

|  |
| --- |
| **Direction Decision** |
| **by Nigel Farthing LLB** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 25 February 2025** |

|  |
| --- |
| **Ref: ROW/3355487**  **Representation by Robert Wright on behalf of Denstone Parish Council**  **Staffordshire County Council (reference 025221)**  **Addition of a footpath in the parish of Denstone** |
| * 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 Staffordshire County Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Robert Wright on behalf of Denstone Parish Council, and is dated 7 November 2024. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 22 March 2023. |
| * The Council was consulted about the representation on 22 November 2024 and the Council’s response was made on 28 November 2024. |
|  |

Decision

1. The Council is directed to determine the above-mentioned application.

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.

1. The Applicant supports his request for a direction on the basis that the application to record the claimed public path is made in reliance upon user evidence statements and the ability of the witnesses to support their statements will diminish over time. Otherwise, the Applicant puts forward no special circumstances.
2. In response to consultation the Council advise that it currently has 267 definitive map modification order (DMMO) applications awaiting determination. Currently this application is positioned 252nd in the list. The Council are unable to estimate when in the ordinary course it would be determined due to the number of outstanding applications and the Council’s lack of staff resources.
3. The Council determines applications in accordance with its Statement of Priorities for investigation of DMMO applications. Generally, applications are dealt with in order of receipt unless they fall within one of two exceptional categories. These are first, that the route is threatened by imminent development for which planning permission has been given and second, where there is evidence of severe financial hardship. The Council has determined that the current application does not fall within either of these priority categories.
4. The Council does not consider that a direction should be made in this case. To do so would be to the disadvantage of the 251 applications ahead on the waiting list, many of which will be no less deserving than this matter and it would be unfair to give it priority over those which have been waiting longer.
5. Of the applications awaiting determination, 32 are the subject of Schedule 14 directions which specify dates for determination. The Council states that if all its resources were devoted to the cases where an existing direction has been made it would not be possible determine them all within the time allowed. I recognise the illogicality of making a direction which would prejudice the ability of the Council to comply with directions already given.
6. 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.
7. 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 two years 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 indefinite period. In all the circumstances I am satisfied that there is a case for setting a date by which time the application should be determined.
8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I have recognised the illogicality of making a direction requiring determination of this matter ahead of cases where a similar direction has already been made. For these reasons, I have allowed a further period of 15 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 Staffordshire County Council to determine the above-mentioned application not later than 15 months from the date of this decision.

Nigel Farthing

INSPECTOR