



Direction Decision

by Alan Beckett BA, MSc, MIPROW

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

Decision date: 15 December 2017

Ref: FPS/U3100/14D/5

**Representation by Mrs Rachel Livingstone
Oxfordshire County Council**

Application to add a Bridleway from New Yatt Road (SP 37482 12864) to join the cycle path on the A4095, Witney to Woodstock Road (SP 37524 11553) ('Occupation Lane') (Parish of Hailey) (OMA ref. 312/MOD/09.16 03399)

- 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 Oxfordshire County Council to determine an application for an Order made under Section 53(5) of that Act.
 - The representation, dated 26 September 2016, is made by Mrs Rachel Livingstone.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 24 September 2016.
 - The Council was notified of the representation on 28 September 2017 and submitted its response on 10 November 2017.
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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, 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.
3. 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.
4. The applicant acknowledges that the Council seeks to investigate definitive map applications in the chronological order in which they are received but considers that the circumstances of this case warrant the application being considered out of turn. The applicant considers that the application should be prioritised as the claimed bridleway provides a safe traffic free route for pedestrians, cyclists

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

- and riders away from the busy New Yatt Road and links to a well maintained cycleway alongside the A4095 which in turn provides access to the local secondary school and Witney.
5. Furthermore, the applicant submits that those persons who have personal knowledge of use of the claimed path are currently in their 70s and 80s; such first-hand evidence of use is likely to be lost if an investigation of the application is not commenced for another 9 or 10 years. Two of the landowners adjacent to the claimed route have recently erected obstructions along the way and are unapproachable; although evidence of use has been gathered from 20 local residents it will not be submitted until the investigation commences for fear of intimidation.
 6. The applicant also submits that some of the documentary evidence relied upon in support of the application is held by local residents and some by local museums. There is a risk that if the application was not investigated promptly that access to these documents might be lost as people move away from the village or if local collections are amalgamated.
 7. The Council does not consider that the reasons given by the applicant amount to exceptional circumstances and does not believe that deferring consideration of the application would lead to significant consequences. As a result, the Council does not consider that the application should take priority over others on the application register.
 8. The Council says that its current statement of priorities does not allow consideration to be given to matters of public safety or the potential level of use of a route when prioritising cases. The Council acknowledges that claims for public rights of way can be contentious within local communities, but it cannot assist in matters of witness intimidation.
 9. The Council has a three-fold statement of priorities. First is the updating and maintenance of the definitive map and statement; second is the processing of applications for definitive map modification orders; third is the investigation of other evidence to modify the definitive map and statement. With regard to its second priority, the Council states that it aims to process definitive map modification order applications in chronological order of receipt and that it aims to begin work on applications within 9 – 10 years of them being made. The application stands at number 96 out of 97 on the Council's list; the Council estimates that work will commence on this application in 8 or 9 years' time.
 10. Although the Council aims to deal with the backlog of applications it faces in chronological order, 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, although only a year has passed since the application was submitted, the applicant raises legitimate concerns about first-hand evidence of use of the claimed bridleway being lost through the passage of time; witnesses who are currently in their 70s and 80s may no longer be alive in 10 years' time. It seems to me that this is an exceptional circumstance which would justify taking the application out of turn.

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

11. Furthermore, the Council is expected to commence its consideration of an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate; it is not considered reasonable for 8 or 10 years to elapse between an application and its determination, or for the Council to afford this level of uncertainty to applicants. It would appear unlikely that a determination will be made in the near future without intervention.
12. 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 and I consider it appropriate to allow a further 6 months 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** the Oxfordshire County Council to determine the above-mentioned application not later than six months from the date of this direction.

Alan Beckett

INSPECTOR