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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: 12 October 2021** |

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| **Ref: FPS/G1440/14D/24****Representation by Christopher Smith on behalf of The Ramblers’****East Sussex County Council****Application to modify the Definitive Map and Statement for the area by the addition of a footpath from Potato Lane (grid reference 545848 112078) to Lewes Road (grid reference 545635 112824) in the Parish of Ringmer, East Sussex (OMA Ref: RWP 226)** |
| * 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 East Sussex County Council to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation made by Christopher Smith is dated 29 April 2021.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 3 September 2018.
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| * The Council was consulted about the representation on 13 May 2021 and the Council’s response was made on 21 June 2021.
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Decision

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

Procedural matter

1. The Council queries why the application was made by Mr Smith on behalf of The Ramblers’, but that the appeal is made in his own name. Further, that Mr Smith has given his personal reasons for seeking a direction, but they are not aware of The Ramblers’ reasons. I note from the documents available to me that Mr Smith made both the definitive map modification order application and the direction application in his name, but for and on behalf of the organisation which he represents, The Ramblers’. Whilst there are personal circumstances cited in the direction appeal, these are not the only reasons given for seeking that determination of the application be expedited. There is nothing before me to suggest that the request for a direction should not be determined.

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. Initial checks were made by the Council to validate the application and it currently awaits full investigation and for the formal consultation process to begin. The Council normally investigates applications in chronological order of receipt unless they meet one of the exceptional circumstances listed in their Priority Statement – where a successful order would significantly enhance public safety; where the claimed route is threatened by imminent development; or where demand for the claimed route is particularly high, or it would form part of a recognised strategic link in the network. The application meets none of these criteria and is ranked at approximately 21 in their current list of applications. The Council is unable to give an accurate timescale as to when it will be investigated, but the estimated timescale is 4-5 years. This accords with the Applicant’s view on the basis that the Council processes around 5 applications each year.
3. The Applicant is concerned that given his health and age, and the likely current estimated timescale for the application to be determined, he may not be able to participate in a public inquiry which he believes is likely to result if an order is made following investigation of the application.
4. The Council understands there is an expectation for applications to be determined within a 12-month period, and recognises it has a duty to ensure the full definitive map modification order process is carried out correctly and in a timely manner, and fair attention given to each case, but says it can only do this with the resources available to it. However, they find this often proves unworkable not least given the complexity of some cases, and that a number of directions in the last 3-4 years have taken precedence over other applications already received or new ones submitted. This application is based on documentary evidence. The Council relies on a mix of researching records at the East Sussex Record Office as well as its own records and does not routinely rely on documents produced by an applicant from the National Archives. Although the application was submitted prior to the Covid-19 pandemic, which may have detrimentally affected access to archives, the pandemic had an impact on the Council’s staff resources as it took precedence over definitive map modification order work.
5. The Council is concerned that making a direction on this case may undermine its priority system and may result in the prioritisation of a less-urgent case over those which require more immediate action, for example where witness or user evidence may be lost due to the passing of time. Sometimes a determination date for a direction can jump ahead of applications already subject to a determination date provided as a result of a direction. In addition, a considerable amount of officer time is taken up with associated definitive map issues and to ensuring that applications have been correctly made, as well as other work such as temporary closure applications and commons and village green applications.
6. Nevertheless, these factors do not alter the Council’s statutory duty in respect of definitive map modification order applications, and suggest insufficient resources are being allocated by the Authority to determining applications. 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. Accordingly, I have decided that there is a case for setting a date by which time the application should be determined.
7. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 9 months has been allowed.

**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 East Sussex County Council to determine the above-mentioned application not later than nine 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)