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| **Direction Decision** |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 January 2023** |

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| **Ref: ROW/3305893**  **Representation by Debbie Rayner on behalf of the Humber Bank Preservation Society**  **North Lincolnshire Council**  **Application to add footpaths from OSGR 992-214 to 975-211, & access paths to Sluice Road from Humber Bank to access path to Pebbly Beach – Humber Bank and Connecting Routes, South Ferriby** |
| * 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 North Lincolnshire Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Debbie Rayner on behalf of the Humber Bank Preservation Society, dated 9 July 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 23 November 2021. |
| * The Council was consulted about your representation on 21 September 2022 and the Council’s response was made on 26 October 2022. |
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Decision

1. The Council is directed to determine the above-mentioned application by 31 July 2023.

Procedural matter

1. The Council advised that the applicant's Schedule 9 certificate dated 9 July 2021 was not received by it until 2 August 2021. In addition, the Council explains that although the claimed route is described by the applicant as being unwalkable from points D to P and A to B on the application map, it remains freely accessible at all times from E to H (approximately half the total length). Neither claim prejudices the proper consideration of this application and I have proceeded on the basis of the original date shown in the application and as described in the banner heading to this decision.

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[[1]](#footnote-2).
2. The Council indicates that applications are dealt with in simple chronological order and there is no grading of applications in terms of any identified priority matrix policy. No reference is made by the Council linking such applications to the objectives set out in any published Rights of Way Improvement Plan. The Council acknowledges that its present staffing resources has impacted upon its ability to deal with applications expeditiously. It is hopeful that recent staff recruitment will lead to improvements in the near future.
3. While I have no reason to dispute that the Council’s prioritisation procedure appears fair, it is somewhat simplistic and does not allow for prioritisation of cases to take place. However, I also have to recognise that timeliness is also a reasonable expectation. The Council currently has some 10 fully served applications awaiting determination and the current application is ranked 9th amongst these. There is no indication that this application is likely to be considered within a reasonably short timeframe. I note that three years have now passed since parts of the route became impassable.
4. It appears from the evidence that the application relies at least in part, on user evidence to support the case. Where reliance is placed on user evidence, the longer period between the date of calling into question and the date of investigation, the more difficult it is to get to the truth of the matter and for any discrepancy in the route of the path to be reconciled. I have noted the applicant’s reasoning for making the application and that families and users are no longer able to use parts of the route, which has considerable heritage value and is of regional significance. Evidently, the Council is aware of the issues raised by the applicant and appears willing to resolve matters.
5. That said, the Council has failed to provide a date for resolving the issue and this is not acceptable. 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.
6. Normally, 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, some 18 months has already passed since the application was submitted and it there is no indication that it will be determined soon. I have sympathy with officers who are genuinely trying to deal with the backlog of applications; however, the situation within which they find themselves would suggest that the Council is failing to deploy sufficient resources to the determination of such applications. If this is indeed the case, I assume that this issue has been drawn to the attention of the portfolio Member with responsibilities for Rights of Way matters at North Lincolnshire Council who is best placed to bid for increased resources to be devoted to this important area of work.
7. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly, I propose to allow a period of 6 months 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** North Lincolnshire Council to determine the above-mentioned application not later than 31 July 2023.

Gareth W Thomas

INSPECTOR

1. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)