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| **Direction Decision** |
| **by Laura Renaudon LLM LARTPI Solicitor** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 January 2025** |

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| **Ref: ROW/3345227****Representation by Ian Witham****Norfolk County Council****Application to add a restricted byway from from Lantern Lane (U 19183), at the grid reference TG 3786 3030, to meet the Happisburgh Footpath No. 15, at the grid reference TG 3795 2991, in the parish of Happisburgh (OMA ref 72004/HP198/3 & 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.
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| * The representation is made by I M Witham, dated 16 February 2024.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 24 September 2021.
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| * The Council was consulted about the representation on 30 May 2024 and the Council’s response was made on 30 August 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 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 application is dated 19 May 2021, although recorded by the Council as being received in August that year, and some 147 (of around 200) applications precede it in accordance with the Council’s stated priorities which are to deal with applications received in chronological order unless specific considerations arise. That is not an unreasonable approach, but the Council explains that it is dealing with a considerable increase in modification applications without a commensurate increase in resources. From the table of outstanding applications supplied, it appears there was a bulge in applications made in 2021 although there are many outstanding from before then.
4. The consequence of a direction here would potentially be to delay other applications. The Council acknowledge that a considerable amount of time has elapsed since the application was made. Nonetheless I note that the evidence relied upon is entirely documentary, and thus the risk of failing recollections or the unavailability of those giving user evidence is not a consideration that arises here.
5. The applicant is concerned that the Council is falling behind in discharging its rights of way functions, and specifically its statutory obligation to bring and keep the Definitive Map and Statement up to date. He states that a notice is sometimes displayed beside the route which is the subject of the application, declaring the route to be private, thus inhibiting public use of the route. He contends that the route has a high amenity value, so its status – whether public or not – needs to be properly determined without further delay, in the interests of all parties concerned.
6. It is not explained what the amenity value of the route is or why this should result in a prioritising of the application. Nonetheless the Council has 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.
7. 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 might be affected. I am not informed how many of those applications might rely on user evidence. Nor am I informed whether the route is threatened by development or if recording it on the Definitive Map and Statement would progress any specific targets within the Council’s Access Improvement Plan.
8. In the light of these factors, the Council’s decision not to prioritise this application above others received before it appears to me reasonable, but nonetheless 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 three years have passed since the application was submitted and no exceptional circumstances have been indicated. 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 in view of the Council’s current shortfall in resources and the time needed to ameliorate that.
9. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

**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 Norfolk County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Laura Renaudon

INSPECTOR