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| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 October 2023** |

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| **Ref: ROW/3326844**  **Representation by Chris Smith (Open Spaces Society)**  **East Sussex County Council**  **Application to add four bridleways in Firle (Council Ref: RWO 288)** |
| * 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 Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by the applicant, Mr C Smith, on behalf of the Open Space Society dated 27 July 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 14 April 2022. |
| * The Council was consulted about the representation on 31 July 2023 and the Council’s response was made on 29 August 23. |
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Decision

1. The East Sussex Council (ESC) is directed to determine the above-mentioned application.

Reasons

1. On 13 April 2022 Mr C Smith made an application to ESC. This sought to record on the Definitive Map and Statement a series of bridleways between Bridleway Firle 12 and Bridleway Firle 7a. The evidence adduced in support of the claimed bridleways include a number of historical maps and plans and a number of user evidence forms.
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2 of Schedule 14.
3. As required by Rights of Way Circular 1/09 (Version 2, October 2009: Department for Environment, Food and Rural Affairs at paragraph 4.9) 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. Thus, each case must be considered on its individual facts.
4. Initial checks have been made by the Council to validate the applications and the cases currently await their turn for full investigation to begin. The Council normally investigates applications in chronological order of receipt, unless prioritisation is justified by one of the exceptional circumstances listed in their Statement of Priorities – where a successful order would significantly enhance public safety; where the claimed route is threatened by imminent development; or where demand for the claimed route is particularly high, or it would form part of a recognised strategic link in the network. However, applications subject to a determination date provided by the Planning Inspectorate are usually worked ahead of these, where possible, in chronological order of the determination date.
5. Although it is entirely reasonable to deal with applications in chronological order, authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the Definitive Map and Statement up to date.
6. The routes claimed in the application do not fall into any of the priority categories, it is currently positioned at number 73 on the priority list. ESC state that 10 of these applications have already received directions to determine the applications, ESC estimate it to take 18 months to 2 years to clear their backlog of directions. ESC considers that on review, the position may change as cases are processed and new cases are added with some falling into the priority categories. With current levels of resources ESC predicts this case will be determined in 5-6 years’ time at the earliest.
7. The applicant notes that ESC does not regard this as a priority case, and states that ESC are currently processing applications at the rate of five a year, estimating that based on current processing it would be in excess of 20 years before this case would be determined.
8. This application is based on the evidence of 8 witnesses supported by documentary evidence. Nearly all of the users that have provided evidence are said to be elderly and the applicant fears that the state of affairs will soon be that these witnesses will not be able to give evidence. The applicant believes that ESC does not intend to interview any of the witnesses until the application reaches the top of the priority list, which is unlikely to be before 2028-2029 at the earliest. The applicant considers it imperative that this is done, at least, to avoid evidence being lost.
9. Meanwhile parts of the claimed routes have been blocked following storms in early 2022 and public access is being denied. The applicant understands that no action to remove these obstructions can or will be taken until the status of these ways is established.
10. ESC submits that a direction to determine this application sooner than would otherwise be the case would ultimately be to the detriment of other cases on the priority list. In their view the applicant has failed to provide sufficient grounds to justify why this case should be elevated above others.
11. The applicant is entitled to expect their applications 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 insufficient staff and a backlog are not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
12. In the circumstances, I have therefore decided that there is a case for setting a date by which time this application should be determined. However, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I am mindful that the Council have requested any new Directions do not jump ahead of those already issued. Accordingly, I propose to allow a further period of 18 months for a decision to be made.

**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 Council to determine the above-mentioned application not later than 18 months from the date of this decision.

Charlotte Ditchburn

INSPECTOR