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| **Direction Decision** |
| **by K R Saward Solicitor** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 JULY 2021** |

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| **Ref: FPS/B3600/14D/1**  **Representation by Joy Taylor**  **Surrey County Council**  **Application to add bridleways and to upgrade part of footpaths FP114 and FP116 to bridleways at Effingham Common, Effingham** |
| * An application was made by Joy Taylor to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’). * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 14 February 2020. |
| * The Council’s reference for the application is CP593. * A representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to Surrey County Council to determine the application. * The representation by Ms Joy Taylor was made on 28 February 2021. |
| * The Council was consulted about the representation on 21 April 2021 and its response is dated 20 May 2021. |
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Decision

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

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement (‘DMMOs’).
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
3. 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. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009[[1]](#footnote-1). It explains[[2]](#footnote-2) that 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.
4. The Council determines applications in order of receipt except in the very few circumstances outlined in its Public Rights of Way Priority Statement of October 2014. This document ranks the investigation of claims for DMMO’s as third in the order of priority behind the publication of Legal Event Orders which take top priority followed by the processing of Rail Crossing Orders.
5. In terms of DMMO’s, the Priority Statement provides that the Council will start processing applications within 2 years of receipt of an acceptable application and make a decision on whether to make a DMMO within 3 years of its receipt. In exceptional circumstances, an application may be processed out of date order. Those circumstances are limited to (i) where planning permission has been granted which would have the effect of obstructing the alleged right of way; (ii) where there is a safety issue; (iii) the alleged route would form part of a Right of Way Improvement Plan improvement, or; (iv) a route anomaly would be resolved. None of those circumstances apply to this case.
6. The application is for four claimed bridleways at Effingham Common and is dated 22 January 2020. It was received by the Council on 24 January 2020 although the certificate of service was not completed until 14 February 2020.
7. As of May 2021, there were 15 applications awaiting determination ahead of it with work having commenced on just 5 of these received between 2015 and 2018. In addition, 11 other cases are being handled at post-determination stage, some of which are with or in the process of being referred to the Secretary of State. The applicant highlights how a search of the Council’s Register of Applications revealed that the first entry is for an application dating from June 2015 which took 5 years to determine in November 2020.
8. Apart from initial contact with landowners, no further work has begun on this case. With current back-logs and the complexity and size of some of the other applications ahead of it, the Council anticipates it will be at least another 18 months before work begins on the application and over 24 months before a decision is likely to be made.
9. According to the applicant, the Council has given no indication of when the application will be determined. This is disputed by the Council which says that it was explained to the applicant that it would be at least 24 months before work could begin and stressed that the decision would be longer still.
10. The routes cannot now be used by horse riders following the introduction of a cattle grid. The applicant asserts that obstruction of the routes is special reason to give greater priority to the application compared with routine recording of applications. As the application is based on user evidence, the applicant fears that any delays in scrutiny of a rider’s evidence may reduce its value as people move or pass away. The applicant highlights how two witnesses have already passed away and another five of those who completed user evidence forms are elderly.
11. The applicant goes on to quote Lord Bellwin, the Minister, in 30 March 1981 during the third reading of what became the 1981 Act. The quote refers to the intervention of the Secretary of State to direct the determination of applications in recognition that in the early years of the new system a backlog of applications could build up. Lord Bellwin went on to acknowledge that authorities could be inundated with applications to the extent that they will need extra time to enable them to cope. However, it was hoped that the vast majority of applications would be determined within 12 months. These comments are reflected in the statutory provisions and latest guidance.
12. In response, the Council emphasises the impacts of the Covid-19 pandemic on Rights of Way teams with hugely increased workloads as greater numbers use the countryside. Teams have been operating with reduced numbers as staff are seconded to local authority pandemic support. The Council’s Rights of Way team have in recent months also taken on Commons and Town and Village Green work with no additional resources.
13. The Council has a statutory duty to keep the DMS up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 makes clear 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.
14. However, the expectation is for applications to be determined within 12 months under normal circumstances. It is not long since the 12 month period expired. Moreover, the period since the application was submitted have not been normal circumstances given the global pandemic which will have caused major disruption to the operation of local authority services, including public rights of way. In the circumstances, it is unrealistic to have expected determination of the application within the 12 months expiring February 2021.
15. It is entirely reasonable for the Council to determine applications in order of receipt, subject to the prescribed exceptions. I also acknowledge that DMMO applications can be complex and time consuming. Nevertheless, over 12 months has now elapsed since the application was submitted and the applicant is entitled to expect it to be determined within a finite and reasonable period. There is no certainty that the application will be processed within the Council’s anticipated timescale. Judging by the age of applications and the rate of determination, progress has been slow albeit this may be attributable to a number of reasons.
16. All things considered, there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require sufficient time to carry out its investigations and make a decision on the application which includes more than one route.
17. I consider that a period of 20 months to make a determination is reasonable and proportionate and this broadly correlates with the Council’s own expectations within its Priority Statement. To achieve this timeframe, investigations would need to commence earlier. It does not prevent a quicker decision being taken.

**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 Surrey County Council to determine the above-mentioned application not later than 20 months from the date of this decision.

K R Saward INSPECTOR

1. Published by the Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-1)
2. At paragraph 4.9 [↑](#footnote-ref-2)