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| **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: 27 September 2022** |

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| **Ref: FPS/L3055/14D/29**  **Representation by Stephen Parkhouse, Nottingham Area Ramblers**  **Nottinghamshire County Council**  **Application to add a Footpath in the parish of Costock from the A60 at point A to point C on Costock FP6; to add a Footpath in the parish of Costock from point B to point D on Costock FP6 (OMA ref. 1258)** |
| * 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 25 June 2021. |
| * The Council was consulted about your representation on 8 March 2022 and the Council’s response was made on 29 March 2022. |
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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. 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. In this case I have been provided with two certificates with different dates, 22 October 2020 and 25 June 2021. The latter appears to be the result of a change in landownership or occupation that predates the earlier certificate. In the circumstances, therefore, I have used the latter certificate for the purposes of calculating the 12 month period.
3. 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.
4. The application form, to add two sections of public footpath to the Definitive Map, is dated 22 October 2020. The representation states that *the village of Costock is very badly served by public rights of way. This is an important off road route for walkers linking Bunny BW15, via Bunny Hill Top (formerly part of the old A60) to Costock FP6 without having to walk alongside the very busy A60. Like all applications based on user evidence the pool of witnesses starts undergoing attrition as soon as the evidence is gathered due to death, mental and physical decline and moving away. In this case the application is also supported by records of use which should have speeded up assessing the case. At present though there is no evidence of any progress on the case.*
5. In its response, the Council stated that the application is 147 out of 195 applications awaiting determination largely 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 applications in chronological order subject to five exceptions:

(1) 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.

(2) Where a claim affects a householder in proving the existence or non‑existence of a right of way. For example, a route that passes close to residential buildings and dwellings.

(3) A claimed route triggered by an event such as fencing-off the line of a regularly used path.

(4) Where an application is claimed on 20-years use the personal circumstances of path users will be taken into account. For example, the witness's age, health and possible relocation.

(5) Where a claimed route is under threat due to development or major road schemes. For example, the dualling of the A46 trunk road or the widening of the M1 motorway.

1. The Council considers that four of these exceptions have been met. While it has not expressly identified which four, from the information before me they seem likely to be criteria (1) to (4) inclusive. Nonetheless, the Council states that it does not intend to expedite this case as it would lead to the preceding 146 applications being further delayed. The Council adds that it employs only three members of staff who are currently engaged on such applications and on directions from the Secretary of State. The Council has yet to investigate the case in question and estimates that it will take at least 14 years before it will make its decision.
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 pragmatic set of criteria as set out in the Management Plan. 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, however, approaching 2 years have passed since the application was submitted and it is well over a year since the date of the relevant certificate.
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. Additionally, some further time would be required to adequately investigate the case and make a decision on the application. While the Council’s prioritisation of cases appears reasonable as a matter of principle, it cannot possibly be right that an applicant should have to wait in the region of 16 years or more for a decision on an application of this type. Therefore, having regard to all of these circumstances and bearing in mind that the application relies in part on user evidence, a further period of 12 months only is 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 12 months from the date of this decision.

G D Jones

INSPECTOR