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| **Direction Decisions** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 December 2022** |

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| **Ref: FPS/A0665/14D/6, 7, 8 & 9**  **Representation by the Parish Councils of Christleton and Littleton**  **Cheshire West and Chester Council**   * **Application to add a footpath from SJ 44556645 at 078/FP7/1 to SJ 44636629 at 078/FP3/1.** * **Application to add a footpath from SJ 44796633 at 078/FP3/1 to SJ 44976604 at 078/FP13/1.** * **Application to add a footpath from SJ 45056681 at 187/FP6/1, Fir Tree Lane to SJ 45166659 at 187/FP5/1.** * **Application to add a footpath from SJ 44626628 at 078/FP3/1 to SJ 44806591 at 078/FP13/1.** |
| * The representation was made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking directions to be given to Cheshire West and Chester Council to determine four applications for Orders, under Section 53(5) of that Act. * Cheshire West and Chester Council have grouped the applications together under one reference number CWAC/021/DMMO. |
| * The representation was made by the Parish Councils of Christleton and Littleton, on 26 April 2022. * The certificates under Paragraph 2(3) of Schedule 14 were dated 16 December 2020 and 17 April 2021. |
| * The Council was consulted about the representation on 6 June 2022 and the Council’s response was made on 12 July 2022. |
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Decision

1. The Cheshire West and Chester Council (CWCC) is directed to determine the above-mentioned applications.

Reasons

1. Schedule 14 of the Wildlife and Countryside Act 1981 sets out provisions for applications made under section 53(3) for orders to amend the definitive map and statement (DMS). Four applications were completed by the Parish Councils of Christleton and Littleton (PCCL) for modification orders to add the footpaths identified above.
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 twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
3. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 (Circular 1/09) 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. The applications were registered by CWCC on 17 December 2020 during the Covid-19 pandemic where restrictions meant that many local authority offices were closed to the public. The pandemic increased pressures on the rights of way network and on CWCC’s officers.
5. PCCL’s applications currently sit at number 10 out of 30 on CWCC’s Schedule 14 Applications Priority 2022/2023 (the 2022/2023 Priority). Applications are prioritised chronologically unless there are extenuating circumstances where there is a danger to the public or risk to life. They are not prioritised on the presumption of rights or where routes have been obstructed.
6. CWCC are working to address the backlog of applications and are trialling a programme using consultants to determine them. Five applications have been allocated for determination by consultants in 2022/2023 and, if this is successful, funding will be secured for another five. PCCL’s applications will be included for determination in 2023/2024 with a target completion date of December 2023.
7. PCCL considers that there should be flexibility to the chronological order where there is a great deal of interest from the local community. The footpaths were very well used until September 2020 when the landowner fenced them. They provided access between and around the two villages and connected to the wider footpath network. The closures have been to the detriment of parishioners physical and mental health. They claim that most of the other applications are for paths that are still open. They find it particularly worrying that there are applications awaiting determination dating back to 2004.
8. I consider that dealing with applications in chronological order, with scope for them to be taken out of order in extenuating circumstances, is a reasonable approach. Although I note that PCCL’s applications have a higher priority than they would if they were in chronological order.
9. CWCC have a duty to keep the DMS up to date and Circular 1/09 makes it clear that Authorities should ensure that sufficient resources are allocated to meeting their statutory duties with regard to the protection and recording of public rights of way. A lack of resources would not be considered as an exceptional circumstance for not determining applications.
10. 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 twelve months under normal circumstances. In this case, two years have passed since the applications were registered and no exceptional circumstances have been indicated. I am mindful that CWCC have a programme in place to determine applications and that PCCL’s applications are targeted for determination by December 2023.
11. In the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. A further period of nine months shall be allowed to make the determinations. I appreciate that PCCL want them determined earlier, but CWCC will need some time to investigate and determine the applications. Setting a date will ensure that the applications are not affected by any changes in priorities.

**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 Cheshire West and Chester Council to determine the above-mentioned applications not later than nine months from the date of this decision.

Claire Tregembo

INSPECTOR