

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

|  |
| --- |
| **Ref: ROW/3330722**  **Representation by Joanne Appleby**  **West Sussex County Council**  **Application to add a footpath from New England Road via Windermere Road to Woodlands Road, Haywards Heath (OMA ref. CC803.16634)** |
| * An application was made by Joanne Appleby to West Sussex County Council (the Council) for an order to modify its Definitive Map and Statement of Public Rights of Way (‘DMS’) under Section 53(2) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) (‘the application’). The Council’s reference for the application is CC803.16634. * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 3 June 2022. * A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application. The representation is dated 18 October 2023. The Council was consulted about the representation on 19 October 2023 and its response is dated 2 November 2023. |
|  |
|  |
|  |
|  |

Decision

1. The Council is directed to determine the application not later than twelve months from the date of this decision.

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS.
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(3) of Schedule 14.
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 light of its particular circumstances.

1. The claimed public footpath is supported by a quantity of user evidence statements.
2. As of June 2023, the application was positioned at 59 out of 91 on the Council’s list of applications awaiting determination.
3. The Council determines applications in accordance with its Statement of Priorities for investigation of Definitive Map Modification Order applications. Generally, applications are dealt with in order of receipt although the Council retains a discretion to take an application out of date order. The two circumstances in which this could generally occur are set out in the Statement of Priorities. The Council acknowledge that where it is directed to take a decision the application will be taken out of order.
4. The application has been allocated priority on the Council’s list and is tenth of those applications which rely upon user evidence. Recognising the fact that in the past two years the Council has determined six and five applications respectively, and ignoring the fact that other applications may be awarded a greater priority and precede this one, it is likely to be a minimum of two years, and possibly longer, before it is determined.
5. The Council note that the application route is currently open and unobstructed, and that access is unrestricted. On this basis the Council do not consider the application more urgent than other user-based claims.
6. The Council has a statutory duty to keep the DMS up to date. Circular 1/09 is clear that Authorities should ensure sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
7. The applicant is entitled to expect her application will be determined within a finite and reasonable period and the legislation gives rise to an expectation of a determination 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 and I recognise that this has resulted in the application reaching an elevated position on the list. However, almost 18 months have elapsed since the application was submitted, and the Council has not been able to put forward any exceptional circumstances justifying further delay.
8. It is appreciated that the Council will require some time to carry out its investigation and to 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** West Sussex County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Nigel Farthing

INSPECTOR