

|  |
| --- |
| **Direction Decision** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 March 2024** |

|  |
| --- |
| **Ref: ROW/3319106**  **Representation by Michael J Peachey**  **Suffolk County Council**  **Application to add a footpath from Mildenhall Footpath 30 (TL671753) to Mildenhall Footpath 2 (TL676750) (OMA REF: CPM1002)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 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 representation made by Michael J Peachey, is dated 22 March 2023. * The certificate under Paragraph 2(3) of Schedule 14 is dated 17 February 2022. |
| * The Suffolk County Council was consulted about the representation on 8 August 2023 and their response is dated 18 September 2023. |
|  |

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 12 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 light of its particular circumstances.
3. Suffolk County Council’s (the Council) Statement of Priorities for determining definitive map modification order applications is contained within its Green Access Strategy 2020-2030. Their objective is to make orders in the public interest. To achieve this the Council prioritises definitive map casework with the aim of delivering a public rights of way network that meets the needs of today’s users.
4. The Council meets six times a year to consider and prioritise new claims and public path order requests. Applications are prioritised using nine criteria. These criteria are 1) threat to existing or unrecorded route, 2) level of public interest, 3) value for money, 4) network improvement, 5) safety, 6) strength of evidence, 7) resolves problems, 8) residential obstruction and 9) proposed development affecting route. Each criterion is scored out of ten and a weighted score is also allocated where applicable. The final priority score is the sum of both scores. These are used to rank each application as low, medium, or high.
5. This application was given a score of 27 which places it in the medium priority category. The Council have 139 formal applications, including 52 where the landowner has not been informed of the application. Sixty-five cases have a higher priority, 46 of which are formal applications. The Council will commence work on the medium priority cases upon completion of the high priority cases. Due to the number of higher priority applications, the Council advise that this application is unlikely to be determined for a considerable time.
6. I recognise the Council has a significant number of applications before them and resources are limited. This makes it necessary to prioritise applications and the approach used appears to be reasonable.
7. However, Authorities have a duty to keep the definitive map and statement up to date and Circular 1/09 makes it clear that they should ensure that sufficient resources are allocated to meeting their statutory duties with regard to the protection and recording of public rights of way. The appellant considers insufficient resources to be the reason for the delay in determining the application and has discussed this with the Council. A lack of resources is not considered to be an exceptional circumstance for not determining applications.
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. In this case, almost two years have passed since the application was submitted and no exceptional circumstances have been indicated.
9. I appreciate a direction to make a determination on the application before me would disadvantage applicants who have been waiting longer and delay higher priority applications. However, I do not consider these higher scoring applications should be grounds to justify not giving a direction when the 12 month determination period has expired.
10. In the circumstances I have decided 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 carry out its investigation and make a decision on the application. A further period of six 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 six months from the date of this decision.

Claire Tregembo

INSPECTOR