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| **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: 26 October 2022** |

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| **Ref: ROW/3300547**  **Suffolk County Council**  **Application to add a bridleway from Brandon Byway No 7 at TL 735864 to the C620 road at TL 731843** |
| * An application was made by John Andrews (on behalf of The Ramblers Suffolk Area) 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 Council’s reference for the application is 325/158/356/MG CPM972. * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 2 June 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 representation is dated 2 June 2022. |
| * The Council was consulted about the representation on 9 June 2022 and its response is dated 15 July 2022. |
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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. It is one of 132 DMMO applications on the Council’s list awaiting determination as of 15 July 2022. Of those, there are 52 applications which will not be prioritised until the relevant applicant completes the procedural requirements by formally notifying the landowner/s of the application.
5. The Council’s current Rights of Way Improvement Plan 2020-2030 is within the document titled ‘Suffolk Green Strategy’. The delivery plan includes the objective of ‘recording the network’ by ‘making orders in the public interest’. One of the measures identified to achieve this is to continue to prioritise definitive map case work in the public interest.
6. Council officers meet six times a year to consider and prioritise new claims. Priority is assigned to each application in accordance with a prioritisation scheme introduced in 2013. Nine criteria are applied (1) Threat to existing or unrecorded route (2) level of public interest (3) value for money (4) network improvement (5) safety (6) strength of evidence (DMMO) (7) resolves problem, other than financial (8) residential obstruction, and (9) proposed development affecting the route. Each criterion is scored out of 10 and weighted, where applicable, as a percentage of the score. The final priority score is the sum of the scores plus weightings. From this, each application is ranked as low, medium or high priority.
7. According to the Council’s spreadsheet, 18 of the applications are in process. All except one of these is ranked as ‘high’ priority. The one ‘medium’ ranked application in process is being addressed by way of a dedication agreement.
8. In response to the direction request, the Council advised that Mr Andrews’ application scored well for network improvement and for the strength of evidence. Although the claimed route had been considered previously and not confirmed, this was prior to new case law meaning that the Enclosure Award evidence is now regarded as strong. The application has been assigned a score of 52.1, which places it in the high priority category for future investigation. Currently 22 order making cases are assigned a higher priority. There are 13 formal applications not yet started which are assigned a higher priority and so the Council’s present estimate is that this application is unlikely to be determined before 2024.
9. Aside from the formal applications, the Council states that it had a previous backlog of cases before adopting its current prioritisation scheme in September 2013. This includes 86 ‘informal’ DMMO claims, 46 potential public path order cases, 4 TRO cases and a further 259 potential cases where Officers are yet to establish the most appropriate mechanism for order making.
10. I recognise that in an environment of limited resources there is a need to prioritise potential order making work. The criteria approach utilised appears to be reasonable and the applicant has not suggested otherwise.
11. 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.
12. I am mindful that this is one of many high priority applications before the Council and the 12-month period has not long expired. Moreover, there are other applications with higher scores in the Council’s list. To direct the Council to make a determination would disadvantage and potentially delay applications which warrant greater urgency under the Council’s prioritisation system. Indeed, I note that the application has been overtaken by other more recent higher scoring cases. The applicant was given opportunity to identify any special circumstances which were not set out in the original application that he wished me to take into account but none were identified.
13. 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. Whilst this is a repeat application, there has been a change in the circumstances since the previous application was considered which weighs in its favour.
14. Given that the application has been investigated before, it might be anticipated that the investigatory process should be quicker and easier this time around. The Council points out that the number of outstanding applications is expected to fall once the Deregulation Act 2015 comes into force when up to 18 of the current applications are expected to fail a preliminary evidential assessment. However, that will be of little comfort to the applicant. As things stand the Council suggests that the application will be decided no earlier than 2024. Of course, numerous factors could influence that estimate, such as other applications and staffing resources. It is indefinite and uncertain.
15. In the circumstances, there is a case for setting a date by which time the application should be determined. A further period of 18 months would strike the right balance of giving the applicant assurance that his application will be determined within a finite and reasonable period in line with the Council’s prediction whilst also accommodating other high priority applications already in the system.

**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.

K R Saward

INSPECTOR