



## Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 5 February 2020

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**Ref: FPS/Y3940/14D/3**

**Representation by Alan Woodford**

**Wiltshire Council**

**Application for the addition of a restricted byway from Crosslanes, Axford to footpath RAMS9B at SU2378 6906 approx;**

**upgrading to a restricted byway Footpath RAMS9B from SU2378 6906 approx to SU2375 6905 approx;**

**addition of a restricted byway from RAMS9B at SU2375 6905 approx to its junction with footpath RAMS44 at SU2383 6862 approx;**

**upgrading to a restricted byway RAMS44 from SU2383 6862 approx to its junction with footpath MILD16; and**

**upgrading to a restricted byway MILD16 from its junction with RAMS44 south to the A4 at Putall (OMA ref. 2018/07)**

- 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 Wiltshire Council to determine an application for an Order, under Section 53(5) of that Act.
  - The representation is made by Alan Woodford, dated 1 November 2019.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 12 October 2018.
  - The Council was consulted about the representation on 11 November 2019 and the Council's response was made on 13 December 2019.
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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>.

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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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3. The Council have not undertaken any work in respect of the application and there is currently a backlog of 179 definitive map modification order applications. The Council estimates that it will be approximately 18 years before the application could be determined although other factors may delay the determination of the application further. Given the other factors it is likely that it will be approximately 29 years for the application to be determined. However, if a large number of applications based on witness evidence were to be received then the determination of the application would be delayed further.
4. At present applications based on historical evidence are dealt with in date order of receipt and applications based on witness evidence, or where the path is under threat, are prioritised. Under the current scheme of prioritisation there are no circumstances which would result in the application being prioritised. The Council has published a scheme of prioritisation for applications although this has not yet been formally adopted. The time taken to determine the application could be shorter under this proposed prioritisation scheme but the Council say that it is not possible to give an indication as to how this may affect the processing of the application.
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. It is reasonable for the Council to determine applications in accordance with its approved policies. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take in the region of 29 years. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.
6. In the circumstances 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.
7. It is noted that the officers dealing with definitive map modification orders have other duties which need to be dealt with alongside that work. However, 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.

### **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** Wiltshire Council to determine the above-mentioned application not later than 6 months from the date of this Direction Decision.

*Martin Elliott*

INSPECTOR