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| **Direction Decisions** |
| **by K R Saward Solicitor, MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 April 2022** |

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| **Ref: FPS/ W1850/14D/8 – 46 (not 13)**  **Herefordshire County Council**  **Various applications – see Annex** |
| * The applications were made to the Council by Tom Fisher and the Herefordshire Ramblers for an order to modify its Definitive Map and Statement of Public Rights of Way (‘DMS’) under Section 53(5) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’). * The Council’s references for the applications are shown in the Annex to these Decisions. * The date of the certificate attached to each application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is shown in the Annex. |
| * A representation has been made by Mr Tom Fisher, on behalf of the Herefordshire Ramblers also, under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine all the applications. * The representation is dated 9 April 2021. |
| * The Council was consulted about the representation on 26 November 2021 and its response is dated 18 January 2022. |
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Decisions

1. The Council is directed to determine the applications identified in the Annex hereto.
2. The Council is not directed to determine the application ref. FPS/W1850/14D/10.

**Preliminary Matters**

1. Originally, the Secretary of State was requested to direct the Council to determine a total of 41 applications seeking modification to the DMS. Two of those applications, referenced FPS/W1850/14D/7 and 13 have since been determined by the Council. The request concerns the remaining 39 applications, the Council having registered FPS/W1850/14D/22 as two separate applications (Council refs. M358 and M359).
2. One of the applications (ref. FPS/W1850/14D/8) was made by Mr Fisher personally. All others were made by the Herefordshire Ramblers. In requesting a direction, Mr Fisher also represents the Ramblers.
3. One response was submitted on the Council’s behalf to encompass all 39 outstanding applications. I have similarly addressed all the requests for a direction in this single document. In doing so I have clearly considered the merits of making a direction in respect of each application. Whilst I have grouped the applications for the purposes of the directions, they constitute individual decisions.

