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| **Direction Decision** |
| **by Claire Tregembo BA (Hons) 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/3310324**  **Representation by Christopher Smith on behalf of The Ramblers**  **East Sussex County Council**  **Application to add a footpath from Eastbourne 10/1 to Wish Hill and spur to Badgers Brow (****OMA Ref: RWO 271)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to East Sussex County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Christopher Smith, is dated 2 November 2022. * The certificate under Paragraph 2(3) of Schedule 14 was dated 13 August 2021. |
| * The East Sussex County Council was consulted about the representation on 4 November 2022 and their response was dated 14 December 2022. |
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Decision

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

Reasons

1. The applicant has made the direction request because he believes that without one it will be many years before the application is determined. He is aware that the process to record public rights of way is long and would like the application to be determined within a reasonable time to ensure that he is fit enough to attend a public inquiry.
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 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 be considered in light of its particular circumstances.
4. The East Sussex County Council (the Council) Statement of Priorities sets out its approach for determining applications. This is in order of receipt unless there are exceptional circumstances which justify prioritisation of an application. Exceptional circumstances are where the route would significantly enhance public safety, where the claimed route is threatened by imminent development, where the demand for the route is particularly high or where it would form part of a recognised strategic link in the network. There are no circumstances that require this application to be prioritised and the route is available for use.
5. Following an initial investigation, the application sits at fifty seven on the Council’s list of seventy nine applications awaiting determination. Due to limited staffing resources, it is anticipated that it will be at least five years before the application is determined. Order making was suspended during the Covid-19 lockdowns leading to a backlog of Orders waiting to be made which will take time away from investigating applications.
6. Nevertheless, authorities have a duty to keep the definitive map and statement up to date and Circular 1/09 makes it clear that they should ensure that sufficient resources are allocated to meeting their statutory duties with regards to recording public rights of way. A lack of resources is not considered to be an exceptional circumstance for not determining applications.
7. Applications where the Council have been directed to make a determination are normally worked on ahead of other applications. The Council have already been directed to determine eight other applications which they indicate will take between eighteen months and two years to complete. Another six applications have been submitted to the Secretary of State with requests for directions. This delays work on older and historical claims which the Council consider are equally as valid. I appreciate that making a direction to determine the application would disadvantage applicants who have been waiting longer and could delay applications where there are exceptional circumstances.
8. However, 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. The applicant is entitled to expect their application will be determined within a reasonable timescale and a five to six year wait is well beyond that anticipated by legislation. I therefore consider that there is a case for setting a date by which time the application should be determined.
9. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Taking into account the other directions, I consider a further period of eighteen months would be reasonable to reach a decision on this application.

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

Claire Tregembo

INSPECTOR