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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: 08 March 2023** |

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| **Ref: ROW/3311014**  **Representation by F. Spivey on behalf of Emley Action Group and Trust**  **Kirklees Council**  **Application to add a footpath from junction of PROW DEN 21/20 to junction of PROW DEN 96/10 (Council ref. File no. 311)** |
| * 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 Kirklees Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Emley Action Group and Trust, dated 7 November 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 3 September 2021 and was served on 4 September 2021. |
| * The Council was consulted about the representation on 7 December 2022 and the Council’s response was made on 20 January 2023. |
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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.
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. The Council adopts a robust priority matrix system to establish the order in which Definitive Map Modification Order (DMMO) applications shall be determined. The system, which was approved by the Council’s Cabinet in 2012, allocates a score based on priority criteria which include paths under threat, those providing a range of public benefits, and the age of both the application and the witnesses. Any applications that score the same points are dealt with in chronological order of receipt.
4. The application from Emley Action Group and Trust was made in September 2021, received by the Council on 20 October 2021 and is currently ranked at 56 of 250 on the Council’s prioritised register of outstanding applications. There is nothing to suggest that the system employed by the Council is unreasonable, or that the application has been ranked incorrectly. However, given the changing nature of the priority system, the application’s current position on the list and other Directions already received by the Council, a timeframe for determination is unable to be provided.
5. Emley Action Group and Trust consider that the footpath being claimed is a vital link in the village and are concerned that the land through which the footpath passes, is subject to a planning application and is also in the process of being sold.
6. I do recognise that the Council has a priority matrix system to ensure fair ranking and I note that the Council have recently recruited an additional staff member to investigate and determine DMMO applications. I also appreciate that the issue of a direction would disadvantage those applications that have been waiting longer, as well as those that rank higher on the priority list. However, the applicant is entitled to expect their application 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 a backlog or a staff shortage is not an exceptional circumstance, as sufficient resources should be in place to deliver this statutory duty.
7. 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 the application was submitted and no exceptional circumstances have been indicated. The Council has advised it is unable to provide a timeframe for determination, but I nonetheless consider that the applicant is entitled to some certainty in this respect.
8. Correspondingly, I have decided that there is a case for setting a date by which time the application should be determined. I note the Council’s request that any Direction given should, if possible, allow a further 24 months, but I am also mindful of the evolving circumstances of this application. Given that the Council will require some time to conduct its investigation and make a decision on the 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** Kirklees Council to determine the above-mentioned application not later than 18 months from the date of this decision.

A Behn

INSPECTOR