

|  |
| --- |
| **Direction Decision** |
| **by G D Jones BSc(Hons) DipTP DMS MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 July 2022** |

|  |
| --- |
| **Ref: FPS/L3055/14D/28**  **Representation by Stephen Parkhouse, Nottinghamshire Ramblers**  **Nottinghamshire County Council**  **Application to add a footpath situated in the Parish of East Retford running from East Retford FP42 at point A to East Retford FP19 at point B. (OMA ref. 1245)** |
| * 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 Nottinghamshire County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Stephen Parkhouse, dated 2 January 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 3 August 2020. |
| * The Council was consulted about your representation on 8 March 2022 and the Council’s response was made on 15 March 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. Schedule 14 to the 1981 Act, allows applicants to ask the Secretary of State for a direction following the expiration of 12 months from the date the certificate is served on the surveying authority.
2. 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 application form to add a public footpath to the Definitive Map is dated 3 August 2020. The representation indicates that the application was made after the route was blocked and then obstructed via the erection of a security fence. The Council stated on 15 March 2022 that the application is 136 out of 195 applications awaiting determination taken chronologically. The Council also refers to Policy A5-2 of its Rights of Way Management Plan 2018-2026 (the Management Plan), which states that it will process Definitive Map Modification Order (DMMO) applications in chronological order subject to five exceptions. The Council advises that it has information to suggest that two of these five criteria apply in this case, at least to some degree. They are:

* Where the public benefit to be gained is of more than limited impact. For example, where an order could result in a positive impact on the network such as adding a bridleway to complete an ‘off-road’ network for horse riders; and
* A claimed route triggered by an event such as fencing-off the line of a regularly used path.

1. In view of the foregoing, the Council has identified the application as one that needs prioritising, and is currently investigating the case. On 15 March, it stated that it expected to come to a decision on the application in approximately 12 months’ time. The Council has also set out that it has three officers engaged on DMMO applications that are either older than this application, have been given greater priority than it in line with its Policy A5-2 or are subject to a Schedule 14 Direction from the Secretary of State.
2. The Council is evidently attempting to deal with its backlog of cases on a managed basis, which prioritises according to the date of application whilst also applying a published and pragmatically applied set of criteria as set out in the Management Plan. Nonetheless, 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 21 months have passed since the application was submitted.
3. In my view the Coronavirus pandemic was an exceptional circumstance which is likely to have accounted for at least some of the delay to date bearing in mind when the application was made. The Council’s prioritisation of other cases, as outlined in para 5 above, also appears reasonable in the circumstances. Additionally, some further time would be required to adequately complete the investigation of the case and make a decision on the application.
4. Having regard to all of these circumstances, therefore, the Council’s request of a further ‘approximately 12 months’ is reasonable provided that it is fixed to no more than 12 months. Consequently, bearing in mind that the Council provided its advice over 2 months ago, a further period of 10 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** the Nottinghamshire County Council to determine the above-mentioned application not later than 10 months from the date of this decision.

G D Jones

INSPECTOR