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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 4 April 2023** |

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| **Ref: ROW/3311234**  **Representation by Michelle Haley, Wiltshire Bridleways Association**  **Wiltshire Council**  **Application to upgrade part of Stert Footpath 11 to a bridleway (Council ref. 2021/74D)** |
| * 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 (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Michelle Haley, dated 15 November 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 27 October 2021 and was served on 28 October 2021. |
| * The Council was consulted about the representation on 13 December 2022 and the Council’s response was made on 14 December 2022. |
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Decision

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

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.
2. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: 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.
3. Initial checks have been made by the Council to ensure compliancy of the application and it has been duly registered. The case now awaits allocation to an Officer and investigation. To ensure consistency, the Council operates a policy of prioritisation for all Definitive Map Modification Order (DMMO) applications to establish the order in which applications shall be determined. The scheme adopts an initial sifting process based on the following criteria: (i) whether the application contains user evidence (ii) whether the route is threatened by development (iii) whether the application is linked to, or close to another application, so that they can be processed together. If an application meets any of the above, it is often progressed as highest priority. Otherwise, a scoring system based upon other published criteria, is used to determine the place on the Council’s list of outstanding DMMO applications. 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.
4. The application from Michelle Haley, on behalf of Wiltshire Bridleways Association, was acknowledged by the Council on 04 November 2021, duly weighted using the criteria above, and correspondingly ranked 264 of the 326 applications outstanding on the historical case list. The practice of the Council to consider user and historical cases alternately means that this application, when the 42 outstanding user- based applications are taken into account descends to 306 of the 377 total outstanding applications. There is nothing to suggest that the scoring system employed is unreasonable, or that the application has been scored incorrectly.
5. The Council have indicated that with current resources, it could be over 50 years before the application is determined, albeit if the application had been scored as a user-based application, (which it could have been), its position would have risen to 84 of 377 on the list, reducing the timeframe for determination to approximately 14 years. The applicant is fearful that given the current estimated timescales for the application to be determined, as time elapses, the likelihood of those able to give evidence will reduce in number; a concern that is acknowledged by the Council. Furthermore, the route has been obstructed for use by equestrians since 2020, by the erection of a fence and a stile.
6. I do recognise that there are a large number of applications awaiting determination, and that there is a policy of prioritisation to ensure fair ranking. I also appreciate that the Council has limited resources in this area and has recently experienced an influx of applications based upon historical evidence. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and the Council have a statutory duty to keep their Definitive Map and Statement up to date. Difficulty complying with this due to a backlog is not an exceptional circumstance, as sufficient resources should be in place to deliver this statutory duty.
7. 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 12 months has passed since the application was submitted and no exceptional circumstances have been indicated.
8. Correspondingly, I have decided that there is a case for setting a date by which time the application should be determined. I am mindful that the 12-month period has not long expired, and it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 12 months has been allowed.

**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 12 months from the date of this decision.

A Behn

INSPECTOR