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| **Direction Decision** |
| **by Barney Grimshaw BA DPA MRTPI (Rtd)** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 November 2021** |

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| **Ref: FPS/G1440/14D/26 and FPS/W2275/14D/4****Representations by Mr B Clegg, Open Spaces Society****East Sussex County Council and Kent County Council****Applications to modify the Definitive Map and Statement by the addition of a footpath from Kent Footpath WT109 (grid ref TQ 53359 37550 to East Sussex footpath Withyam 33 (grid ref TQ 53359 37567)**  |
| * The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking directions to be given to East Sussex County Council and Kent County Council to determine applications for Orders, under Section 53(5) of that Act.
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| * The representations are made by Mr B Clegg on behalf of the Open Spaces Society, dated 1 July 2021.
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| * The certificates under Paragraph 2(3) of Schedule 14 are dated 4 and 30 March 2019.
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| * The Councils were consulted about the representations on 2 September 2021 and the Councils’ responses were made on 11 October 2021.
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Decision

1. The Councils are directed to determine the above-mentioned applications not later than 12 months from the date of this Direction.

Reasons

1. Although 2 separate applications have been made, they both deal with a single claimed path which crosses the county boundary between East Sussex and Kent. It is therefore appropriate to consider the applications together. Both Councils have also requested that the applications be dealt with similarly.
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 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).
3. In this case, both Councils deal with applications in accordance with published policies which state that they are investigated in chronological order of their receipt unless they meet one of a number of specified exceptional circumstances. The current applications are said not to meet any of these.
4. East Sussex County Council currently has 62 applications awaiting determination and the current application is ranked 30th amongst these. The Council states that it is estimated that it is likely to be at least 4-5 years before this application will be determined.
5. Information supplied by Kent County Council indicates that the current application is currently 24th out of 76 awaiting determination. It is estimated that it will be around 18 months to 2 years before this application is allocated to an officer for investigation and then a further 6 months at least before a decision is reached.
6. Both Councils state that limited resources are available for determining applications such as these and, if they are dealt with out of order, other applications will be delayed.
7. The applicant has pointed out that, although the claimed path is currently available for use, the land has recently changed ownership and he fears that this may result in the path being obstructed. In addition, the claim is based on evidence from users of the path, many of whom are elderly.
8. 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, over 2½ years have passed since the applications were submitted and it is estimated that a further 2½-5 years or more is likely to pass before they are determined. This would suggest that the Councils are failing to deploy sufficient resources to the determination of such applications.
9. This is not an acceptable situation. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
10. It is appreciated that the Councils will require some time to carry out their investigations and determine the applications. I also recognise that restrictions that have been in place as a result of the coronavirus outbreak have had a significant impact on all rights of way work. Accordingly, although under normal circumstances I would have allowed a further period of 6 months for a decision to be made, I propose to allow a period of 12 months 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 East Sussex County Council and the Kent County Council to determine the above-mentioned applications not later than 12 months from the date of this Direction.

Barney Grimshaw

INSPECTOR

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