

|  |
| --- |
| **Direction Decision** |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 February 2022** |

|  |
| --- |
| **Ref: FPS/E1855/14D/1****Representation by Shirley Featherstone****Worcestershire County Council****Application to vary the particulars of the Definitive Map relating to Footpaths WC-620 (formerly Footpath 59) from Brooklands, Wolverley Village to adjacent field, by providing that the Definitive map has the correct description, but the map is drawn incorrectly (OMA refM-2034)** |
| * 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 Worcestershire County Council to determine an application for an Order, under Section 53(5) of that Act.
 |
| * The representation is made by Shirley Featherstone, dated 18 October 2019.
 |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 1 March 2020.
 |
| * The Council was consulted about your representation on 3 September 2021 and the Council’s response was made on 22 September 2021.
 |
|  |

Decision

1. The Council is directed to determine the above-mentioned application by 31 March 2023.

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-2).
2. The Council indicates that applications are dealt with in accordance with a published Definitive Map Modification Order Application Prioritisation policy statement and Register. The Register is in two parts; the first part comprising a list of applications currently being processed and the second part includes a list of applications that are presently awaiting further investigation. The Council deals with applications such as this on the basis of a priority scoring system which takes into account a number of factors, including where applications would:
* Aid conflict resolution – where an application has caused some resentment within a local community.
* Assist the development process – where development has been permitted and an unresolved issue concerning a public rights of way might result in the blighting of properties if the matter remains unresolved.
* Make effective use of staffing etc resources – where a number of applications in the same area might be better dealt with together.
* Are backed by a high level of public support or where there is a high level of documentary evidence in support of the application.
* Meet the wider public rights of way network and ROWIP objectives.
1. I have no reason to dispute that the Council’s policy and prioritisation procedures appear fair. However, timeliness is also a reasonable expectation.
2. The Council currently has in excess of 60 applications awaiting determination and the current application is ranked 61st amongst these. The Council indicates that applications will be investigated on the basis of the prioritisation order and those applications that affect the most people or with most potential effect on the rights of way network will be considered first. The Council has indicated that this application has scored very low in line with the above criteria and it is unlikely that it will be considered within the next ten years given staffing resources.
3. It appears from the evidence that the application relies at least in part, on user evidence to support the case. Whilst the claimed route appears to be available for public use, where reliance is placed on user evidence, the longer period between the date of calling into question and the date of investigation, the more difficult it is to get to the truth of the matter and for any discrepancy in the route of the path to be reconciled.
4. The anticipated period for resolving the issue is not acceptable. 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.
5. Normally, 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 2 years have passed since the application was submitted and it is estimated that a further ten years or more is likely to pass before it is determined. This would suggest that the Council is failing to deploy sufficient resources to the determination of such applications.
6. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I also recognise that restrictions currently in place as a result of the coronavirus outbreak have 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 Worcestershire County Council to determine the above-mentioned application not later than 31 March, 2023.

Gareth W Thomas

INSPECTOR

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