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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/3346445**  **Representation by Ian Witham**  **Norfolk County Council**  **Application to upgrade to a restricted byway the footpath running from Dovehouse Lane (U 14392) at Alby Hill, at the grid reference TG 1930 3419, to Church Road (U 14440), Alby, at the grid reference TG 2007 3368, in the civil parish of Alby with Thwaite (OMA ref 61354/HP3/1)** |
| * 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 I M Witham, dated 8 June 2024. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 17 August 2019. |
| * The Council was consulted about the representation on 17 June 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 was submitted on 7 May 2019 and the relevant certificate confirming notification to interested parties followed in August of that year. The Council’s stated priorities 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 the increase in resources to match. The present application lies around 50th in the queue of around 200 undetermined applications. It appears that consultation has been undertaken and the Council is in the process of drafting a report, although is presently unable to say when the application is likely to be determined other than that it is some way off.
4. Given the Council’s stated shortfall in resources, the consequence of a direction would potentially be to delay other applications that would otherwise take priority. In relation to this particular application, the route is presently recorded as a footpath and signposted as such. The application seeks to demonstrate that higher rights apply. To this end, apart from the applicant’s own statement it appears that the application relies entirely on a suite of documentary evidence such as historic Ordnance Survey maps, tithe maps and inclosure awards. There is seemingly no reliance on user evidence.
5. The applicant states that the route in question is in an area containing few bridleways or byways currently recorded on the Definitive Map, and suggests that this is a reason why the case should be prioritised over other cases. He also expresses a general concern that the Council appears to be falling behind in dealing with Definitive Map applications, even those already subject to directions. Without a direction, the applicant considers that there can be no expectation of a decision in the reasonably near future.
6. From the map supplied it appears that there are few bridleways or byways in the immediate vicinity, although the context in which other applications are made is not given and the route does lie within proximity to minor roads. This does not appear to me a sufficient reason to require the case be prioritised above others. 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. 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 but that appears to me a consequence of the Council’s resourcing decisions.
7. 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 five years have passed since the application was submitted and, although the Council is dealing with a marked increase in the number of applications, these do not in themselves amount to exceptional circumstances. It is appreciated that the Council will require some time to complete its investigation and make a decision on the application. As the Council has already carried out consultation and is in the process of drafting a report, a further period of nine months has been allowed.
8. 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 nine months from the date of this decision.

Laura Renaudon

INSPECTOR