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| **Direction Decision** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 May 2025** |

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| **Ref: ROW/3358363**  **Representation by Douglas Fryer**  **Surrey County Council**  **Application to add a footpath from along Park Close to Esher Public Footpath 43/10 (Council Reference: CP601)** |
| * The representation is made under paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Surrey County Council to determine an application for an Order, under section 53(5) of that Act. |
| * The representation made by Douglas Fryer is dated 23 December 2024. * The certificate under paragraph 2(3) of Schedule 14 is dated 4 February 2021. |
| * The Surrey County Council was consulted about the representation on 21 January 2025 and their response is dated 28 February 2025. |
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Decision

1. The Surrey County Council (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 12 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 applicant is concerned with the time taken to determine this application as the alternative route is not suitable for older or disabled residents.
4. The Council’s Public Rights of Way Priority Statement sets out their priorities for keeping the Definitive Map and Statement under continuous review. It is under review, but currently investigating applications for Definitive Map Modification Orders are their third priority after Legal Event Orders and Rail Crossing Orders.
5. The Council aim to start processing applications within two years and make a decision within three years of receipt. Applications are dealt with in date order except in the following exceptional circumstances: 1) planning permission has been granted which would obstruct an alleged right of way, 2) safety issues, 3) the route would be part of a Rights of Way Improvement Plan improvement, 4) a route anomaly would be resolved. The Council consider that none of the exceptional circumstances apply to this application.
6. The Council anticipate it will be over 30 months before a decision is made. There are currently 17 applications awaiting determination before this one and they are currently working on nine applications. Other directions have resulted in newer, complex applications being worked on before older ones.
7. The Council states the Covid pandemic continues to impact the Rights of Way team due to increased work and reduced staffing levels. They had staff vacancies until early 2024 and took on the Commons Registration and Town and Village Green work in 2020 without additional resources or experience. The Council estimates this has added 12 to 24 months onto application waiting times, but they are committed to reducing these delays.
8. Authorities have a duty to keep the definitive map and statement up to date and Circular 1/09 makes it clear they should ensure that sufficient resources are allocated to meeting their statutory duties with regard to the protection and recording of public rights of way. A lack of resources is not considered to be an exceptional circumstance for not determining applications.
9. 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 four years have passed since the application was submitted and no exceptional circumstances have been indicated.
10. I appreciate a direction to make a determination on the application before me would disadvantage applicants who have been waiting longer. However, I do not consider older applications should be grounds to not justify giving a direction when the 12 month determination period has passed.
11. In the circumstances I have decided there is a case for setting a date by which time the application should be determined. 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 six 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** the Surrey County Council to determine the above-mentioned application not later than six months from the date of this decision.

Claire Tregembo

INSPECTOR