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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: 11 October 2022** |

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| **Ref: FPS/ V3500/14D/24**  **Suffolk County Council**  **Application to add a byway open to all traffic from the B1116 road at TL 816795 to the A1065 road at TL 756818** |
| * 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 CPM945. * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 21 January 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 10 March 2022. |
| * The Council was consulted about the representation on 22 March 2022 and its response is dated 15 July 2022. |
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Decision

1. The Council is not 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 21 January 2021.
3. The application is for a definitive map modification order (‘DMMO’) to add a restricted byway to the DMS in the parishes of Elveden, Wangford and Lakenheath. 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.
4. The Council confirms that it has not yet commenced a full investigation of the application which currently remains on its backlog of cases for future investigation.
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. The Council says it is currently working on 19 applications albeit only 18 are highlighted as being in process on its spreadsheet. 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. The score assigned to this application places it in the ‘medium’ priority category for future investigation. Currently 49 order making cases are assigned higher priority, 34 of which have not yet started. The Council aims to commence cases assigned a medium priority within 2 to 5 years. Its present estimate is that this application is unlikely to be determined before 2027.
9. The Council explains that the reason the application scored medium priority was because, while it would provide a network improvement, the claimed route has been the subject of previous unsuccessful applications. The Council states that, with slight variations at one particular location, the claimed route has been considered by the Planning Inspectorate at three public inquiries in 1992, 2002 and 2013. On each occasion the Inspector decided not to confirm the Order. Although Mr Andrews has provided new evidence, Council Officers consider it is of minimal weight and it is probable the Council will reject the application.
10. 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.
11. Each case must therefore be considered in light of its particular circumstances.
12. The applicant considers “*it is entirely justifiable to ask that this application be taken forward as soon as it may possibly be done since attempts to get this historic road recorded on the Definitive Map have been continuing the 1970’s, despite various setbacks*.” The applicant also cites his age as a reason for pressing for a degree of urgency and the potential need for the matter to be resolved via a public inquiry.
13. There is no suggestion that the Council’s prioritisation system is unreasonable. I daresay that most, if not all, applicants would consider their application is important and deserving of priority. An applicant’s age does not in itself justify taking an application out of sequence particularly if much of the claimed route has been considered on previous occasions. The applicant has not explained how the latest application differs from those before and why he considers it has better prospects. Indeed, there is no indication that any new or different evidence is relied upon.
14. There are many other applications ranked higher in the Council’s list which are ‘high’ priority and which will have not been subject to previous consideration. To issue a direction to make a determination would disadvantage those who have been waiting longer. It would also invariably delay other applications warranting greater urgency under the Council’s prioritisation system.
15. 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. However, these are not normal circumstances when most of the claimed route has been considered on three previous occasions. It is further noted that the 12 month period has not long expired.
16. In all the circumstances, I have decided that there is not a case for setting a date by which time the application should be determined. However, that will not preclude the applicant from making further representations to the Secretary of State in future if his application remains undetermined for an unreasonable period of time

K R Saward

INSPECTOR