



Direction Decision

by **Alison Lea MA (Cantab) Solicitor**

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

Decision date: 6 September 2017

Ref: FPS/J1155/14D/5

Representation by Mr Anthony Barnes

Devon County Council

Application to add a footpath connecting with Northam Footpath No 26 at either end of Kipling Tors, Westward Ho!

- 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 Devon County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 21 April 2017, is made by Mr Anthony Barnes.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 7 April 2016.
- The Council was notified of the representation on 26 April 2017 and submitted its response on 5 July 2017.

Summary of Decision: 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, to 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.
2. The Council's Statement of Priorities is published as Definitive Map Review Policy Statements. Policy DM1B/2 states that "Schedule 14 applications and other such claims will be dealt with as part of the parish-by-parish Definitive Map Review" (the Parish Review) and Policy DM1A/3 states that the Council is seeking to complete that review before 1 January 2020. Policy DM1C/3 states that "new claims which arise in a parish where the review has been completed will be deferred until the whole of the County has been reviewed". There is provision for exceptions to made in specified circumstances.

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

3. The Council states that it has 182 applications on the register awaiting determination, 30 of which will be picked up as part of the Parish Review. The remaining 152 applications will be dealt with once the Parish Review is completed and at that time applications will be prioritised, with those duly made, of which there are 25, prioritised over those which are not. The Council states that it may be able to allocate staff to start dealing with outstanding applications ahead of the target date of 1 January 2020, but no details of progress have been provided.
4. The Council has given no indication with regard to the rate at which it is likely to determine the 25 duly made applications once the Parish Review is completed or any information with regard to how those applications will be prioritised. The Council does however state that, with regard to the current application, the route is currently open and available to the public and no details of any special circumstances why it should be given priority over other claims have been provided.
5. I agree with the Council that the applicant has provided no reasons to support the case being elevated above other applications. I also note the Council's concern that diverting staff resources to determine the application would have a detrimental impact on the progress of the Parish Review. However, 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 circumstances². In this case, that 12 month period has passed and the Council has been unable to provide any real indication of when it is likely that the application will be dealt with. Although the Council states that staff may start dealing with some outstanding applications prior to 1 January 2020, on the information provided it seems unlikely that this application would be given priority and that it could be a considerable time after 2020 before it would be dealt with.
6. Taking into account all the above matters, I conclude that there is a case for setting a date by which time the application should be determined. However, I consider that in the particular circumstances of this case, the Council should be given time to complete the Parish Review. It is also appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly I consider it appropriate to allow a further 3 years for a decision to be reached.

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** Devon County Council to determine the above-mentioned application not later than 3 years from the date of this decision.

Alison Lea

INSPECTOR

² The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14