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| **Direction Decision** |
| **by Nigel Farthing LLB** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 April 2023** |

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| **Ref: ROW/3315801****Representation by Christopher Smith for and on behalf of the Ramblers****Application for the addition to the Definitive Map of a public rights of way at St Elisabeth’s Church, Eastbourne (OMA ref. RWO 281)** |
| * 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 East Sussex County Council (the Council) to determine an application made on 21 December 2021 for an Order, under Section 53(5) of that Act.
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| * The representation made 31 January 2023, but incorrectly dated 31 January 2022, is made by Christopher Smith for and on behalf of the Ramblers.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 16 January 2022.
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| * The Council was consulted about the representation on 2 February 2023 and the Council’s response was made on 10 March 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. 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.
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. 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 are where a successful Order would significantly enhance public safety; where the claimed route is threatened by imminent development and where demand for the claimed route is particularly high or would form part of a recognised strategic link in the network. This appears to me to be a reasonable approach.
3. The Applicant states the application is shown by the Council as ‘awaiting investigation’, suggesting that no substantive investigation into the claim has yet commenced. In this case, the Council states that the application has had an initial investigation and is currently in the list of outstanding applications to be fully investigated in date order. The case is currently no. 67 in the list of 81 outstanding applications and, without a direction being made, it is anticipated that it will not be fully investigated for five to six years at the earliest. The application is not considered to fall within any of the exceptions to the Council’s policy set out in its Statement of Priorities.
4. The Council does not consider that a direction should be given in this instance as there are other applications which are ahead in the ranking and/or equally deserving, and to issue a direction would disadvantage those parties. In addition, the Council has already been directed to determine 15 applications by the Secretary of State and anticipates it will take eighteen months to two years to deal with these matters. The latest directed date for a decision is 20 July 2024. It is acknowledged these will require significant staff input.
5. It is appreciated that if a direction is given in this case, then the determination of other applications will be affected. The Council recognises this application relies upon user evidence and that delay in progressing it may jeopardise that evidence but points out that many other applications are in the same position, many of which pre-date this application. To make a direction in this case will further delay work on those cases and the Council urge this application should not take precedence over others which have been awaiting determination for a much longer time.
6. The Council acknowledges that the problem is one of resource but states that staff levels are unlikely to improve.
7. Whilst I acknowledge the Council’s position, 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. This case has exceeded that period, and, notwithstanding the issues raised by the Council, no exceptional circumstances have been advanced by them for not determining it. The current timescale to determine this application cannot be considered to be reasonable.
8. 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 is already subject to directions to determine other cases and it would not be reasonable for me to require this case to be determined ahead of those. The latest directed date for this Council is 20 July 2024. I recognise that the Council will require some time to carry out its investigation and make a decision on the application. I will allow a period of eighteen months.

**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 18 months from the date of this decision.

Nigel Farthing

**Inspector**