



## Direction Decisions

by Peter Millman BA

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

Decision date: 12 June 2017

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**Ref: FPS/U3100/14D/2, 3 and 4**

**Representations by Westbury Parish Council  
Oxfordshire County Council**

**Applications to add to the Definitive Map (i) a bridleway from the junction of Mixbury paths 303/4 and 303/5 to Fulwell Road at Station House, (ii) a footpath from Buckinghamshire footpath WBB/15/2 south west to a junction with a section of disused railway line in Mixbury and (iii) a footpath from a junction with Buckinghamshire footpath WBB/14/1 south east to a junction with Buckinghamshire footpath WBB/11/1.**

**Oxfordshire County Council references 02965, 02966, 02967**

- The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act") seeking directions to be given to Oxfordshire County Council ("the Council") to determine applications for three Orders, under Section 53(5) of that Act.
- The representations, dated 13 March 2017, are made by Sue Rumfitt Associates on behalf of Westbury Parish Council.
- The certificates under Paragraph 2(3) of Schedule 14 are dated 7 December 2010.
- The Council was notified of the representations on 2 February 2017 and submitted its response on 4 April 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned applications.

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### 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 applicant<sup>1</sup>.

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

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2. The applications for modification orders in this case were made on 7 December 2010. The parish of Westbury is adjacent to the boundary between Oxfordshire and Buckinghamshire. Westbury Parish Council applied to both County Councils for orders relating to alleged rights of way which crossed the county boundary. Buckinghamshire County Council made an order to add to its definitive map a section of path which lay within its boundary in 2014, and this order was confirmed after a public inquiry in 2015. Buckinghamshire County Council offered to investigate the applications as they affected Oxfordshire, but agreement between the two county councils could not be reached.
3. Westbury Parish Council is concerned that the Council is making very little real progress in reducing its backlog of applications, and that there is a danger that members of the public who gave evidence on paper of their use of the paths will have moved from the area or otherwise become unavailable to give oral evidence before the applications are investigated in, according to the Council, 5 or 6 years' time. Where an order is made and contested, cross-examined oral evidence may be vital in determining a case.
4. The Parish Council is also concerned that the delay in investigating the applications is causing friction between path users and some landowners. This delay, they state, is unfair on all parties. There is no good reason why the Council cannot expedite determination of these applications. Its actions frustrate the clear will of Parliament that the Definitive Map and Statement should be a complete and accurate record of public rights of way. The Parish Council asks for a direction that the Council determines the applications within 12 months.
5. In response to the application for directions, the Council states that it is processing the applications in line with its published Statement of Priorities, that the applications are numbers 60, 61 and 62 in the list of 94 pending applications and that there are no exceptional circumstances which set these ones apart from other applications for modification orders. It estimates that it will begin investigating these applications in 5 or 6 years, i.e. 12 or 13 years after they were received. To take them out of order would disadvantage other applicants.
6. The Parish Council does not take issue with the way that the Council prioritises applications. I note, however, that the Statement of Priorities does not appear to take account of the possibility of witnesses becoming unavailable after a long waiting period – its current aim is 'to begin work on applications within 9-10 years of receipt'. In addition I note the Statement prioritises improvement of the accuracy of the Council's Definitive Map and Statement ahead of dealing with applications for modification orders. It does this 'however minor' an individual discrepancy in the current Definitive Map and Statement might be. I am not convinced that it would always be sensible to devote resources to the 'complex legal order processes' involved in resolving such discrepancies where they do not cause immediate or foreseeable problems, ahead of determining applications for modification orders.
7. Neither the Statement of Priorities nor the Council's response to the applications deals with the level of resources available to process applications for modification orders within a reasonable time, beyond noting that progress depends upon the resources available within the Definitive Map and Commons team. There is no commitment to provide any level of resource beyond the aim to start work on applications within 9 to 10 years.

8. The County Council's response concludes with the comment that it ensures that 'we provide the same high quality of service to all parties'. A high quality service must also, I consider, be a timely service.
9. 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, six and a half years have passed since the applications were submitted and if no directions are given a further 5 or 6 years may elapse before determination. This is fair neither to the applicant nor to affected landowners, whose property may be blighted.
10. It is clear that if directions are given, other applications may suffer unless the Council is prepared to allocate resources commensurate with the length of its waiting list. It is appreciated, too, that the Council will require some time to carry out its investigation and make a decision on the applications. Nevertheless, in the circumstances I have decided that there is a case for setting a date by which time these applications should be determined and consider it appropriate to allow a further 12 months for decisions 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** Oxfordshire County Council to determine the above-mentioned applications not later than 30 June 2018.

*Peter Millman*

INSPECTOR