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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 August 2024** |

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| **Ref: ROW/3342887****Representation by Michael and Jane Findlay****Leeds City Council****Application to add a byway open to all traffic from Sturton Lane to Aberford Road, Garforth (Council ref. 84)** |
| * 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 Leeds City Council (the Council) to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation is made by Michael and Jane Findlay (the applicants) and is dated 18 April 2024.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 20 May 2019.
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| * The Council was consulted about the representation on 23 May 2024 and the Council’s response was made on 5 July 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. As required by the 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’s Statement of Priorities covers all areas of work needed to be undertaken for bringing and keeping the Definitive Map and Statement (DMS) under control. With regard to Map Modification Order applications, these are broadly dealt with in chronological order, with a target of determining six of these applications per annum.
4. The council advised that there are currently 56 outstanding applications to be determined, 40 of which predate this application. The earliest application was made in 2003 and the Council feel that to take this particular case out of turn, would set back the already overdue applications.
5. Although an initial review of the user evidence forms has been undertaken for this case, the Council have advised that this case is not currently under investigation. Under the target outlined at paragraph 4, the timescale before determination should be approximately 7 years, however the Council have admitted that the target is proving hard to meet with current resources. Realistically, they consider that it will be 10 years before this application is determined.
6. The application in question was made on 20 May 2019 and was submitted following allegedly intentional obstruction of the claimed route by an adjoining landowner parking a vehicle across the route and erecting signs stating no entry and indicating the route is private.
7. The applicants state that the route is used by families on the school run as well as being one of only two routes off the housing estate when using a vehicle. They are concerned that over 5 years has passed without progress on their application.
8. I accept that there are a large number of applications awaiting determination and that the Council has a Statement of Priorities in place for dealing with matters concerning the DMS. Nevertheless, 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. More than 5 years have passed since the application was submitted and no exceptional circumstances have been indicated. The prospective wait of a further 10 years is well beyond the expectation of determination under the legislation, and the applicant is entitled to expect their application to be determined within a finite and reasonable period.
9. The Council have a statutory duty to keep their Definitive Map and Statement up to date and although I appreciate the circumstances the Council find themselves in, difficulty complying with this due to a backlog is not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
10. Correspondingly, 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 time to carry out its investigation and make a decision on the application, and taking this into consideration, 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** Leeds City Council to determine the above-mentioned application not later than 12 months from the date of this decision.

A Behn

INSPECTOR