

|  |
| --- |
| **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** |

|  |
| --- |
| **Ref: FPS/P3800/14D/3**  **Representation by Christopher Smith**  **West Sussex County Council**  **Application to add a restricted byway from a road junction at grid reference TQ40213035 to a road junction at TQ40193020. (OMA ref. CC803/16190)** |
| * 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 West Sussex County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Mr C Smith, dated 9 January 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 14 December 2020. |
| * The Council was consulted about your representation on 18 January 2022 and the Council’s response was made on 14 February 2022. |
|  |

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 representation has been made on the basis that over twelve months have passed since the application for the Order was made. The applicant is elderly and has a number of health problems. Given the time that it can take from application to the definitive map actually being modified he is concerned that he will not be able to use the route in his lifetime. Although the West Sussex Records Office was closed during part of the Covid-19 pandemic he states that it has been open for some time.
4. West Sussex County Council has adopted a Statement of Priorities for the investigations of Definitive Map Modification Order applications. Its approach is generally to deal with applications in order of receipt. The Council though exercises its discretion to deal with an application out of date order where it could be dealt with by other means, such as by agreement with the landowner for a dedication or permissive path, or where it is evident that minimal work would be required to conclude a matter due to the extent of evidence / lack of opposition. It also exercises its discretion where a delay could have consequences. In my judgement, an example of this would be where a there is a risk that a path could be lost through development.
5. In date order, excluding applications that are now with the Planning Inspectorate, the application is 23 out of 47 awaiting investigation and determination by the Council. A further 12 new applications are awaiting to be accepted and place on the register. Given that the application is accompanied only by archival documentary evidence, and the significant amount of such evidence, a notable amount of work will be required to assess the application. As a result, in the absence of any indication of a lack of opposition to the application, and the absence of evidence that a delay in its determination would have consequences such as the loss of the path, the Council’s adopted statement guides that there are no grounds for giving the application greater priority.
6. The adopted approach of the Council is fair and reasonable. However, the fact remains that the Council has a significant number of outstanding applications dating up to 4 years in age. The Council has provided no indication of when it anticipates being in a position to determine this application. However, it is clear from the register of applications supplied by the Council that in 2019, the year before the Covid-19 pandemic which significantly slowed down work, that only 5 applications were dealt with by the authority. At such a rate it would be 2026 before the application is dealt with – nearly 6 years after it was made and by any reasonable estimate far longer than should be reasonably practicable.
7. The lengthy closure of the West Sussex Record Office during the pandemic caused delays to the determination of applications on the list. The applicant states though that the Office has now been open for some time and this assertion has not been challenged by the County Council. These circumstances which limited the investigation of applications have therefore now passed.
8. Over the last year the Council has been facing staffing issues that have affected the processing of DMMO applications. Nevertheless, the Council has a statutory duty to keep its Definitive Map and Statement up-to-date. Difficulties complying with that duty due to staffing issues cannot be considered to be an exceptional circumstance given that alternatives such as external specialist resources exist. 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. Although the Council is also in the process of recruiting replacement staff there is no firm indication of when those resources will be in place.
9. There are other applications ranked higher in the Council’s list. I appreciate that the issue of a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council’s prioritisation system. However, those factors do not justify a direction not being given in this instance when the 12 month period has comfortably expired.
10. 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, approximately 18 months has passed since the application was submitted and no exceptional circumstances have been demonstrated.
11. Taking all of the above matters into account, I have decided that a date should be set by which the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 12 months has been 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** West Sussex County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Ian Radcliffe

INSPECTOR