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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: 13 October 2022** |

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| **Ref: ROW/3301993**  **Staffordshire County Council**  **Application to add a footpath from A4091 opposite Salts Lane, Drayton Bassett to Drayton Brick Bridge and access to canal towpath** |
| * An application was made by Marlene Keenan to Staffordshire 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 022069. * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 12 April 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 27 June 2022. |
| * The Council was consulted about the representation on 11 July 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. In this case, the certificate of service is dated 12 April 2021.
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 DMS 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 in the parish of Drayton Bassett to the DMS. The application relies upon user evidence. The Council has accrued a backlog of 286 applications awaiting determination. At the time of its response, this application was ranked 258.
5. The Council operates a system of determining applications in the order of receipt unless a listed exception applies. In summary, those exceptions concern cases where land affected by the route has received permission for development or where severe financial hardship is caused by reason of the application for a DMMO. In principle, this is a reasonable approach. Neither exception applies in this case.
6. Unless a direction is given, the application will remain on file until reaching its turn. The Council says it is unable to estimate or give a timescale as to how long it will take for this application to be processed. The reason given, is the number and complexity of claims, the lengthy nature of the DMMO process and the deadlines from Directions already issued by the Secretary of State.
7. There are other applications ranked higher and/or equally deserving that would be disadvantaged by a direction taking this application out of turn. However, that does not justify a direction not being given once the 12 month period has expired.
8. I note that the Council has already been directed to determine 74 applications by the Secretary of State giving a determination range from June 2018 to March 2023. Significant staff time will be required to carry out and complete the investigations. I recognise that DMMO applications can be complex and may necessitate interviewing a considerable number of witnesses and landowners.
9. If the Council adheres to the directions already issued then significant progress should already have been made in deciding those applications. As more directions are issued there will be a further increase in waiting time for other applicants. The Council suggests that granting directions would result in its own prioritisation system being undermined with applications effectively being prioritised by the Planning Inspectorate, not the Council.
10. That is not so. The applicant has exercised a statutory right to seek a direction which is an option available to all applicants upon expiry of the 12-month period. The provision exists to be used. Applications can only be considered in accordance with the statutory provisions within the 1981 Act. It is not a question of the Secretary of State imposing a system of prioritisation but applying the law in circumstances in which the Council has not made a decision within the period normally expected for such applications.
11. The Council further considers that the burden imposed from the number of requests and deadlines for determination is unreasonable with the end result of it having been set objectives that cannot realistically be met. I am sympathetic to the strain placed upon staff tasked with an ever increasing number of directions. Ultimately though, it is the responsibility of the Council to ensure that sufficient resources are devoted to meeting its statutory duties with regard to the protection and recording of public rights of way, as set out in Circular 1/09.
12. The Council highlights a theme emerging in recent months of late material/ comments being received just before committee causing the application being deferred and rescheduled to a later meeting. In most cases the late material is either irrelevant or has no evidential effect. In consequence the Council has imposed a deadline for submissions with a proviso that they may not be considered if made within 2 or 3 days of the committee meeting.
13. The Council further states that whilst it endeavours to deal with directions in date order this is not always possible due to the nature of the work and it therefore consciously deals with directed applications as soon as they are ready.
14. These points are made to illustrate the endeavours being made by the Council to deal with directions as expeditiously as possible despite being faced with an almost unsurmountable task.
15. Given the current ranking of the application in what is undeniably a very long list, it could be many years before a determination is reached. The applicant fears that it will take decades without the intervention of a direction. This is no exaggeration given that there are numerous applications submitted in the 1990’s which are still on the Council’s waiting list. The applicant calculates there are 103 applications that have remained undetermined for 20 years or more. According to the applicant, only 3 applications were determined between 1 January – 31 May 2022, a statistic not denied by the Council.
16. I bear in mind that the 12 month period has not long expired in this case. Even so, the applicant is entitled to expect their application will be determined within a finite and reasonable period. The efforts being made by the Council are noted but this is against a backdrop of an ever increasing list and history of slow progress which will give the applicant little reassurance of a timely decision. It is unreasonable to expect the applicant to wait indefinitely with no clear anticipated timescale.
17. In the circumstances, 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 in circumstances where it has other directions to meet. Another 12 months from now would give an expiry date ending 6 months or so after the date of the longest direction mentioned by the Council. Having regard to all issues raised, I consider it appropriate to allow a further period of 12 months for a decision to be reached.

**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 Staffordshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

K R Saward

INSPECTOR