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| **Direction Decision** |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 31 March 2022** |

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| **Ref: FPS/X2600/14D/18****Representation by Ian Witham****Norfolk County Council****Application to add to the particulars of the Footpath from Sandy Hill Lane in the Parish of Weybourne to the north end of Bodham Footpath No. 3 by adding a width and providing that there are no limitations or conditions on the use of the route by the public (Order Making Authority ref. 60633 HP508/1)** |
| * An application was made by Mr Ian Witham to Norfolk County Council 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 certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 10 April 2019.
* A representation has been made by the applicant 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 the application.
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| * The representation is dated 19 July 2021.
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| * The Council was consulted about the representation on 12 November 2021 and its response is dated 23 December 2021.
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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. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for a definitive map modification order (DMMO).
2. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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 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 the matters that the Secretary of State will take into account in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period. These are 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.
4. The application seeks to clarify the path’s width and other matters as the applicant considers that this will enable the highway authority to require the removal of suggested obstructions to the public’s right. The applicant has sought the removal of the suggested items over a number of years.
5. The Council determines applications in accordance with its Statement of Priorities, which forms part of its Access Improvement Plan. Applications are dealt with in chronological order although a higher priority may be applied if any of four exceptional circumstances apply. Such an approach appears reasonable.
6. The Council has carried out consultations on the application but there is no indication that any other actions have been taken on it. At the date of its response the Council had 180 DMMO applications outstanding. The application had not been assessed to meet any of the exceptional circumstances for priority and hence it was ranked 41st in the priority list. As a result, the Council considers that a decision is likely to be reached on the application by the end of 2022. However, there is minimal evidence to indicate whether this timescale is achievable.
7. The Council considers that obstructions on the footpath have given rise to the application. It suggests that recourse to its highway boundaries team will provide an opinion on the position and width of the path and hence that the DMMO application may not be necessary. Nevertheless, the suggested course of action is a separate process which would not provide the legal definition of these matters which the application seeks.
8. The Council states that it has created a new post to contribute to the processing of DMMO applications, although I consider that the ability of this matter to expedite the processing of this application is unclear.
9. The applicant states that there is no evidence that the Council has determined other DMMO applications which have previously been subject to directions to reach a decision and for which the date set has since expired.
10. Whilst I sympathise with the pressures that the Definitive Map service is under, the Council still has a statutory duty to keep the DMS up-to-date. 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.
11. 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, almost 3 years have passed since the application was submitted and no exceptional circumstances have been demonstrated by the Council. Furthermore, the number of preceding applications within the Statement of Priorities and the lack of evidence that other decision directions have been complied with suggest that this application is unlikely to be determined within the timescale suggested by the Council. In the circumstances I have consequently decided that there is a case for setting a date by which time the application should be determined.
12. It is appreciated that the Council will require some time to carry out its investigation and to make a decision on the application. Accordingly, a further period of 12 months has been allowed. This includes an allowance to address working constraints arising from the ongoing coronavirus pandemic.

**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 Norfolk County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

C Beeby

INSPECTOR