



Direction Decision

by **Mark Yates BA (Hons) MIPROW**

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 July 2017

Ref: FPS/R0660/14D/2

Representation by Mrs Cunningham

Cheshire East Council

Application to delete part of Rainow Footpath No. 15 and Kettleshulme Footpath No. 23 (OMA ref. MA/5/252)

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") seeking a direction to be given to the Cheshire East Council ("the Council") to determine an application for an order, under Section 53(5) of that Act.
 - The representation, received on 3 May 2017, is made by Mrs Cunningham.
 - The certificate under Paragraph 2(3) of Schedule 14 was received by the Council on 17 March 2017.
 - The Council was notified of the representation on 24 May 2017 and submitted its response on 13 June 2017.
-

Decision

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

Reasons

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. 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 applicant¹.
3. The Council scores applications in accordance with the criteria set out in its 'Statement of Priorities' and there is nothing to suggest that the system adopted by the Council is unreasonable.
4. The applicant points to the proposed action to make the paths available for the public to use and the works involved. I concur with the Council that the consideration of the application and the proposed works are separate matters.

¹ Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

Further, this appeal relates to the application submitted by Mrs Cunningham and not a previous application considered by the Council. However, the applicant is rightly concerned about the loss of evidence from witnesses if the application is not determined for some time.

5. It is not my role to consider the merits of the evidence in this case. Nonetheless, a letter from the Council, dated 13 April 2017, indicates that some analysis of the evidence has been undertaken. In the circumstances, it may have been appropriate to complete the determination on the application.
6. 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 twelve months under normal circumstances. In this case, the application was only submitted in March 2016. However, the Council anticipates that a decision will not be reached for approximately another five to six years. I do not consider that such a delay can be viewed as reasonable.
7. In the circumstances 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 some time to complete its investigation and make a decision on the application. I consider that a further period of twelve months should be allowed.

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Cheshire East Council to determine the above-mentioned application not later than twelve months from the date of this decision.

Mark Yates

INSPECTOR