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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: 19 December 2023** |

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| **Ref: ROW/3329994**  **Representation by Chris Smith (Open Spaces Society)**  **West Sussex County Council**  **Application to add a bridleway from a junction with a public road near Ferry Barn to southern termination of recorded footpath 2952 (Application Ref: DMMO 15/21)** |
| * 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 West Sussex County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Chris Smith (Open Space Society), dated 23 September 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 9 December 2021. |
| * The Council was consulted about the representation on 22 September 2023 and the Council’s response was made on 2 October 2023. |
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Decision

1. The West Sussex County Council (WSCC) is directed to determine the above-mentioned application.

Reasons

1. On 23 November 2023, Mr C Smith made an application to WSCC. This sought to record on the Definitive Map and Statement a bridleway between a public road near Ferry Barn to the southern termination point of Footpath 2952. The evidence adduced in support of the claimed bridleway include a number of historical maps and plans and photographs of the route.
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.
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 application and the case currently await its turn for full investigation to begin. The Council normally investigates applications in chronological order of receipt, unless prioritisation is justified by one of the circumstances listed in their Statement of Priorities – there is potential to satisfy an application by other means such as agreement with the landowner for a dedication or permissive path; or the extent of the evidence and/or the lack of opposition would involve minimal workload to conclude the matter. 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. The route claimed in the application does not fall into any of the priority categories, it is currently positioned at number 20 on WSCC’s register. The Council have indicated that although it is difficult to provide a timeframe for determination, it is likely to be a further three years before this case is investigated.
6. The applicant notes that WSCC does not regard this as a priority case, and states that WSCC are currently processing applications at the rate of 4-5 a year, estimating that based on current processing it would be many, many years before this case would be determined.
7. The applicant anticipates that the order will be opposed, so the applicant wishes to be able to attend a public inquiry if this is the case. Although the application is based on documentary evidence the applicant fears that due to their age and health problems, they may not be fit enough to attend a public inquiry if this is many years in the future. The applicant states that they would not normally seek direction for a route that is currently in use, but at some point, in 2023 a sign appeared which is deterring use by cyclists.
8. The applicant rightly believes they have a right to a decision within a reasonable time. WSCC 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 and serves to undermine the purpose of a statement of priorities.
9. I do recognise that the Council has a Statement of Priorities to ensure fair ranking. I also appreciate that the issue of a direction would disadvantage those applications that have been waiting longer, as well as those that rank higher on the priority list. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and WSCC 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.
10. 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, two years have passed since the application was submitted and no exceptional circumstances have been indicated.
11. 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. Accordingly, I propose to allow a further period of 6 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 West Sussex County Council to determine the above-mentioned application not later than 6 months.

Charlotte Ditchburn

INSPECTOR