



Direction Decision

by J P Tudor BA (Hons), Solicitor (non-practising), AIPROW

an Inspector appointed by the Welsh Ministers

Decision date: 10/04/2024

Case reference: CAS-03068-R8N4D9

Representation by: Mrs Carole Evans

Order Making Authority: Torfaen County Borough Council

Application to: Add a public footpath from St Marys Road to Woodland Road, Croesyceiliog, Cwmbran, Torfaen.

- This 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 Torfaen County Borough Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mrs Carole Evans, dated 20 October 2023.
 - Torfaen County Borough Council was consulted about the representation on 9 January 2024 and its response was made on 6 February 2024.
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Decision

1. Torfaen County Borough Council ('the Council') is directed to determine the above application.

Preliminary Matters

2. The application has been decided based on the written representations received in accordance with the relevant procedures.
3. Although the Definitive Map Modification Order (DMMO) application form submitted to the Council does not clearly specify the status of the public right of way to be added, it does refer to use being on foot. In addition, the majority of user evidence submitted with the application refers to a footpath, as does the representation to PEDW seeking a direction. Therefore, I have referred to the DMMO application in the header above as to add a footpath to the Definitive Map and Statement of Public Rights of Way (DMS) for the area.
4. I would normally provide the Council's reference for the application within the header above. However, notwithstanding correspondence between PEDW and the Council, the Council has not provided its reference. Therefore, I have been unable to include it.
5. I have considered the duty to improve the economic, social, environmental, and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-being of Future Generations (Wales) Act 2015 ('the WBFG Act'). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable

development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out as required by section 8 of the WBFG Act.

Reasons

6. On receipt of a duly made application under s53(5) of the 1981 Act, the relevant authority is required, by paragraph 3(1) of Schedule 14 of the same Act, '*as soon as reasonably practicable*' to investigate the matters stated in the application and, after consulting with the relevant town or community councils, to decide whether to make the order to which the application relates.
7. If the authority has not determined the application within 12 months of it receiving a certificate confirming that notice has been served on every owner and occupier of any of the land to which the application relates, the applicant may make representations to the Welsh Ministers (WM), under paragraph 3(2) of Schedule 14. The WM may then, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.
8. Paragraph 5.26 of the Welsh Government's Guidance for Local Authorities on Public Rights of Way (August 2016) ('the WG Guidance') states that in response to such a request from an applicant for the WM to direct an authority to make a decision, the WM, '*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.*
 - *Any views expressed by the applicant.'*
9. Although the Council advises that it provided only verbal rather than written acknowledgement of the application, it appears to accept that the application from Mrs Carole Evans to add a footpath from St Marys Road to Woodland Road, Croesyceiliog, Cwmbran, Torfaen to the DMS was duly made on 2 August 2022, and that it has yet to be determined.
10. In response to the consultation from PEDW, the Council advises that the primary reason for not determining the application is due to a reduction in the number of staff within its rights of way team since 2020, which has impacted on the Council's ability to respond to these types of applications in a timely manner.
11. In addition the Council states that since receipt of the application, it has held discussions with the relevant landowner about how public access could remain. According to the Council, an initial offer from the landowner to reopen the route on a permissive basis was rejected by the applicant and has since been withdrawn.
12. The Council further advises that, although it is not currently in a position to make a decision, the application and supporting evidence have been reviewed and a timetable is being devised to progress it, with the next step being to interview members of the public who have submitted user evidence.
13. In addition, the Council advises that it has not published a statement setting out its priorities for bringing and keeping the DMS up to date. I also note that it has not provided any information regarding any backlog of such applications or the basis on which it deals with them.

14. The applicant indicates that the access along the relevant path has been blocked by locked gates since late 2019 or early 2020, which led her to contact her local councillor in October 2021 and, subsequently, to the making of a DMMO application in August 2022. Since then, the applicant advises that, notwithstanding her requests for updates from the Council, it appears that no progress has been made, which led her to request a direction in October 2023.
15. An applicant's right to seek a direction from the Welsh Ministers gives rise to the expectation that an application will, under normal circumstances, be determined within 12 months. In this case, about 20 months have now passed since the DMMO application was submitted. Although the Council advises that it contacted the relevant landowner in an attempt to resolve the access issue, and that it has now taken initial steps to progress the application, no estimated timeframe for determination has been provided.
16. While I am sympathetic to the Council's resource issues, I note that paragraph 1.4 of the WG Guidance advises that: *'Authorities should ensure they allocate sufficient resources to discharge their statutory duties in relation to public rights of way.'* I also recognise the generally time-consuming nature of assessing, investigating and determining DMMO applications. However, although it had the opportunity to do so, the Council has not provided information regarding any current backlog of such applications. It also appears to lack any formal statement or methodology for prioritising DMMO applications.
17. Given the above factors, I consider that the application has not been dealt with as soon as reasonably practicable. Overall therefore, I find it appropriate to direct that the application should be determined within a specified timescale. However, I recognise that, given that the Council appears to have only relatively recently begun to progress the application and that it wishes to carry out witness interviews, realistically, it will require a reasonable amount of time to complete its investigations and determine the application. Accordingly, although under normal circumstances I would have allowed a further 6 months for a decision to be made, in this case I consider that a period of 9 months is more appropriate.

Direction

18. On behalf of the Welsh Ministers and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, I HEREBY DIRECT Torfaen County Borough Council to determine the above-mentioned application not later than 9 months from the date of this Direction Decision.

JP Tudor

INSPECTOR