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| **Direction Decision** |
| **By Laura Renaudon LLM LARTPI Solicitor** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 November 2023** |

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| **Ref: ROW/3311115**  **Representation by Deborah King**  **Knowsley Council**  **Application to upgrade to a Bridleway the Footpath running from Pex Hill, Cronton to Norlands Farm, Cronton (OMA ref. PT/KM/PexHill/KPROWA1)** |
| * 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 Knowsley Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Deborah King, dated 12 November 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 22 August 2021. |
| * The Council was consulted about the representation on 22 November 2022 and the Council’s response was made on 12 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. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009, details the relevant factors.
2. 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. A previous application seeking a direction was declined in November 2021 under reference FPS/V4305/14D/1, as a result of some confusion about whether the paragraph 2(3) certificate had been served contemporaneously with the application which was purportedly made in October 2019. The result was that the application was not considered valid by the Council until August 2021 with the service of the appropriate certificate; meaning that the necessary 12 month period had not elapsed at the time of the previous Inspector’s decision.

**The Council’s statement of priorities**

1. The Council concedes that it does not have a Statement of Priorities per se; but that this is being worked on and they propose to work through any DMMO applications in date order. The Rights of Way Improvement Plan of the Liverpool City Region Combined Authority has been supplied, setting out the way in which the relevant authorities plan to make changes, in respect of management and improvements, of the local rights of way network.

**Action taken or intended to be taken by the Council**

1. At the time of responding, the Council say they were in receipt of four modification order requests, although the extract of the register supplied suggests there were 10. Either way, the present application was the first listed, the next application having been made on 29 September 2022. According to the Council’s proposal to work through any DMMO applications in date order, the present application is thus the priority.
2. The Council has recently recruited to a number of roles, presenting an opportunity to assign staff to deal with DMMO applications. At the time of responding in January, it was anticipated to present a report for consideration by the relevant committee in April 2023. Subsequent correspondence was received in February 2023 to say that the committee report was being finalised and would recommend the upgrading of the affected routes into bridleways, subject to advice from counsel. The anticipation of objections meant that it was considered likely that the application would be escalated to the Secretary of State. No further update has been received.

**Circumstances of the case**

1. The Council explain that the route in question is approximately 500m long, with part falling within the borough of Halton and the majority falling within Knowsley. An application has also been received, and progressed, by Halton Borough Council. A putative objection has been received by the (Knowsley) Council together with Landowner Deposits under section 31(6) of the Highways Act 1980, with a formal objection anticipated. A referral of the application to the Secretary of State pursuant to Schedule 15 of the Wildlife and Countryside Act 1981, potentially duplicating the Planning Inspectorate’s involvement, is considered possible.
2. Meanwhile it appears that some signs have been erected (since the application was made) dissuading the use of the route by cyclists and horse riders and there have been some instances of confrontation. Safety concerns are raised, both in respect of the use of the contested route and also in respect of those diverting onto the road network.
3. The application was accompanied by 22 user evidence forms, some completed by those in their 60’s and 70’s. One of those users has since passed away.

**Any views expressed by the applicant**

1. The applicant contends that the certificate was properly served in October 2019 and thus that the application has in reality been outstanding for three years. The Council have given repeated assurances that the application will be determined ‘soon’. As the only application on the Council’s books for a long time, determination of it is long overdue.

**Conclusion**

1. 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. The Council is expected to determine an application as soon as reasonably practicable after receipt of the paragraph 2(3) certificate.
2. Whilst the Council in this case had denied receiving the certificate in October 2019, and it was subsequently re-served, the application nonetheless appears on their register as having been received in October 2019, with an anticipated determination date of October 2020. Whilst the absence of a certificate may have prevented the technical progression of the application, it has nonetheless been the Council’s priority application since August 2021, with no other applications received until over a year later. The applicant has had repeated assurances that the application will proceed to a determination and apparently with no explanation why it has not. The potential escalation of the application to the Secretary of State does not appear to me a good reason for the Council to delay its own consideration of it.
3. More than two years have passed since the application was submitted and no exceptional circumstances have been indicated. 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 complete its investigation and make a decision on the application. A further period of 4 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** the Knowsley Council to determine the above-mentioned application not later than 4 months after the date of this decision.

Laura Renaudon

INSPECTOR