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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: 8 June 2022** |

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| **Ref: FPS/V3500/14D/23**  **Representation by John Andrews**  **Suffolk County Council**  **Application to add a public footpath along the line of the U 8307 road, parishes of Chelsworth and Nedging with Naughton (Order Making Authority ref. CPM946)** |
| * An application was made by Mr John Andrews to Suffolk 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 18 January 2021. * 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. |
| * The initial representation is dated 7 January 2022. |
| * The Council was consulted about the representation on 18 January 2022 and its response is dated 3 February 2022. |
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Decision

1. The Council is directed to determine the above-mentioned application not later than 18 months from the date of this decision.

**Procedural Matter**

1. An initial application for a direction to determine the application was submitted within the 12 months following the date of the certificate of service of notice, as set out above. However, this was invalid because the 1981 Act provides that applications for directions can only be made once an authority has exceeded a 12-month period to determine a modification application.
2. The applicant consequently submitted a further application following the end of the 12-month period, on which the Council was also consulted. As a result, this decision results from the latter application, which is dated 6 May 2022. Nevertheless, I have taken the grounds of both applications and both of the Council’s responses into account in determining the application, due to the close timeframe within which the applications were submitted.

**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 Council refers to its Green Access Strategy 2020, which sets out that the Council “will continue to prioritise definitive map case work in the public interest”, with the aim to deliver “a public rights of way network that meets the needs of today’s user”.
5. The Council determines applications in accordance with its prioritising scheme, which was introduced in 2013. Cases are prioritised on the basis of potential public benefit, resulting in a priority score from high to low. Such an approach appears reasonable.
6. At the date of its response the Council had 112 formal DMMO applications outstanding. It also had a large number of other identified issues including “informal” DMMO applications, potential public path order cases and cases with a known issue but no identified potential means of resolution. It considers that a limited number of these are likely to fail to accord with statutory provisions.
7. The application has been assessed as low priority and hence it was ranked 82nd in the prioritising scheme at the date of the Council’s response. The Council does not refer to any work having been started on the application, and considers that it is unlikely to be determined for some considerable time.
8. The applicant considers that evidence of use of the Order route should be investigated due to the potential for such evidence to become unavailable as time passes.
9. The Council sets out that the application’s low priority for investigation arises in part as the route is recorded in the Council’s List of Streets as a maintainable highway. Nevertheless, the purpose of the List of Streets is to identify and record streets which are publicly maintainable, whereas a confirmed DMMO will precisely delineate the type and extent of any unrecorded public rights which exist over a route. Therefore the two designations relate to different considerations and the route’s presence in the List of Streets consequently does not provide justification for me not to issue a direction.
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, over a year has passed since the application was submitted and no exceptional circumstances have been demonstrated by the Council. Furthermore, the number of preceding cases outstanding suggests that the application would be unlikely to be determined for several years. I acknowledge that it is desirable for user evidence to be investigated as soon as possible. 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 18 months has been allowed. This includes an allowance to address working constraints arising from the 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 Suffolk County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

C Beeby

INSPECTOR