

|  |
| --- |
| **Direction Decision** |
| **by K R Saward Solicitor, MIPROW**  |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 September 2022** |

|  |
| --- |
| **Ref: ROW/3297025****Shropshire Council****Application to add a footpath from B4368 West of Old Spice Works, Clunton to Unmade Lane at Gunridge**  |
| * An application was made by Ann Berwick and Jenny Aywin-Foster to Shropshire 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 Council’s reference number for the application is 155.
* The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 22 February 2020.
 |
| * 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 representation is dated 14 April 2022.
 |
| * The Council was consulted about the representation by letter dated 13 May 2022 and its response is dated 25 August 2022.
 |
|  |

Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS.
2. 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 12 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.
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, 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. Each case must therefore be considered in light of its particular circumstances.
4. This application is for a definitive map modification order (‘DMMO’) to add a footpath to the DMS. At the date of the Council’s response, the application was positioned at 89 out of 177 on the Council’s list of applications awaiting determination. Of the registered applications, the Council states that 17 have, or are in the process of being, determined
5. The Council determines applications in accordance with its Statement of Priorities (Policy Statement No 8). This provides that applications to amend the DMS that fall within an area which has not undergone the district review process will be dealt with by priority area. Priority Area 1 is North Shropshire and the remaining un-reviewed Parishes within Oswestry District. Priority Area 2 is all other outstanding areas which have not yet been reviewed. Priority Area 3 is the rest of the County in relation to key historic document resources. In addition, applications within the three priority areas will be prioritised in accordance with key local demands identified through ‘Shropshire’s Great Outdoors Strategy 2018-2028’.
6. The application falls within Priority Area 3, being an area previously reviewed. As such, the Council classifies it as not warranting priority investigation.
7. The applicants explain that they have been waiting for over 2 years for a decision and the matter is causing anxiety and distress to a number of people, most of whom are elderly. They describe the route as a centuries old footpath which not only served village amenities but also provided public access to the local Methodist burial ground. The applicants say that relatives of those interred are now being re-directed through a neighbour’s private garden. They also claim that a stable has been erected across the path and access prevented from one end by fencing where an old stile was located.
8. The applicants make three points to support their contention that there are special circumstances to be taken into account. Firstly, most of their witnesses are elderly, time is passing, people are getting older and one witness has been lost already in the intervening years. Secondly, the claimed path has been made impassable by double fencing at one end and where the stile has disappeared completely. Thirdly, the claimed path is the only public access to the cemetery and relatives of the interred have been turned away since March 2020. One of the eldest witnesses who was refused access on their last visit has since died.
9. The Council acknowledges that the claim “has become more contentious locally and it would therefore be beneficial to determine the application.” However, due to the resources available and the number of other applications under investigation, the Council cannot say when this will take place.
10. I recognise that the Council has ongoing investigations which it would rightly not wish to interrupt and it has limited resources. Nevertheless, the Council has a statutory duty to keep the DMS up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. 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. There are other applications ranked higher in the Council’s list. To issue a direction to make a determination would disadvantage those who have been waiting longer. However, that does not justify a direction not being given in this instance when the 12 month period has expired.
12. Moreover, I note that the Council’s Statement of Priorities recognises that there may be occasions when applications falling outside its programme need to be determined in the public interest. Such instances may apply where the application is for a route that is being threatened by potential development work or where an amendment to a route would significantly improve public safety. Neither scenario is argued here but they appear to be examples only. In this instance, a case has been put as to why the public interest would be met in determining the application due to the claimed use of the route as the sole means of public access to the cemetery. Based on the number of users, there also appears to be much local interest in the matter being resolved.
13. The Council has given no indication of when it anticipates being in a position to start the investigations. 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. No exceptional circumstances have been advanced by the Council. I am content there is basis to warrant the application being given higher priority, which would also accord with the Council’s Statement of Priorities in light of the public interest.
14. Therefore, I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and decide the application. A further period of 9 months shall be allowed to make a determination which I consider to be reasonable and proportionate to the circumstances.

**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 Shropshire Council to determine the above-mentioned application not later than 9 months from the date of this decision.

K R Saward

INSPECTOR