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| **Direction Decision** |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 September 2023** |
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| **Ref: ROW/3324849**  **Representation by Simon Jackson**  **Shropshire Council**  **Application to modify the definitive map and statement for the area by adding a footpath at Tan y Graig, Rhydycroesau (Council application ref: 240)** |
| * 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 Shropshire Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Simon Jackson and is also on behalf of the joint applicant Charlotte Hunter, dated 23 June 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 June 2022. |
| * The Council was consulted about the representation on 28 June 2023 and the Council’s response was made on 24 August 2023. |
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Decision

1. The Council is directed to determine the above-mentioned application within 12 months from the date of this decision.

Reasons

1. On 20 May 2022 Simon Jackson and Charlotte Hunter made an application to the Council. This sought to record on the definitive map a public footpath at Tan y Graig in the parish of Oswestry Rural. The evidence adduced in support of the claimed footpath included over thirty statements from witnesses who have used the path.
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 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.
4. The Council’s outdoor partnership policy statement number 8 details how the Council will prioritise applications to amend the definitive map. There are three priority areas, based on the geographical location of the application route and whether or not that area has been reviewed. In addition, applications within the three areas are prioritised according to key local demands these are, high priority missing links, unrecorded routes which are clearly used, signed and available on the ground, prioritisation of higher status claims and routes which provide strategic links and are evidenced by strong historical evidence. The policy also recognises that there may be instances such as where a route is threatened by potential development or would significantly improve public safety. In these instances, such applications are dealt with in order of receipt.
5. The Council acknowledges that the backlog of applications is significant, this application is currently at 156th place out of 168. However, the route claimed in the application is within the priority 1 area as it is in a parish which has not undergone the parish review process. The application is 70th on the list within the priority 1 area. The Council state, after reviewing the applicants’ supporting reasons against the policy statement, this could result in the application moving further up the list of priority applications. However, the Council have been unable to provide an estimate on the length of time before the application is determined.
6. The applicants state that part of the claimed footpath has been materially altered. The width, marginal features, location, and elevation have changed. In addition, this part of the route is now impassable due to gates, fencing and barbed wire preventing public access. The applicants are concerned that there is a risk of further interference with the remainder of the route.
7. The applicants have concerns regarding the aging witnesses and their ill health. One witness has passed away since the application was submitted. They state there is a risk of crucial evidence of the history of the path being lost as witnesses will be unable to give evidence.
8. The applicants argue that the blocking of the claimed route leaves pedestrians with only one alternative of walking along the busy B4580, this road has no pavement and some blind corners. They contend that it is in the public interest that the determination of this application is expeditiously dealt with for reasons of public safety.
9. In response the Council acknowledge the special circumstances given, especially regarding the health and increasing age of some of the witnesses and the lack of an alternative route in the vicinity to reach the wider rights of way network.
10. I do recognise that there are a large number of applications awaiting determination, and that there is a policy of prioritisation to ensure fair ranking. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period.
11. 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.
12. 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. I conclude it would be reasonable to allow a further 12 months for a decision to be reached in this case.

**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 Shropshire Council to determine the above-mentioned application not later than 12 months from the date of this decision.

J Ingram

INSPECTOR