Long Eaton E8 40/1, Sawley E16 21/1, 22/1, 23/1, 20/3, 24/1 from Trent Lane, Long Eaton SK494314 to SK489314 and from SK488315 to Lock Lane, Sawley SK487315 (OMA ref. x04364)[[1]](#footnote-1)** |
| * 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 Derbyshire County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation dated 4 February 2021 is made by Stephen Parkhouse. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 May 2019. |
| * The Council was consulted about the representation on 11 February 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[[2]](#footnote-2).
2. The Applicant points out the application route is crossed by the chosen route for the HS2[[3]](#footnote-3) extension to Sheffield; is an important section of the Trentside Path for Everyone; and an Active Travel Route linking Holme Pierrepont east of Nottingham with Sawley to the west. In accordance with Article 6(1) of the Human Rights Act 1988, they argue both users and landowners affected by the application have a right to a fair and public hearing within a reasonable time. Further, whilst sympathising with the Council as regards staffing levels, Circular 1/09 envisages that applications will be investigated as soon as is reasonably practicable, and that authorities should ensure they have sufficient resources to meet their statutory duties as regards recording public rights of way.
3. The Council prioritises definitive map modification order applications in chronological order of receipt unless there is a valid reason to do otherwise. In this case it is noted that the exceptional circumstances experienced as a result of the coronavirus (Covid-19) outbreak have impacted on the Council’s ability, it says for example, to access historical documents (on which the application is based) as the Record Office has been closed. Further, staff have been unable to carry out site visits, consultations, and place documents on deposit and so forth. The Council hopes that as restrictions are eased, they will be able to undertake such tasks and determine applications. This application is third in line on their list of applications outstanding for allocation to a case officer. However, as the claimed route is impacted by the HS2 extension to Sheffield, the Council has decided to prioritise it over those above it in the list and to determine it within the next few months.
4. 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. The Council’s commitment to re-prioritise and determine the application soon, and the current exceptional circumstances are noted. Nevertheless, I have decided that there is a case for setting a date by which time the application should be determined. This will ensure certainty for both the applicant and the Council and prevent further delay. It is appreciated the Council will require time to carry out its investigations and to make a decision on the application. Accordingly, a further period of 6 months has been allowed.
5. The Applicant refers to the rights of users and landowners under Article 6(1) of the Human Rights Act 1998. This provides that in the determination of their 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 authority 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 civil rights and obligations of the parties referred to. Article 6(1) is not applicable to this decision.

**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 Derbyshire CountyCouncil to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

**Inspector**

1. The Application was made by Stephen Parkhouse and Anne Wood, representing the British Horse Society [↑](#footnote-ref-1)
2. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)
3. High Speed rail link [↑](#footnote-ref-3)