

|  |
| --- |
| **Direction Decision** |
| **by Nigel Farthing LLB** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 July 2024** |

|  |
| --- |
| **Ref: ROW/3316996**  **Representation by Jayne Storer**  **Nottinghamshire County Council**  **Addition of footpath between Inkersall Lane and Sustrans 6 Multi use path, in the parish of Bilsthorpe**  **(Application Ref: 12295)** |
| * 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 Jayne Storer, dated 19 February 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 20 May 2021. |
| * The Council was consulted about your representation on 23 May 2024 and the Council’s response was made on 31 May 2024. |
|  |

Decision

1. The Council is directed to determine the above-mentioned application within twelve months of the date of this decision.

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.
4. The Applicant makes her request for a direction on the grounds that more than twelve months have elapsed since the application to record the claimed public path was made and that the path is missed greatly by the villagers.
5. In response to consultation the Council advise that it currently has 220 definitive map modification order (DMMO) applications awaiting determination. Currently this application is positioned 181st on the list and in the ordinary course would not be determined for a minimum of twelve years due to the number of outstanding applications and the Council’s lack of staff resources.
6. The Council determines applications in accordance with its Rights of Way Management Plan. Generally, applications are dealt with in order of receipt unless they fall within one of a set number of exceptions.
7. In this case the Council accept that the application falls within the relevant criteria for two such exceptions; that the public benefit to be gained is of more than limited impact and that the application is based upon evidence of 20 plus years of use. The Council comments that the vast majority of applications, if accepted, would have more than limited impact, and that many other applications also rely upon user evidence.
8. Although the Council recognises that two exceptions are met, it does not accept that this justifies giving this application priority over many other applications which meet the same criteria, and which would inevitably be further delayed by giving priority to this application.
9. 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.
10. 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 twelve 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.
11. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. For this reason, I have allowed a further period of twelve 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 Nottinghamshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Nigel Farthing

INSPECTOR