

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

|  |
| --- |
| **Ref: FPS/L3055/14D/27****Representation by Stephen Parkhouse, Nottingham Area Ramblers****Nottinghamshire County Council****Application to add a public bridleway from point A east of Trent Bridge (SK582382) under the bridge, along the embankment to point C on Welbeck Road and from there to point D (SK579375); to upgrade to a bridleway West Bridgeford footpath 6 from point D to E (SK574377) (OMA ref. 1197)** |
| * 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 9 December 2019.
 |
| * The Council was consulted about your representation on 8 March 2022 and the Council’s response was made on 31 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 bridleway to the Definitive Map and to upgrade a section of public footpath of the Definitive Map to bridleway, is dated 6 June 2019. The representation states that *the application is still to be decided, which should be quick and easy to assess as it is a key route for those on foot cycle & horse. To assist the County Council a fully worked up case with the available evidence and statement of case was included with the application, which is supported by 43 UES and historical evidence*.
4. The Council stated on 31 March 2022 that the application is 94 out of 200 applications awaiting determination largely taken chronologically and that it has yet to investigate the case. Referring to its current resources, the Council estimates it will take approximately 12 years until the application is determined.
5. 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 states that, although it could be argued that the application meets the first of these criterion, in its view it does not meet any of the others. The Council adds that it is not aware of any ongoing restrictions affecting public use of the path and that the applicant has not identified any special circumstances within his supporting reasons for this appeal. In the circumstances, the Council advises that it does not intend to expedite the case.
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, over 3 years have passed since the application was submitted and a little less 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 15 years 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