

|  |
| --- |
| **Direction Decision** |
| **by Barney Grimshaw BA DPA MRTPI (Rtd)** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 December 2022** |

|  |
| --- |
| **Ref: FPS/X2600/14D/27**  **Representation by Ian Witham**  **Norfolk County Council**  **Application to add a restricted byway from Dereham Road, Whinburgh to Garvestone Restricted Byway No.1 (OMA ref. 63311/HP510/1)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Norfolk County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Ian Witham, dated 14 May 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 28 October 2020. |
| * The Council was consulted about the representation on 24 May 2022 and the Council’s response was made on 15 June 2022. |

Decision

1. The Council is directed to determine the above-mentioned application not later than 6 months from the date of this Direction.

Reasons

1. 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. 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 (Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs).
2. In this case, the Council deals with applications in accordance with a statement of priorities contained in its published Access Improvement Plan. This means that applications are determined in chronological order of their receipt subject to priority being given to some cases in certain specified circumstances, none of which apply in this case.
3. The Council also states that it has experienced a great increase in modification applications which it cannot progress as rapidly as it would like with the staff resources currently available. Whilst more resources have been sought, this is difficult to achieve as cuts in services are currently having to be made.
4. The Council has stated that a decision on this application is ‘not imminent’.
5. 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. In this case, more than 2 years have passed since the application was submitted and no indication has been given as to when it will be determined. This would suggest that the Council is failing to deploy sufficient resources to the determination of such applications.
6. This is not an acceptable situation. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
7. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I therefore propose to allow a period of 6 months in these cases.

**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 Norfolk County Council to determine the above-mentioned application not later than 6 months from the date of this Direction.

Barney Grimshaw

INSPECTOR