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| **Direction Decision** |
| **by Sue Arnott FIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 07 September 2022** |

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| **Ref: ROW/3302442**  **Representation by Mr J Deane**  **EAST SUSSEX COUNTY COUNCIL**  **Application to modify the definitive map and statement for the area by adding a footpath at Parish Wood, East Hoathly** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to East Sussex County Council to determine an application for an order (RWO 249) under Section 53(5) of that Act. |
| * The application was submitted to East Sussex County Council on 16 June 2020 and the accompanying certificate under Paragraph 2(3) of Schedule 14 was also dated 16 June 2020. |
| * The representation, dated 1 July 2022, is made by the applicant, Mr J Deane. |
| * The Council was consulted about the representation on 13 July 2022 and the Council’s response was made on 22 August 2022. |
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Decision

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

Reasons

1. Mr J Deane submitted an application to East Sussex County Council (ESCC) on 16 June 2020. This sought to record on the definitive map a public footpath between the north-west corner of Parish Wood to a footbridge at the northern boundary of Moat Wood on the north-west side of East Hoathly. Once the route enters Moat Wood, the Woodland Trust has guaranteed the public unrestricted access within the wood in perpetuity.
2. The evidence adduced in support of the claimed footpath included statements from users of the path, maps, photographs and plans.
3. The application was submitted at a time when ownership of Parish Wood (also known as the Pine Plantation) was changing hands. It was motivated by a desire to secure a permanent route, this being one commonly used on a regular basis for many years by local people.
4. The request was made to the Secretary of State due to the lengthy period of time which has elapsed since the application was submitted. Since then, planning permission for 205 new homes in the village has been granted. Once these new dwellings are occupied, the claimed footpath would become a prime route to Moat Wood, the southern end of the village and the two existing public footpaths radiating from that area. Mr Deane submits that this is an important path, both for today’s residents and for future generations. This is a major new factor that supports the early resolution of this claim.
5. 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 twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
6. As required by Rights of Way Circular 1/09 (*Version 2, October 2009: Department for Environment, Food and Rural Affairs*) 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.
7. In response ESCC confirmed that an initial investigation was carried out in this case. It is now listed as number 36 on its list of 80 applications awaiting determination. Given the available staff resources, ESCC estimates that it will be another 4-5 years at the earliest before a decision is made on this application.
8. The Council’s policy is to investigate and determine applications for orders in sequence of receipt unless there are exceptional circumstances which would justify prioritisation. Such circumstances include where the route would significantly enhance public safety, where the claimed route is threatened by imminent development, or where the demand for the route is particularly high or would form part of a recognise strategic link in the network. It submits that the application does not fall into any of these categories.
9. However, applications subject to a determination date provided by the Planning Inspectorate are usually worked ahead of these, in chronological order of the determination date, where possible. Taking more cases out of turn will have an impact on others that are pending.
10. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances as authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the definitive map and statement up to date. In this case more than 2 years have already passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
11. I recognise that the resources allocated by ESCC to this area of work has limited its progress in determining outstanding applications. This has pushed ESCC into an invidious position, gradually accumulating an increasing number of cases to be taken out of turn as a result of being directed to determine them, leaving other cases to wait even longer.
12. Nevertheless, the applicant is entitled to expect that the application is processed within a reasonable length of time. A delay of 2 years with the prospect of a further 4-5 years is well beyond the timetable anticipated by the legislation. I therefore consider that there is a case for setting a date by which time the application should be determined.
13. However, I accept that ESCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that restrictions brought about by the Covid-19 pandemic have hindered research work and I must make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 18 months for a decision to be reached in this case.

**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 East Sussex County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

Sue Arnott

**Inspector**