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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: 28 March 2024** |

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| **Ref: ROW/3331974****Representation by Michael Peachey****Suffolk County Council****Application to add a footpath from Pollards Lane to Cow & Sheep Drove (also known as Weston Ditch) West Row (OMA ref. 325/398/MG CPM1005)** |
| * 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 Suffolk County Council to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation made by Michael Peachy is dated 22 September 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 17 February 2022.
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| * The Council was consulted about the representation on 8 December 2023 and the Council’s response was made on 19 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 application seeks that Suffolk County Council (the Council) record a footpath on the definitive map and statement. The application was hand delivered to the Council by the applicant on 23 December 2021 and the related certificate confirming service on the affected landowners was dated 17 February 2022. As of yet the Council is yet to make a decision on the application.
4. The Council has explained that it has 137 formal applications for Definitive Map Modification Orders (DMMOs) on the register of which 52 applications do not have the completed certificate to confirm that the affected owners of land along the routes have been served notice. These are not being prioritised. This effectively leaves 85 applications to be determined. The Council has explained that since 2013 it has used a priority scheme for all applications that also covers other types of rights of way case, such as public path orders. This is contained within the Suffolk Green Access Strategy – Rights of Way Improvement Plan 2020-2030. One of the key objectives is to develop a public path and claims process that provides routes of public benefit.
5. In this case, the application has been assigned a score which places it in the Council’s medium priority category. At the time of the Council’s response there were 39 applications not yet started that had been assigned a higher priority, and the Council estimate that the application is unlikely to be determined within 5 years. In addition to this backlog, the evidence indicates there are also backlogs with similar types of other rights of way work that the Council is seeking to address.
6. The applicant seeks a direction for the Council to determine the application in the shortest reasonable timeframe, which it is respectfully suggested ought to be a maximum of 6 months. The applicant explained that he has sympathy with the Council’s definitive map officers, but that the delays and backlogs occur because it is argued the Council does not take its duties to deliver this function seriously and it is insufficiently resourced. The applicant believes that there are no exceptional circumstances or reasonable justification as to why the authority has not determined this application.
7. The Council appear to have undertaken an initial examination and comments that the application route scored as a medium priority because while the Inclosure Award provides conclusive evidence for part of the route, the evidence for the remainder of the route would, at best, only support a reasonable allegation. Nevertheless, the application has been with the Council for over two years and it appears that a full investigation has not yet commenced with the application currently part of the backlog.
8. While the available details of the application may not justify it having the highest priority, the application appears to have made no material progress towards a decision and, without a direction, further years of delay are likely. This is unreasonable despite any resource issues and an application should normally be progressed to a decision within a reasonable timeframe.
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. In this case, there are no exceptional circumstances which have led to the delay in determination. I accept that if this application is subject to a direction it will be given a higher priority for the Council and that this may then delay other applications being considered. However, the time period likely to determine this application is not reasonable.
10. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. The applicant suggests a direction which specifies 6 months. However, given the Council’s priority scoring approach and the medium priority level in this case, and that the Council will require some time to carry out its investigation and make a decision on the application, a further period of 18 months 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** the Suffolk County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

David Wyborn

INSPECTOR