



Direction Decision

by Susan Doran BA Hons MIPROW

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

Decision date: 30 September 2022

Ref: FPS/G5180/14D/1

**Representation by Steve Barnes on behalf of Downe Residents' Association
London Borough of Bromley Council**

**Application to add a footpath between Luxted Road, Downe and Footpath 232
(OMA ref. 6.2)**

- 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 the London Borough of Bromley Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation received on 15 October 2021 is made by Steve Barnes, Chair, Downe Residents' Association.
 - The certificate under Paragraph 2(3) of Schedule 14 is undated, however notices were served on the landowners on 10 June 2020.
 - The Council was contacted about the representation on 19 November 2021 and their response was made on 15 December 2021 and 11 July 2022.
-

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 applicant, as set out in the Rights of Way Circular 1/09 Version 2, October 2009, Department for Environment, Food and Rural Affairs.
3. The application, made on 10 June 2020, was accompanied by 89 user evidence forms, with many claimants providing evidence of 60 or more years use in support of the claim. Many are long-standing local residents who are elderly, and to delay considering the application, it is argued, would negatively impact upon their ability to support their evidence. The applicant has been advised that determination of the

application has been delayed by the Covid pandemic, the loss of rights of way expertise within the Council and a backlog of work. In September 2021, they were told theirs was next in line to be determined once an earlier claim had been processed. However, the Council has been slow in determining cases and the applicant considers this application should be determined given the overwhelming support for it and the strength of feeling in the community. They believe that the landowners will challenge the claim and are aware a small number of residents oppose it, but the matter needs to be settled.

4. The Council does not have a statement of priorities for deciding the order in which to determine applications, and they say that even if they did, this one would not command sufficient urgency to merit being considered out of turn. They have recently received 17 requests for Definitive Map Modification Orders which in their experience is unprecedented. Their Register of Applications lists 15 awaiting determination of which this application is fifth down that list. Although the Council says it deals with applications in strict chronological order, it appears this application has moved up the list a few places as 3 others with earlier dates sit beneath it. In addition, it has been assigned to a named case officer. Further, the Council states that although it has not yet been possible to carry out any detailed work on the application, it has now been assessed, and every effort will be made to progress this application as quickly as possible.
5. It is acknowledged that the Council regrets the delay in processing this application, that it is mindful of its obligation to make timely modifications to the Definitive Map and Statement, and endeavours to determine all applications received as soon as staff resources allow. It is also acknowledged that the effects of the Covid-19 pandemic have impacted on the process together with the increase in claims the Council has received, such that a back-log of some 12 months has already built up. To that end the Council has engaged a consultant to assist with the workload.
6. However, although the Council says the application has been assessed, it has not said what this means in practice. Neither has it given any indication as to when it expects to fully investigate and determine it and therefore how long the applicant will have to wait for a decision. 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, over 2 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council for the delay in determining it.
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 carry out its investigation and make a decision on the application. A further period of 6 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 London Borough of Bromley Council to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

Inspector