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| **Direction Decision** |
| **by Barney Grimshaw BA DPA MRTPI (Rtd)** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 2 August 2021** |

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| **Ref: FPS/Y3940/14D/4****Representation by Cllr Sandra Eaton, Kington St Michael Parish Council****Wiltshire Council****Application to upgrade to recognise the existence of higher vehicular rights along the footpath leading from the western edge of the Old School (now known as the New Village Hall) to the entrance of Manor Farm and recorded on the Definitive Map as part of KSTM12 (OMA ref. 2020/04D KSTM12)** |
| * 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.
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| * The representation is made by Cllr. Sandra Easton, dated 9 March 2021.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 9 March 2020.
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| * The Council was consulted about your representation on 17 March 2021 and the Council’s response was made on 4 May 2021.
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Decision

1. The Council is directed to determine the above-mentioned application not later than 12 months from the date of this Direction.

Reasons

1. 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[[1]](#footnote-1).
2. In this case, the Council deals with applications such as this in accordance with a statement of priorities which forms part the Council’s Countryside Access Improvement Plan. Applications are divided into those containing user evidence and those which adduce only historical documents. The Council’s policy is to deal with user and historical applications alternately.
3. The Council currently has 186 applications awaiting determination and the current application is ranked 37th amongst the user applications. The Council estimates that it will be at least 15 years before it is determined.
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 15 months have passed since the application was submitted and it is estimated that a further 15 years or more will pass before it is determined. This would suggest that the Council is failing to deploy sufficient resources to the determination of such applications.
5. This is not an acceptable situation. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
6. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I also recognise that restrictions currently in place as a result of the coronavirus outbreak have a significant impact on all rights of way work. Accordingly, although under normal circumstances I would have allowed a further period of 6 months for a decision to be made, I propose to allow a period of 12 months in this case.

**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 Wiltshire Council to determine the above-mentioned application not later than 12 months from the date of this Direction.

Barney Grimshaw

INSPECTOR

1. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-1)