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| **Direction Decision** |
| **by Nigel Farthing LLB** |
| **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/3332201**  **Representation by Nick Gale**  **East Sussex County Council**  **Addition of two footpaths in Little Park Wood, Brede**  **(Application Ref: [RWO 292]** |
| * 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 Nick Gale, dated 30 October 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 5 July 2022. |
| * The Council was consulted about your representation on 17 November 2023 and the Council’s response was made on 4 January 2024. |
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Decision

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

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 Definitive Map and Statement (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 twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
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 DMS 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 Applicant supports his request for a direction on the grounds that the application to record the claimed public path is supported by a quantity of user evidence statements which may diminish over time. The Applicant also states that the woodland through which the claimed route runs is in the course of being sold in smaller parcels. He is concerned that this will lead to fencing of each parcel with possible obstruction of the claimed route which could cause problems for the establishment of the route on the ground if an order is made and confirmed.
2. In response to consultation the Council advise that it currently has 88 definitive map modification order (DMMO) applications awaiting determination. Currently this application is positioned 73rd and in the ordinary course would not be determined for a minimum of five to six years due to the number of outstanding applications and the Council’s lack of staff resources.
3. The Council determines applications in accordance with its Statement of Priorities for investigation of DMMO applications. Generally, applications are dealt with in order of receipt unless they fall within one of three priority categories. These are that the route would significantly enhance public safety, that the route is threatened by imminent development and that there is high demand for the route, or it would provide a strategic link within the public right of way network. The Council has determined that the current application does not fall within any of these priority categories.
4. The Council acknowledges that the application is based upon user evidence and that the passage of time may impact the availability of that evidence. The Council does not regard the sale of the woodland as a compelling reason for expedition. The Council considers that the 87 other outstanding applications are of no less significance than this application and it would be unfair to give it priority over those which have been waiting longer.
5. Of the applications awaiting determination, 15 are the subject of Schedule 14 directions which specify dates for determination up to 30 April 2025. The Council argues that it would be illogical for a direction to be made requiring this matter to be determined at an earlier date than that applicable to existing directions. I accept and agree with the logic of this argument.
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 his 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 in theory however, more than 18 months have already elapsed since the application was submitted, and the Council has not been able to put forward any exceptional circumstances justifying further delay. It is not reasonable that the Applicant should have to wait a further period of five to six years, or more. In all the circumstances I am satisfied that there is a case for setting a date by which time the application should be determined.
8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I have recognised the illogicality of making a direction requiring determination of this matter ahead of cases where a similar direction has already been made. For these reasons, I have allowed a further period of 15 months.

**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 15 months from the date of this decision.

Nigel Farthing

INSPECTOR