

|  |
| --- |
| **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/3309909**  **Representation by Little Waltham Parish Council**  **Essex County Council**  **Application to add Footpath from Brook Hill leading south-westwards across glebe field and crossing Footpath 23 to meet Footpath 24 TL711,127 to TL710,126 (OMA ref. HIGH/12188)** |
| * 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 Essex County Council to determine an application for an Order, under Section 53(5) of that Act. The application was made on 21 September 2021. |
| * The representation is made by Suzanne Walker as Clerk to Little Waltham Parish Council and is dated 27 October 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 23 September 2021. |
| * The Council was consulted about your representation on 12 December 2022 and the Council’s response was made on 25 January 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. 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.
2. 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.
3. The application to record the claimed public footpath is supported by user evidence.
4. As of 25 January 2023, the application was positioned 16th on the Council’s list of applications awaiting determination and is not expected to be considered earlier than 18 to 30 months from January 2023.
5. The Council determines applications in order of the date the application was received unless circumstances exist for the matter to be prioritised. The decision whether an application should be prioritised is at the discretion of the sole case officer who is required to have regard to agreed criteria for departing from this policy. The Council states that currently the only circumstances which might lead to an application being considered out of turn are issues such as urgent planning matters or the likelihood of significant local breach of the peace. No such circumstances are considered to arise in connection with this application.
6. The Council has a statutory duty to keep the DMS up-to-date. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
7. 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. 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. However, more than eighteen months have elapsed since the application was submitted, and the Council have not been able to put forward any exceptional circumstances.
8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

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

Nigel Farthing

INSPECTOR