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| **Direction Decision** |
| **by Sue Arnott FIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 SEPTEMBER 2021** |

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| **Ref: FPS/Q1770/14D/6****Representation by Mr I Fairley****HAMPSHIRE COUNTY COUNCIL****Application to modify the definitive map and statement for the area by adding a footpath between Lower Road and Mill Lane, Havant**  |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Hampshire County Council to determine an application for an order (ref 1262) under Section 53(5) of that Act.
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| * The representation, dated 18 June 2021, is made by Mr I Fairley.
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| * The certificate under Paragraph 2(3) of Schedule 14 was dated 21 October 2019.
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| * The Council was consulted about the representation on 30 June 2021 and the Council’s response was made on 10 August 2021.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

1. Mr Fairley submitted an application to Hampshire County Council (HCC) on 21 October 2019[[1]](#footnote-1). This sought to record on the definitive map and statement a public footpath linking Lower Road (at grid reference 701063) and Mill Lane (at grid reference 701061.
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[[2]](#footnote-2).
3. Mr Fairley submits this is an historic route that is part of the setting of a conservation area and forms part of the network of Bedhampton’s paths and lanes. It is valued as an important facility for local people for health and well-being purposes. Three planning applications have been submitted for development of the land over which the claimed footpath passes. None have been approved but the latest application is currently subject to appeal. The land is allocated for development in the draft local plan. Without a definitive map modification order to record this route as a public right of way, this historic route will be lost. Mr Fairley argues that a timely decision is required to safeguard its future for generations to come.
4. In response Hampshire County Council has confirmed that this case is listed as number 21 on its A1 List of applications awaiting determination.
5. HCC’s usual policy is to process applications for definitive map modification orders in chronological order unless a case is established to warrant determination out of sequence. To be afforded greater priority, HCC takes into consideration (a) the extent to which a route would improve public safety; (b) the extent to which it would provide a link between existing highways, population centres or places of interest, or (c) whether determination of the claim would help resolve an anomaly on the definitive map. It may also be taken out of turn if there is a risk the route would be physically lost.
6. HCC concluded that Mr Fairley’s application does meet the criteria for being given priority, being reliant on both user and historical evidence. However, given the number of other priority cases ahead of it in the queue, the effect of prioritising this case has been diluted. HCC now estimates that it will be another 2-3 years before a decision is made on this application.
7. HCC points out that the developer has repeated stated that the claimed route would not be affected by the intended development and the planning authority has outlined a number of options to protect the path should planning permission be granted.
8. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances. In this particular case it is approaching two years since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
9. I recognise that the resources allocated by HCC to this area of work limits its progress in determining outstanding applications and that other cases will have waited much longer than this. Nevertheless, the applicant is entitled to expect that the application is processed within a reasonable length of time. A delay of 2 years with the prospect of a further 2-3 years is beyond the timetable anticipated by the legislation. I therefore consider that there is a case for setting a date by which time the application should be determined.
10. However, I accept that HCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that current restrictions brought about by the Covid-19 pandemic are hindering research work and I will make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 12 months for a decision to be reached 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 Hampshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Sue Arnott

**Inspector**

1. Logged as received on 2 February 2020 [↑](#footnote-ref-1)
2. Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)