



# Direction Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 14 May 2018

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**Ref: FPS/U3100/14D/6**

**Representation by Michelle Thomas**

**Oxfordshire County Council**

**Application to add a footpath between Mill Lane and Newtown Road, Henley-on-Thames (Council ref. 245/MOD/10.16)**

- 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, under Section 53(5) of that Act.
  - The representation is made by Michelle Thomas, dated 19 January 2018.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 4 October 2016.
  - The Council was consulted about the representation on 8 February 2018 and the Council's response was made on 21 March 2018.
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## Decision

1. The Council is directed to determine the above-mentioned application as set out in the formal direction below.

## 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<sup>1</sup>.
3. Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, states: "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...".

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

4. The Council's policy is to process applications in chronological order of receipt but will make exceptions to an application if the impact of deferral would have significant consequences. The application in question is ranked 85<sup>th</sup> on a list of 98 cases. The Council estimates that it will be 8 - 9 years before they commence investigating this case.
5. 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<sup>2</sup>. In this case, the applicant for the Order has waited more than 14 months before seeking a direction from the Secretary of State. The statutory duty is to investigate applications as soon as is reasonably practicable. The statement by the authority setting out its priorities for bringing and keeping the definitive map up to date is only reasonable if it is able to implement those priorities in accordance with the statutory duty and, under normal circumstances, within 12 months. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to recording public rights of way<sup>3</sup>.
6. 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** Oxfordshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

*Michael R Lowe*

INSPECTOR

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<sup>2</sup> 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.

<sup>3</sup> Paragraph 1.8, Rights of Way Circular 1/09 Version 2, October 2009