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| **Direction Decision** |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 February 2024** |

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| **Ref: ROW/3334360**  **Representation by Timothy Lyons**  **East Sussex County Council**  **Application to add eight footpaths in Broadwell Wood, Wadhurst and Lamberhurst**  **(Council Ref: RWO 290)** |
| * 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 East Sussex County Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Timothy Lyons, dated 30 November 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 4 August 2022. |
| * The Council was consulted about the representation on 11 December 2023 and the Council’s response was made on 22 January 2024. |
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

1. On 6 June 2022 Mr T Lyons made an application to the Council. This sought to record on the Definitive Map and Statement a series of footpaths in Broadwell Wood, Wadhurst and Lamberhurst. The evidence adduced in support of the claimed footpaths include two historical maps and a number of user evidence forms.
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 twelve 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 of Schedule 14.
3. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: 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.
4. Initial checks have been made by the Council to ensure compliancy of the application and it has been duly registered. The case now awaits allocation to an Officer and investigation. The Council normally investigates applications in chronological order of receipt, unless prioritisation is justified by one of the exceptional circumstances listed in their Statement of Priorities – where a successful order would significantly enhance public safety; where the claimed route is threatened by imminent development; or where demand for the claimed route is particularly high, or it would form part of a recognised strategic link in the network. 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. There is nothing to suggest that the chronological system employed is unreasonable, however, authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the Definitive Map and Statement up to date.
6. The Council state that the footpaths claimed in the application do not fall into any of the priority categories. The application is currently positioned at number 70 out of a total of 91 outstanding applications. 15 of these applications have already received directions to determine the applications. The Council estimate it to take 18 months to 2 years to clear their backlog of directions. With current levels of resources, the Council predicts this case will be determined in 5-6 years’ time at the earliest.
7. The application is based on the evidence of 43 witnesses supported by 2 historic maps. The applicant refers to the long-established nature of the footpaths. He claims they have been in existence and used regularly by local residents in excess of 60 years. There are 40 regular users currently being denied access. In addition, he raises concerns as to the motive of the landowners in suddenly preventing access to the woods.
8. The Council acknowledges the concerns of the applicant; however, they do not consider the circumstances offered are of sufficient importance to prioritise this claim.
9. I do recognise that there are a large number of applications awaiting determination, and that there is a policy of prioritisation to ensure fair ranking. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and the Council 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, more than 20 months have passed since the application was submitted and no exceptional circumstances have been indicated.
11. In the circumstances I have decided that 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. I recognise that the Council have requested any new Directions do not jump ahead of those already issued. Accordingly, I propose to allow a further period of 18 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 East Sussex County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

J Ingram

INSPECTOR