

|  |
| --- |
| **Direction Decision** |
| **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** |

|  |
| --- |
| **Ref: FPS/R0660/14D/9**  **Representation by Trevor Boxer, Sandbach Footpath Group**  **Cheshire East Council**  **Application for the addition of a footpath from Dingle Lane (leading from Well Bank) to Sandbach FP 11 (OMA ref. CO/8/49)** |
| * 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 Cheshire East Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Trevor Boxer, Sandbach Footpath, dated 30 September 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 29 March 2016. |
| * The Council was consulted about your representation on 16 November 2021 and the Council’s response was made on 10 January 2022. |
|  |

Decision

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

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 10 January 2022 the Council had had some 47 outstanding applications for Definitive Map Modification Orders (DMMO). The Council aims to deal with those applications as set out in its Revised Statement of Priorities 2020. The application was subject to an annual review and is now at number 5 out of 47 outstanding applications (formerly 15 out of 33). The Council advises that it is difficult, due to the Statement of Priorities, to give a timescale. Although estimates it would be approximately 2 years before a decision was made.
4. That is against the background of staff resources restricting the numbers of applications that can be processed each year. Due, over the last two years, to staff absences and work issues relating to the Covid-19 pandemic. That has limited officer time spent on DMMO applications although they are now being processed at a rate similar to that before the pandemic.
5. The applicant expresses concern that Dingle Lane is subject to a planning application which may result in the lane being blocked. Had the DMMO been actioned the fate of the path would be much more secure. New owners of the land may restrict the current access.
6. Counter to that, the Council suggests that Dingle Lane is used to access other properties so is unlikely to become blocked. The developer has stated they have no intention to gate the lane, or prevent the public from using it, and would be happy for the claimed route to become a public footpath. Should the planning application be successful the Council may be able to enter into a Creation Agreement with the developer. Alternatively, if it turns out that the claimed route is threatened by development the application may be taken out of turn and dealt with as a priority.
7. I recognise that the planning application is due to be decided in the coming months if not weeks and the developer has intimated the route would not be blocked. However, such matters are not confirmed, developers change, landownership changes and without any legal agreement to secure such matters, inevitably they must carry little weight. Whilst it may be that the situation resolves itself through the planning process there are no guarantees.
8. Moreover, 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. I recognise there have been limited resources which has restricted the rate at which applications have been processed. Nevertheless, in this case, nearly 6 years have passed since the application was submitted and whilst the circumstances have inevitably delayed matters, applicants should be able to expect a decision within a finite and reasonable time. It seems to me that 6 years, considering all of the circumstances, is not a reasonable time.
9. Therefore, having considered all matters, 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 the Council faces challenges and it is appreciated that the Council will require some time to carry out its investigation and make a decision. Furthermore, it may be the planning application resolves the situation in any event but that inevitably takes time. Accordingly, I propose a period of 12 months.

**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 Cheshire East Council to determine the above-mentioned application 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)