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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 January 2023** |

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| **Ref: ROW/3310458 and ROW/3310459**  **Representations by Christopher Smith on behalf of the Ramblers**  **East Sussex County Council**  **Application to add a footpath from Gore Park Road to St Marys Road, Eastbourne (Council ref. RWO 265) (ROW/3310458)**  **AND**  **Application to add a footpath from Farlaine Road to the A2270, and from the A2270 to a junction at TQ59333 01099, Eastbourne**  **(Council ref. RWO 269) (ROW/3310459)** |
| * The representations are 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 East Sussex County Council (the Council) to determine applications for Orders, under Section 53(5) of that Act. |
| * The representations are made by Christopher Smith, dated 2 and 3 November 2022 and amended on 9 November 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 in relation to ROW/3310458 is dated 14 June 2021. * The certificate under Paragraph 2(3) of Schedule 14 in relation to ROW/3310459 is dated   8 September 2021. |
| * The Council was consulted about the representations on 10 November 2022 and the Council’s response was made on 19 December 2022. |
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Decision

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

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.
2. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: 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.
3. Initial checks have been made by the Council to validate the applications and the cases currently await their turn for full investigation to begin. The Council normally investigates applications in chronological order of receipt, unless prioritisation is justified by one of the exceptional circumstances listed in their Statement of Priorities – where a successful order would significantly enhance public safety; where the claimed route is threatened by imminent development; or where demand for the claimed route is particularly high, or it would form part of a recognised strategic link in the network. However, applications subject to a determination date provided by the Planning Inspectorate are usually worked ahead of these, where possible, in chronological order of the determination date.
4. The application from Christopher Smith for ROW/3310458 was submitted on 1 June 2021 and is ranked at 51 of 79 on the Council’s list of outstanding Definitive Map Modification Order (DMMO) applications. The application for ROW/3310459 was submitted on 9 August 2021 and is ranked at 55 of 79 on the Council’s list. It is understood that other cases are currently awaiting Direction Decisions, however this is unlikely to significantly affect the position on the list of the above applications. The Council is unable to give an accurate timescale as to when these cases will be investigated but has estimated a timeframe of 5-6 years at the earliest. The Council submits that there are no special circumstances that would require either case to be prioritised and there is nothing to suggest that the system employed is unreasonable, or that the applications have been ranked incorrectly.
5. The Applicant is concerned that given his health and age, and the current estimated timescale for the applications to be determined, he may not be in a position to advocate for the applications in the more distant future and that the Ramblers may not have the resources to take over the cases. He is also fearful that because the applications are based on user evidence, as time elapses, the likelihood increases that those able to give evidence will decrease in number. Furthermore, the applicant believes that although the claimed routes are currently available, the land over which they run is privately owned and may be blocked at any time. The applicant feels that the delay in determining applications is due to the failure of The Council to employ sufficient staff to carry out its statutory duties and that without a Direction, these cases may take many years to be determined.
6. I recognise that there are a large number of applications awaiting determination and that the Council has a Statement of Priorities to ensure fair ranking. I also appreciate that the resources allocated by the Council to work on DMMO applications in recent years has restricted its progress in determining outstanding applications, resulting in an accumulation of cases being taken out of turn as a result of being directed to determine them. I note that the issue of a Direction for these cases would further disadvantage those applications that have been waiting longer, as well as those that rank higher on the priority list.
7. However, the applicant is entitled to expect their applications to be determined within a finite and reasonable period and the Council have a statutory duty to keep their Definitive Map and Statement up to date. Difficulty complying with this due to insufficient staff and a backlog are not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
8. 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 12 months have passed since both of the applications were submitted and no exceptional circumstances have been indicated.
9. Correspondingly, I have decided that there is a case for setting a date by which time the applications should be determined. However, I accept that the Council will require time to carry out its investigations and make a decision on the applications. I also recognise that the restrictions brought about by the Covid-19 pandemic halted the process of determining DMMO applications, creating the backlog and I am mindful that the Council have requested any new Directions do not jump ahead of those already issued. Taking this into consideration, alongside the fact that the 12-month period has not long expired for either application, a further period of 18 months has been allowed.

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

A Behn

INSPECTOR