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| **Direction Decisions** |
| **by R J Perrins MA NDArbor Tech ArborA** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 February 2022** |

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| **Refs:** **FPS/E0535/14D/4 & 6**  **Representations by Roy and Amanda Fabb**  **Cambridgeshire County Council**  **Application to add a footpath from the access track to Somersham allotments that link definitive footpaths 4 and 6**  **Application to add a footpath from the access track to Somersham allotments that link definitive footpaths 4 and 5 (OMA ref. MO74 & MO75)** |
| * The representations are 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 Cambridgeshire County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representations are made by Roy and Amanda Fabb, dated 14 September 2021. |
| * The certificates under Paragraph 2(3) of Schedule 14 are dated 25 September 2018. |
| * The Council was consulted about your representation on 22 November 2021 and the Council’s response was made on 23 December 2021. |
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Decisions

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

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.
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).
3. As of 23 December 2021, the Council had some 81 outstanding applications for Definitive Map Modification Orders. The Council aims to deal with those applications in chronological order, as received by the Council, and as set out in its Statement of Priorities. The Statement also sets out that exceptional circumstances may apply to interrupt that chronology for example where a discrepancy in the Definitive Map and Statement has the potential to cause significant hardship to a landowner.
4. There is nothing before me to suggest that either application falls to be considered as an exceptional circumstance when applying the Council’s priorities. There is also no dispute that the applications were at 9 and 10 on the list as of 23 December 2021. Furthermore, I recognise the Council is seeking to employ more resource and is working on the delivery of a number of regional infrastructure schemes.
5. Alongside that is the undisputed assertion that both application routes are currently open and the public use unrestricted. With regards to application ref: FPS/E0535/14D/6 the applicants suggest that the landowner is agreeable to the route across their land, although no proof as to land ownership has been submitted. In respect of application ref: FPS/E0535/14D/4 ownership is split with one owner accepting a permissive right of way but not one that is dedicated. The applications are not, therefore, completely straightforward and I accept that there are no circumstances applicable to either application that would justify making them a higher priority than others on the list.
6. However, 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 both cases, more than 3 years have passed since the applications were submitted and no exceptional circumstances have been indicated. Moreover, applicants should be able to expect a decision within a finite and reasonable time.
7. Therefore, in the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. Under normal circumstances a further period of 6 months would be appropriate. However, I recognise, as set out above, there are some challenges and that efforts are being made to resource the determination of applications. It is also appreciated that the Council will require some time to carry out its investigation and make decisions on the applications.
8. Accordingly, I propose a period of 12 months for both cases.

**Directions**

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 Cambridgeshire Council to determine the abovementioned applications not later than 12 months from the date of this Direction.

Richard Perrins

INSPECTOR

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