



# 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/U3100/14D/8**

**Representation by British Horse Society Oxfordshire  
Oxfordshire County Council**

**Addition of a Restricted Byway in the Parish of Brize Norton from the B4477 northwards to junction with Minster Lovell Bridleway No.8 (Ting Tang Lane) (OMA ref. DMMO 03090)**

- 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 the British Horse Society Oxfordshire, dated 10 August 2018.
  - The certificate under Paragraph 2(3) of Schedule 14 of the 1981 Act is dated 14 June 2013.
  - The Council was consulted about your representation on 25 September 2018 and the Council's response was made on 9 November 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 determines its applications in accordance with their Statement of Priorities with the application being given the second highest priority. The Council aims to start work on the application in the next 8 to 9 years although if the Council are able to determine other applications then the application is likely to be investigated sooner. Any delay in determining the application will

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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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depend on progress on other preceding cases and resources in the Definitive Map and Commons team. The Council does not consider that there are any circumstances to warrant the application being given priority over other applications.

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, more than five years have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application. It is noted that resources have been under pressure. However, lack of resources to deal with applications is not a sufficient excuse for a delay in determining any application and do not amount to exceptional circumstances. Circular 1/09 makes it clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
5. It is reasonable for the Council to determine applications in accordance with its policies; in this case its Statement of Priorities. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of the application to take 13 to 14 years. 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 investigations and make a decision on the application. A further period of 6 months has been allowed.
6. It is noted that other applications may be affected by giving priority to the application. However, as noted above for the determination of an application to take more than 12 months, and in this case 13 to 14 years, is unreasonable.
7. 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** the Oxfordshire County Council to determine the above-mentioned application not later than 6 months from the date of this Direction Decision.

*Martin Elliott*

INSPECTOR