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| **Direction Decision** |
| **by Ian Radcliffe BSC(Hons) MRTPI MCIEH DMS** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 March 2023** |

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| **Ref: ROW/3307988****Representation by Mr & Mrs Bodle****Kent County Council****Application to amend the alignment of part of Public Footpath SR620 at Edenbridge (OMA ref. PROW/SE/C435)** |
| * 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 Kent County Council to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation is made by Mr & Mrs Bodle, dated 14 October 2022.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 13 November 2019.
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| * The Council was consulted about your representation on 20 October 2022 and the Council’s response was made on 29 November 2022.
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Decision

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

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 Rights of Way Circular 1/09 Version 2, was published by the Department for Environment, Food and Rural Affairs in 2009. It advises that the Secretary of State in considering whether, in response to 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.
2. The applicants applied to the surveying authority, Kent County Council (KCC), in 2019 to divert a public footpath that is shown on the definitive map as running through their garden. The request to direct the authority to reach a decision on the application was made on the basis that almost three years had passed since the application for the Order was made. As this request was made in October 2022 over three years has now passed since the application was made. The applicants state that they are unable to sell the property until this matter is resolved and that, as a result, their lives are on hold.
3. KCC’s policy for the investigations of Definitive Map Modification Order (DMMO) applications is to deal with them in order of receipt unless certain exceptions apply. The exceptions are where the existence of the route is threatened by development, where resolving an application could assist public safety, and where a significant improvement to the network could occur.
4. In date order, excluding applications that are now with the Planning Inspectorate, the application is approximately 20 out of approximately 67 awaiting investigation and determination by KCC. On the basis of the Council’s policy for the investigation of DMMO applications there are no grounds for giving the application greater priority.
5. The adopted approach of KCC is fair and reasonable. However, the fact remains that KCC has a significant number of applications outstanding that are more than 4 years old. At the end of November 2022 KCC estimated that it would be in the region of 2 to 2.5 years before investigation of the application begins. This would mean that it would be the end of 2024 or towards the middle of 2025 before the application is dealt with – 5 to 5.5 years after it was made. By any reasonable estimate this is far longer than an applicant should have to wait and not as soon as is reasonably practicable.
6. The COVID-19 pandemic meant that the work of the Definitive Map team was put on hold for some time. These circumstances though have now passed.
7. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way. Given that a backlog of several years exists, the indications are that more resource than the current equivalent of 1.5 full time staff needs to be directed to this area of work.
8. There are other applications ranked higher in KCC’s list. I appreciate that the issue of a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the KCC’s policy. However, these factors do not justify a direction not being given in this instance when the 12 month period has comfortably expired.
9. 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, over 3 years have passed since the application was submitted and no exceptional circumstances have been demonstrated.
10. Taking all of the above matters into account, I have decided that a date should be set by which the application should be determined. It is appreciated that KCC will require some time to carry out its investigation and make a decision on the application. A further period of 12 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** Kent County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Ian Radcliffe

Inspector