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| **Direction Decision** |
| **by Sue Arnott FIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 July 2021** |

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| **Ref: FPS/L3055/14D/23**  **Representation by Nottinghamshire Area Ramblers**  **NOTTINGHAMSHIRE COUNTY COUNCIL**  **Application to modify the definitive map and statement for the area by adding a footpath between Hockerton Road and Footpath 2 Caunton** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Nottinghamshire County Council to determine an application for an order (ref 999) under Section 53(5) of that Act. |
| * The representation, dated 1 March 2021, is made by Mr Parkhouse on behalf of Nottinghamshire Area Ramblers. |
| * The certificate under Paragraph 2(3) of Schedule 14 was dated 24 May 2011. |
| * The Council was consulted about the representation on 16 March 2021 and the Council’s response was made on 29 April 2021. |
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Decision

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

Reasons

1. Nottinghamshire Area Ramblers’ (Association) submitted an application to Nottinghamshire County Council (NCC) in May 2011. This sought to record on the definitive map a public footpath linking Hockerton Road (grid reference SK 743 588) and Footpath 2 (Caunton) (grid reference SK 745 589).
2. The evidence adduced in support of the claimed footpath relies primarily on the Caunton Inclosure Award.
3. Mr Parkhouse notes that this is only a short path but it provides an important link between two others, thus avoiding a long stretch of road-walking.
4. He also points out that the application was submitted over 10 years ago. Article 6(1) of the European Convention on Human Rights (enshrined in UK law by the Human Rights Act 1998) sets out that “*In the determination of his 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 …*”. He submits that it is important for both users and affected landowners to have the opportunity to be heard and hear evidence from the other party without further delay.
5. Although Mr Parkhouse sympathises with NCC’s staffing situation, he draws attention to DEFRA Circular 1/09 which states that “*Authorities should ensure that sufficient staff resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way*.” With the current rate of progress, and given the reduction in staff available, he estimates that it may take over 100 years to deal with the backlog of applications from Nottinghamshire Area Ramblers.
6. 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).
7. In response Nottinghamshire County Council confirmed that this case is listed as number 29 on its list of 176 applications awaiting determination. Given the available staff resources, NCC estimates that it will be another 4 years before a decision is made on this application.
8. The effect of government restrictions due to the Covid-19 pandemic have seen NCC premises close other than for essential services; the Nottinghamshire Records Office has been closed and its Planning and Licensing Committee which determines these applications has been under restricted working. It submits that it would be difficult for NCC to determine any application within the next 6-12 months in these circumstances.
9. NCC’s Rights of Way Management Plan (2018-2026) states that it will process applications for definitive map modification orders in chronological order by the date of receipt subject to a number of exceptions. Application 999 meets the criteria in only one of the exceptions insofar as it would extend an off-road circuit when used together with other definitive rights of way. However there are other cases which also fall into this category, including ones much older than 999.
10. At present, the only cases being expedited by NCC are those where a direction to determine has been issued by the Secretary of State. Taking more cases out of turn will have an impact on others that are pending.
11. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances. In this case more than 10 years have already passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
12. I recognise that the resources allocated by NCC to this area of work has limited its progress in determining outstanding applications. This has pushed NCC into an invidious position, gradually accumulating an increasing number of cases to be taken out of turn as a result of being directed to determine them, leaving other cases to wait even longer.
13. Nevertheless, the applicant is entitled to expect that the application is processed within a reasonable length of time. A delay of 10 years with the prospect of a further 4 years is well beyond the timetable anticipated by the legislation. I therefore consider that there is a case for setting a date by which time the application should be determined.
14. However, I accept that NCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that current restrictions brought about by the Covid-19 pandemic are hindering research work and I must make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 18 months for a decision to be reached in this case.

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

Sue Arnott

**Inspector**

1. Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-1)