**Reasons**

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS.
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2(3) of Schedule 14.
3. Current guidance is contained within Rights of Way Circular 1/09, Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains, at paragraph 4.9, that 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. I take all these factors into account.
4. All the applications seek an addition of a route to the public rights of way network. The claimed routes are for a mix of footpaths, bridleways and restricted byways. A limited number also seek the upgrade of existing public paths. Details are contained within the Annex.
5. The Council determines applications in accordance with its Statement of Priorities. This distinguishes between existing applications already progressed to draft report stage by 31 July 2005, those existing but not progressed to draft report stage by that date, and new applications. The applications which are the subject of these Decisions fall within the category of ‘new applications’.
6. New applications are prioritised according to whether or not the application provides a ‘useful route’. If it is not a ‘useful route’ then the application will be no more than ‘low priority’. Applications which would create a useful route addition, are assessed as either ‘weak’, ‘fairly robust’ or ‘very robust’. The applicant of a ‘weak’ application will be advised that the application will be low priority and invited to submit further evidence to speed up the process. A ‘fairly robust’ application will be medium priority and the applicant invited to submit stronger evidence in order to fast track the application. A ‘very robust’ application will be fast tracked.
7. With its response of 18 January 2022, the Council produced its spreadsheet of applications requiring determination. Whilst applications are listed in the order of receipt, this does not reflect the order of priority. A total of 252 applications are listed which are either ‘Active’ or ‘Pending’. Of those, 66 are low priority, 95 medium priority, 61 high priority and 30 are not prioritised. In terms of the 39 applications for which a direction is sought, there are 4 categorised as ‘low priority’, 21 ‘medium priority’ and 14 as ‘high priority’ (figure reduced from 16 after determination of 2 ‘high priority’ cases). The Council points out that 8 of the ‘high priority’ applications are active and 6 are pending. That indicates progress is yet to made on 31 of the 39 applications.
8. To put things into context, the Council describes a significant increase in the number of applications in the past 3 years which has affected its processing of DMMOs. Figures are produced to demonstrate how there were only 8 new applications in 2018 which increased to 32 in 2019, 73 in 2020 and 51 in 2021. Notably, there has been no corresponding increase in determinations which have in fact declined since 2018 with between 3-5 over the past 3 years compared with 9 undertaken in 2018. Such decline may be attributable in part to the impact of the coronavirus pandemic creating issues with accessing libraries, public record offices and ability to interview witnesses, as the Council suggests. However, the figures demonstrate a drop in determinations starting in 2019, prior to the pandemic, despite a sharp increase in applications that year.
9. The Council says it is unable to provide any timescale for determination of the applications taking into account, the pandemic, staffing, incoming applications and the re-organisation of its Public Rights of Way Service. Currently, the service is outsourced and when it is brought in-house, as planned, this ‘may provide opportunities for a review of current delivery’. That may be so, but the response is non-committal.
10. The applicant is ‘comfortable’ with the Council’s allocation of priorities but considers it essential that all applications, regardless of priority, are determined within a reasonable timescale. The applicant submits that the Council should be resourced so as to be capable of discharging its statutory duty.
11. Even though the Council has a large number of outstanding applications and receives many new ones each year, there remains a statutory duty on the Council to keep the DMS up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
12. Having considered the position for and against the making of a direction in respect of each of the outstanding applications, I make the observations as set out below.
13. The accompanying note for the application for a restricted byway in FPS/W1850/14D/10 (Council ref. M347) says: ‘Orders completed ready to be determined’. As the application is well advanced there appears to be little reason for a direction to be made in that particular case.
14. Although the ‘high priority’ application under Council ref. M355 is given ‘pending’ status, the notes state that it can be merged with another and ‘research started’. Research has also begun on the ‘high priority’ cases referenced M358, M359, M362 although it is unclear how far those cases have progressed. The record notes that M358 and M359 can be merged. There are four other ‘high priority’ cases which are identified as ‘active’ (Council refs. M333, M349, M351, M352) with no details recorded of the stage they have reached.
15. Where applications are given ‘medium priority’ the Council must have regarded them as creating a useful route addition with a ‘fairly robust’ application and where the applicant will be invited to submit stronger evidence in order to be fast tracked.
16. ‘Low priority’ applications could be ‘fairly’ or ‘very’ robust but not provide a useful route. Alternatively, they would provide a useful route but the application is weak requiring further evidence to gain higher priority. It is unclear which of these reasons applies to the 4 applications that are classified as ‘low priority’.
17. Without particulars of the progress made already or any anticipated timescales, it is difficult to gauge how soon the Council will be in a position to make determinations on the applications. This is not a satisfactory position. I recognise the need to make special allowance for the impact of the pandemic upon staffing resources and the conduct of research. However, there is no explanation as to why witnesses could not be interviewed, where required, by means other than face-to-face.
18. The effects of the pandemic and re-organisation of the Rights of Way Service do not justify a direction not being given now that the 12 month period has expired. Indeed, I note that the Council’s list includes a ‘high priority’ application which, although ‘active’, dates back to 2005 and others from 2011 onwards. The ‘medium priority’ applications date as far back as 1997. An applicant is entitled to expect their application will be determined within a finite and reasonable period.
19. Unless a direction is given, the applicant can have no assurance that the applications will be determined any time soon given the number and age of outstanding applications. It could be many years before a determination is made for those yet to start investigation, particularly those not given a ‘high priority’ rating.
20. Some of the applications are active and under investigation but no estimates are provided on expected timescales. To bring clarity and maintain momentum, a date for determination of those cases should be fixed in addition to setting a date by which time the remaining applications should be determined. There is one exception identified above (M347), where the Orders are already completed.
21. Of course, the Council will require time to complete its investigations and make decisions on the applications. Given the large number, it would not be realistic or reasonable to direct that all applications must be determined within the same time frame. It is appropriate to stagger the timescale depending upon their priority status (which the applicant has not been challenged), age and whether the application is active. In this regard, I note that the applicant’s spreadsheet identifies Council refs. 377 and 378 as being of lower priority status than that rated in the Council’s list. Similarly, the applicant’s entries do not tally with the Council’s for refs. 382 and 383. I have used the Council’s ratings.
22. Where research has begun against the 8 ‘high priority’ applications, a further period of 6 months is justified. There are 5 other ‘high priority’ applications where another 9 months will be allowed. Of the medium priority applications, 15 months will be given for the 12 submitted before end of 2019 and 21 months for the 9 made after. With regard to the 4 ‘low priority’ applications, 24 months will be afforded. In setting these timescales an allowance has been made for the impact of the pandemic. None of these timescales prevent the Council from making an earlier decision particularly if there is cause to heighten the priority status of any application.

**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 Herefordshire County Council to determine the applications as identified in the Annex hereto not later than the period specified, such period to be calculated from the date of these decisions.

K R Saward INSPECTOR