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| **Direction Decision** |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 March 2024** |

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| **Ref: ROW/3333563**  **Representation by Carol Jackson**  **Lincolnshire County Council**  **Application to add a byway open to all traffic between Low Lane and Public Footpath 79 at St Margaret’s Church, Well.**  **(Application Ref: DMMO/580/Well)** |
| * 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 Lincolnshire County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Carol Jackson is dated 18 November 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 22 September 2022. |
| * The Council was consulted about the representation on 6 December 2023 and the Council’s response was made on 23 January 2024. |
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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 twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
2. Guidance on directions 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 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 be considered in light of its particular circumstances.
3. The applicant seeks Lincolnshire County Council (the Council) to record that a byway open to all traffic passes from Low Lane at Well along a drive to St Margaret’s Church. The applicant has explained that the claimed route is the only vehicular access to the Church and it is currently barred by electronic gates which were installed in early February 2022. The submissions make the case that without usage of the claimed route, the only access to the Church is a public footpath which, due to its challenging nature across parkland with grazing cattle, stiles and a sharp incline, cannot be used by the elderly, those with disabilities, those with mobility issues or by families with young children. The applicant indicates that, as a consequence, the Church cannot be utilised by the community for services, private worship, weddings, baptisms, burials or visiting/tending the graves of loved ones. Additionally, it is commented that the closure of this route to the Church has also resulted in harm to the fabric of this Grade I Listed building as no maintenance is possible without vehicular access.
4. The Council has explained that it currently has a caseload of 457 Definitive Map Modification Order (DMMO) applications and of these 315 have been received during about the last three years. The Council has commented that this is an unprecedented level of applications and while it has over four officers dedicated to dealing with the work, some of these officers are fairly new to the job and the increased submissions and the research required to assess the applications has resulted in an effect on the progression of casework.
5. The Council’s document the Prioritisation of DMMOs (the Priority Policy) specifies that cases are to be dealt by the oldest first unless, in accordance with the policy criteria, a case meets the circumstances to be given a higher priority. This meant, in September 2022, that when submitted the case was initially ranked 302nd out of 302 cases in the schedule.
6. In April 2023, the applicant lodged an appeal with the Council for the application to be given a higher priority in accordance with its Priority Policy. This was agreed unanimously by the Committee in July 2023. This resulted in the application being ranked 26th in order of priority. When this direction was sought in November 2023, the applicant explains that the application was still 26th in the list. The details from the Council dated 22 January 2024 show the application remains at 26th in the priority schedule. The Council explain that the first 20 applications in the schedule are being progressed.
7. I can appreciate that the Council has a lot of cases requiring examination and decision. In this case, the Council explain that even if a determination was to be made in favour of the applicant it would then require the making and confirmation of a DMMO, which would be the subject of public consultation and possible objection. An opposed order would require a decision by an Inspector (on behalf of the Secretary of State for Environment, Food and Rural Affairs) on whether or not any order should be confirmed. Consequently, it is argued by the Council that a direction may not resolve the access concerns of the applicant and the wider community in the near future.
8. While I understand the procedures and the potential time for that process to run its course, unless the application is determined by the Council within a reasonable period then there is little prospect of the matter being clarified one way or the other in the short to medium term.
9. 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. If this application is required to be considered via a direction then other applications will, in all likelihood, have to wait longer. Nevertheless, the application has been in the Council’s system since September 2022. The application was promoted up the list following it being granted a higher priority but the available information on its ranking is that it appears that progress towards it being considered has stalled. Consequently, without some form of intervention, there will be some time before it will move up the list towards a decision, even given its higher priority.
10. To ensure that the application is considered within a reasonable time I have decided that there is a justification for setting a date by which time the application should be determined. As it would appear that the Council has not yet started working on the application and it is appreciated that it will require some time to carry out its investigations and make a decision. In all these circumstances, I considered that a further 6 month period should be allowed.

**Direction**

1. 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** Lincolnshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

David Wyborn

INSPECTOR