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| **Direction Decision** |
| **by Ian Radcliffe BSC(Hons) MRTPI MCIEH DMS** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 June 2022** |

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| **Ref: FPS/J1155/14D/9**  **Representation by Honiton Town Council**  **Devon County Council**  **Application to add a footpath which runs from Springfield Road, Honiton to Copper Castle, Honiton** |
| * 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 Devon County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Honiton Town Council, dated 12 May 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 2 May 2019. |
| * The Council was consulted about your representation on 26 October 2021 and the Council’s response was made on 15 November 2021. |
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Decision

1. The Council is directed to determine the above-mentioned application.

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 in accordance with paragraph 2(3) of Schedule 14.
2. Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs is relevant. 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.
3. The request to direct the surveying authority, Devon County Council, was made on the basis that over two years had passed since the application for the Order was made. As the request was made over a year ago, three years has now passed since the application was made. Nothing further has been put forward by Honiton Town Council in support of the representation.
4. In relation to dealing with applications, Devon County Council’s approach is governed by its policies. Policy DM1 B/2 advises that applications will be dealt with as part of the parish-by-parish review. Other than in certain exceptions, if an application is made in a parish where the review has been completed policy DM1C/2 advises that it will be deferred until the whole of that particular District has been reviewed.
5. In this case, as the review of Honiton parish was completed in 2012 and none of the policy exceptions apply, the County Council does not propose to deal with the application until after its parish-by-parish review is completed. The completion date for the review is before 1 January 2025.
6. Whilst the policy approach of the County Council is fair and reasonable, in practice it has resulted in a waiting list of 31 certified applications, some of which have been waiting over twenty years to be decided. A waiting list of 141 uncertified applications also exists. If not picked up by the parish-by-parish review the certified applications will be prioritised over those that are uncertified once the review is complete. Given this, the pushing back of the target for completion of the review from 2020 to 2025 and the applications position on a list of certified applications received in date order of 27 out of 31, I have little confidence that the Council will determine this application in the foreseeable future.
7. The number of staff dealing with this work has been reduced due to budget cuts. Nevertheless, the Council has a statutory duty to keep its Definitive Map and Statement 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.
8. The issuing of a direction to make a determination would be detrimental to the parish-by-parish review and disadvantage those applications higher up the Council’s list that have been waiting longer. It could also potentially delay the determination of applications under the Council’s policy exceptions. However, these factors do not justify a direction not being given in this instance when the 12 month period expired over 2 years ago.
9. 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, more than three years have passed since the application was submitted and no exceptional circumstances have been demonstrated.
10. Taking all of the above matters into account, I have decided that a date should be set by which the application should be determined. Given that the 12 month period has comfortably expired a further period of 10 months shall be allowed.

**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** Devon County Council to determine the above-mentioned application not later than 10 months from the date of this decision.

Ian Radcliffe INSPECTOR