



Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 22 January 2018

Ref: FPS/P0430/14D/2

**Representation by Alison Heath for The British Horse Society
Buckinghamshire County Council**

**Application to upgrade footpath HDG/14 (from SP982874 to SU985872) to
bridleway status (Parish of Hedgerley) (OMA ref. CH/16855 BAP)**

- 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 Buckinghamshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 14 August 2017 is made by Alison Heath on behalf of the British Horse Society.
- The certificate under Paragraph 2(3) of Schedule 14 was dated 4 December 2013.
- The Council was notified of the representation on 6 September 2017 and submitted its response on 17 November 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. In this case the original application was based on the discovery of an historical document: a copy of a Quarter Sessions Court Order dating from 1825. At the time of making the application Mrs Heath was advised that applications were being dealt with in chronological order, and that her application would be determined within two years. By 2016 the case was at the top of the priority list, and was apparently under investigation; scheduled for determination by mid-2017.

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

3. In 2017 the Council introduced a new policy of determining applications which involve user evidence ahead of those based on historical documentation, on the basis that delay to user-evidence based claims is more likely to result in the loss of evidence due to witnesses passing away or moving elsewhere. The applicant has been informed that her application is now at number 12 on the record of applications held by Buckinghamshire County Council ('the Council') and that it is unlikely to be determined before the middle of 2019 at the earliest.
4. The Council is currently suffering from a loss of staff resources due to illness and maternity leave, and has seen an increase in other types of path order work related to major infrastructure schemes. Whilst staff absence can be difficult to anticipate, it is a normal risk factor. The major infrastructure schemes are foreseeable, requiring months, if not, years of pre-planning. If additional resources were needed to deal with them this should have been anticipated.
5. I acknowledge the Council's efforts to ensure that user-based applications are dealt with as a priority, and the rationale behind that decision. However, I also acknowledge that this approach results in uncertainty for applicants submitting historically based cases as they may be pushed further down the list as a consequence. It must also be very dispiriting to have seen your application reach the top of the list, only to have the policy changed and applied retrospectively. Under the circumstances, and given the delay already experienced by the applicant, I consider that it would be reasonable to hold the Council to their original estimate as closely as possible.
6. 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, four years have passed since the application was submitted and no exceptional circumstances have been indicated. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application, but this case appears to be already programmed into their committee cycle, and some investigation is reported as having been carried out.
7. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and 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 Buckinghamshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Helen Slade

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