

|  |
| --- |
| **Direction Decision** |
| **by Nigel Farthing LLB.** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 October 2023** |

|  |
| --- |
| **Ref: ROW/3316363****Representation by John Andrews****Suffolk County Council****Application to add a byway open to all traffic from the B1116 road at TL 816795 to the A1065 road at TL 756818 in the parishes of Elveden, Wangford & Lakenheath (OMA ref. CPM945)** |
| * 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 Suffolk County Council to determine an application for an Order, under Section 53(5) of that Act. The application is dated 20 January 2021.
 |
| * The representation is made by John Andrews and is dated 8 February 2023.
 |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 21 January 2021.
 |
| * The Council was consulted about your representation on 17 February 2023 and the Council’s response was made on 30 March 2023.
 |
|  |

Decision

1. The Council is directed to determine the above-mentioned application within 12 months of 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.
2. 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 is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains, at paragraph 4.9, that 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. Each case must therefore be considered in the light of its particular circumstances.
4. The application to record the claimed byway open to all traffic is supported by historical documentary evidence. The Application route has been the subject of three previous Definitive Map Modification Order (DMMO) applications, in 1992, 2002 and 2013. The 1992 application did not proceed because it was noted shortly before an inquiry that the Order route did not follow the historical alignment. The 2002 and 2013 applications resulted in Orders being made which were objected to and both went to inquiry and neither Order was confirmed.
5. As of March 2023 the application was positioned at 49out of 129 outstanding applications for DMMOs. On this basis the Council estimate that the application is unlikely to be investigated before 2027.
6. The Council determines applications in accordance with its Statement of Priorities which is contained in its Green Access Strategy 2020. The application has been assessed against the criteria set out in the Statement of Priorities and achieved a score of 36.6, placing it in the medium priority category. The Council acknowledge the score given has been prejudiced by a preliminary assessment that the new evidence provided by the applicant is considered to be ‘of minimal weight’. I accept the applicant’s assertion that the fact the application has been considered previously should not adversely affect the determination of the present application.
7. My task is to balance the legitimate expectation of the applicant against the approach of the Council. I am satisfied that the policy adopted by the Council is reasonable and I recognise that this has resulted in the application reaching an elevated position on the list, however that position would, I understand, be higher in the absence of the Council’s preliminary assessment of the merits. In the present circumstances I do not consider the preliminary assessment to be a reasonable factor in assessing priority. Furthermore, more than two years have elapsed since the application was submitted, and the Council have not been able to put forward any exceptional circumstances for not having commenced investigation.
8. 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. It is appreciated that the Council have other applications of greater priority to deal with and will require some time to carry out its investigation and make a decision on the application. I consider it is appropriate for this application to have greater priority than it has been afforded by the Council and accordingly a further period of twelve 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 Suffolk County Council to determine the above-mentioned application not later than twelve months from the date of this decision.

Nigel Farthing

**Inspector**