



# Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 14 January 2019

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**Ref: FPS/C1245/14D/3**

**Representation by Roger Caesley**

**Dorset County Council**

**Application to add Public Footpath between Higher Holt Farm and Fuzzy Grounds, Parish of Melbury Osmond (OMA ref. T513)**

- 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 Dorset County Council to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by Roger Caesley, dated 6 August 2018.
  - The certificate under Paragraph 2(3) of Schedule 14 of the 1981 Act is dated 11 July 2011.
  - The Council was consulted about your representation on 6 September 2018 and the Council's response was made on 10 October 2018.
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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, 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. The Council anticipate that investigations into the application will be commenced in January/February 2021 with an estimated decision for determination of August 2021. The information provided in the representation suggests to the Council that the application may meet exceptions 3 and 6 of their Statement of Priorities and therefore given consideration for prioritisation. However, the Council say that to establish whether or not the exceptions apply more information is required.

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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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4. 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 over seven years have passed since the making of the application and determination is likely to take a further two years and more.
5. It is reasonable for the Council to determine applications in accordance with its Statement of Priorities. It is also noted that if any of the exceptions identified therein are met then consideration will be given to prioritisation of the application; the Council require further information as to whether any exceptions apply. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of the application to take around 10 years. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application. Consequently I consider 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 investigations and make a decision on the application. A further period of 6 months is appropriate.
6. The representation refers to Article 6(1) of the Human Rights Act 1998. Article 6(1) provides that 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. However, my decision as to whether the authority has investigated and determined this application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a decisive determination for the applicant's civil rights and obligations. Article 6(1) is not applicable.

### **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** Dorset County Council to determine the above-mentioned application not later than 6 months from the date of this direction decision.

*Martin Elliott*

INSPECTOR