

|  |
| --- |
| **Direction Decision** |
| **by Alan Beckett BA MSc MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 November 2021** |

|  |
| --- |
| **Ref: FPS/L3245/14D/9**  **Representation by Mr M White**  **Shropshire Council**  **Application to modify the Definitive Map and Statement for the area by the addition of a Footpath from the field gate at the Corner in Bushmoor to the sign for Bushmoor Coppice in the Parish of Wistanstow (Ref No. 165)** |
| * 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 Shropshire Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Mr Mike White is dated 10 July 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 July 2020. |
| * The Council was consulted about the representation on 23 August 2021 and the Council’s response was made on 22 September 2021. |
|  |

Decision

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

Statutory and Policy Context

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.
2. 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).

**Reasons**

***The Council’s statement of priorities and the reasonableness of its priorities***

1. The Council has a backlog of 171 section 53 applications which it has yet to determine. Policy Statement No. 8 regarding Definitive Map and Statement Modification Orders (‘DMMO’) found within the Council’s Great Outdoors Access Strategy 2018-28 sets out how the Council seeks to prioritise section 53 applications made to it. The Council reviews the Definitive Map & Statement (‘DM&S’) on a district basis. Applications in those areas which have not undergone the district review process will be allocated to one of three priority areas (1) North Shropshire and those remaining un-reviewed parishes within Oswestry District; (2) all other outstanding areas which have not been reviewed; (3) the rest of the County in relation to key historic document resources.
2. The Council also prioritises applications within Priority Areas 1 – 3 in accordance with the key local demands identified through the Great Outdoors Strategy; (a) where the claimed route is a High Priority Missing Link as identified in the north of the county under the Discovering Lost Ways project; (b) where an omnibus order could be made with unrecorded routes which are clearly used, signed and available on the ground; (c) in the prioritisation of routes with a claimed higher status; (d) key routes which would provide strategic links in the network and where claims are supported by strong historic evidence.
3. The Council recognises that there may be occasions where applications may need to be taken out of turn in the public interest, such as when routes are threatened by development or where the amendment of a route would significantly improve public safety. For such cases, applications will be dealt with in order of receipt.
4. The Council has clearly identified a number of factors which by which it will assess applications made to it and the order in which such applications will be considered. The Priority Areas appears to have been further prioritised according to separate criteria so that the Council can make the best use of its resources. In addition, the Council has identified several factors which could lead it to conclude that an application could be considered ‘out of turn’ and take precedence over other applications.
5. Whilst there is nothing before me to suggest that the approach taken by the Council for bringing and keeping the DM&S up to date is unreasonable, that does not alter the statutory duty placed on the Council to investigate the matters stated in DMMO applications as soon as is reasonably practicable.

***The actions or intended actions of the Council***

1. The Council has 171 applications outstanding in its register of applications. The register of applications is set out in chronological order with each application being allocated a reference number. From the register it is evident that some applications have been determined as the reference number of individual cases is not sequential.
2. The application which is the subject of this representation is number 103 in the register[[2]](#footnote-2). It is not evident from viewing the register of applications what priority (if any) has been allocated to this application, or into which of the Priority Areas (and the subsets of priorities within those areas) identified in the Great Outdoors Access Strategy this application has been placed.
3. In addition to no indication of the priority assigned to this application being given by the register, the Council has not provided any information as to the priority ranking which has been given to this application. The Council submits that the application is relatively recent and is within a parish which has been the subject of a Parish Review. In addition, other applications which satisfy the published priority criteria are ahead of this application and should be investigated first. Furthermore, the Council has been directed by the Secretary of State to determine a number of other applications within a given timeframe. Consequently, it is not possible to provide a date by which the application will be determined.

**The circumstances of the case and views of the Applicant**

1. The Applicant submits that the route which is the subject of the application is shown on maps dating from 1883 to 1964 by means of a single peck line which is annotated ‘FP’ running in the fields to the north of the sunken way which links Bushmoor and Woolston. The Applicant states that as the sunken track is unsuitable for walkers for much of the year due to ground conditions, the padlocking in 2019 of the field gate which gave access to the claimed footpath has meant that access to Bushmoor Coppice for Bushmoor residents has been severely limited.
2. The Applicant’s ground for appeal is that a decision has not been made by the Council within 12 months of the application having been duly made.

**Conclusions**

1. 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; this expectation is demonstrated clearly by the Applicant’s stated ground for appeal. The scale of the task facing all surveying authorities dealing with DMMO and other rights of way casework is recognised and understood. It is also acknowledged that the Council has limited resources available to it with which to undertake such work.
2. However, the investigation of section 53 applications is a statutory duty which the Council must carry out. The Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate. I have taken into account the Council’s current commitments in relation to the work it already has in hand; the number of applications it has to investigate; and that the Secretary of State has directed the Council to determine a number of applications following representations being made to him.
3. The Council is unable to provide a date by which the application will be investigated and determined. From the register it is not possible to determine what priority ranking (if any) has been assigned to this application. In such circumstances it will be difficult for the Applicant to understand where his application stands in relation to other applications the Council has before it, or to know when the application might be considered. Given the Council’s submission that the claimed footpath is located within a parish which has already been subject to its review process, it may be that this application will not be investigated until all other applications within the register have been dealt with.
4. Deferring the investigation of the application for an undisclosed and unknown period of time is, on the face of it, wholly inconsistent with the Council’s statutory duty to investigate a section 53 application as soon as is reasonably practicable following the receipt of the paragraph 2(3) notice. Consequently, there is uncertainty for the Applicant as to when a decision is likely to be reached. The lack of action by the Council and its failure to set a date for intended action, would justify making a direction that the application is determined before the expiration of a given period.
5. In the circumstances, I consider it highly unlikely that the Council will commence its investigation of this application without intervention, and I have decided that there is a case for setting a date by which time the application should be determined.
6. I note the submissions made by the Council in relation to the resources at its disposal and the number of applications which are currently under investigation. I am also mindful that the Council’s staff may have been following Government guidance to work from home where possible and that it may have been difficult for staff to conduct interviews with path users and other witnesses in cases such as this. In ordinary circumstances, I would consider that the Council should determine the application within six months of a direction being given. However, I also consider that the phased and gradual return to normal working patterns following the ending of the restrictions imposed in response to the coronavirus outbreak may limit the Council’s ability to adhere to a six-month timescale.
7. Accordingly, and to give the Applicant some certainty that this application will be determined in the near future, I consider it appropriate to allow the Council a period of 12 months for a decision to be reached.

**Direction**

1. 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** Shropshire Council to determine the above-mentioned application not later than twelve months from the date of this decision.

Alan Beckett

INSPECTOR

1. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-1)
2. The application has a reference number 165 [↑](#footnote-ref-2)