

|  |
| --- |
| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 May 2024** |

|  |
| --- |
| **Ref: ROW/3338159**  **Representation by Ian M Witham**  **Norfolk County Council**  **Application to add a byway open to all traffic from the Main Road (A149) to Common Lane (U22164) in the parish of Brancaster (OMA ref. 71063/HP59/2)** |
| * 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 Norfolk County Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Ian Witham, dated 2 February 2024. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 21 August 2021. |
| * The Council was consulted about the representation on 20 February 2024 and the Council’s response was made on 4 April 2024. |
|  |

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. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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.
3. The Council acknowledge that the application has been registered but no further progress has been made towards the determination of the application. It is the Council’s policy to deal with applications in chronological order according to the date of receipt. The policy details what exceptions can be made to this basic policy and these can be summarised as threat to use from development, progress a target within the Norfolk Access Improvement Plan, claim based on long use and operational need. The Council do not consider the application to have inherent value which is greater than similar applications which have been waiting longer for determination. The Council does not give a specific estimate for when this application would be determined, only stating given its current resources it will be a considerable time until this case is addressed.
4. The application route is currently recorded on the Council’s List of Streets as an Unclassified County Road (UCR), UCR classification has no legal standing, but it carries some inference that the public may use the highway with vehicles. Therefore, if the application were to be confirmed it would give clarity to users about what rights the route carries. The applicant has concerns that the Council are not progressing applications, even those already subject to directions.
5. The Council have a duty to keep the Definitive Map and Statement up to date and Circular 1/09 makes it clear that authorities should ensure that sufficient resources are allocated to meeting their statutory duties with regards to the protection and recording of public rights of way. A lack of resources would not be considered to be an exceptional circumstance for not determining applications. It is appreciated that if a direction is given in this case, then the determination of other applications will be affected. However, I do not consider that the current delay in determining this application, and the likely future delay, can be viewed as reasonable.
6. 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 3 years have passed since the application was submitted and, notwithstanding the issues raised by the Council, no exceptional circumstances have been indicated by them for not determining it. The current timescale to determine this application cannot be considered to be reasonable.
7. 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. A further period of 12 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** Norfolk County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Charlotte Ditchburn

INSPECTOR