

|  |
| --- |
| **Direction Decision** |
| **by Nigel Farthing LLB Solicitor** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 February 2023** |

|  |
| --- |
| **Ref: FPS/L3055/14D/30**  **Representation by Flintham Parish Council**  **Nottinghamshire County Council**  **Application for the addition to the Definitive Map of footpaths at Coneygrey Spinney, Flintham (OMA ref. 1271)** |
| * 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 Nottinghamshire County Council (‘the Council’) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation dated 17 May 2022 is made by Flintham Parish Council. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 12 May 2021. |
| * The Council was consulted about the representation on 31 August 2022 and the Council’s response was made on 10 October 2022. |
|  |

Decision

1. The Council is directed to determine the above-mentioned application not later than twelve months from the date of 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-1).
2. The Council has limited resources to deal with rights of way matters and the backlog of claims awaiting determination, many of which involve complex legal issues and/or interviewing a considerable number of witnesses and landowners, is substantial. They acknowledge there is an expectation that Section 53 applications will be determined by an authority within 12 months of receipt. However, as this has proven to be unachievable, they have implemented a system for dealing with applications. Their policy is to determine them in order of receipt, subject to a number of exceptions which are given priority. These can be summarised as; (1) significant public benefit to be gained, (2) detriment to a householder, (3) obstruction of a regularly used path, (4) personal circumstances of witnesses in user-based claims and (5) threat to route from proposed development. This appears to me to be a reasonable approach.
3. The Council states the application was, at 10 October 2022, ranked number 160 out of a total of 206 outstanding applications in the Council’s list. The Council estimates, given its current resources, this application will take at least 15 years to be decided. The Council does not consider that the case sufficiently meets the criteria for it to be expedited ahead of older applications of a similar nature.
4. It is appreciated that if a direction is given in this case, then the determination of other applications will be affected. However, I do not consider that the current delay in determining this application, and the likely future delay, can be viewed as reasonable. 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 years have passed since the application was submitted and, notwithstanding the issues raised by the Council, no exceptional circumstances have been indicated by them for not determining it. The current timescale to determine this application cannot be considered to be reasonable.
5. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council 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** Nottinghamshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Nigel Farthing

INSPECTOR

1. [↑](#footnote-ref-1)