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| **Direction Decision** |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 September 2023** |

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| **Ref: ROW/3324591**  **Representation by Paul Howland, Andover Ramblers Association**  **Hampshire County Council**  **Application to add a restricted byway from unclassified road number T58 to North Down Road in the Parish of Hurstbourne Tarrant (Council ref. DMMO 1270)** |
| * 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 Hampshire County Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Charlotte Gibson on behalf of Paul Howland, dated 22 June 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 was served on 10 April 2020. |
| * The Council was consulted about the representation on 29 June 2023 and the Council’s response was made on 1 August 2023. |
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Decision

1. The Council is directed to determine the above-mentioned application within 12 months from the date of this decision.

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. The Council operates a policy of prioritisation for definitive map modification order (DMMO) applications. Applications are progressed in chronological order unless it meets one of the following criteria: (i) the extent to which the claimed route would improve public safety (ii) the extent to which the claimed route would provide a link between existing public highways, population centres or places of interest (iii) whether determination of the claim would contribute to resolving an anomaly on the definitive map and statement (iv) a claim may also be taken out of turn and processed immediately if it can be demonstrated that the route is at risk of being physically lost, for example to development.
4. The application from Paul Howland, on behalf of Andover Ramblers Association, was made on 10 April 2020. It was determined that it met the above criteria and was given priority status. Despite this the application is currently ranked at 17th in the Council’s priority list and awaits allocation to an Officer and investigation. There is nothing to suggest that the prioritisation system employed is unreasonable.
5. The applicant has raised concerns that, due to the delay in investigating the application, the user evidence maybe significantly prejudiced. They state that one of the users who submitted evidence has since died and two have moved from the area, there is a concern that further user evidence will be lost.
6. The applicant also claims that a planning application proposes development which potentially threatens the route that is the subject of the DMMO application. However, the County Council state that the proposed development is confined to the site immediately to the south of the route, therefore the proposal has no direct impact as it does not encroach onto the claimed right of way. The Council have written to the planning authority to draw their attention to the outstanding DMMO application.
7. The Council have indicated that this application is unlikely to be determined within the next 2 to 3 years. This would mean that the application would remain undetermined for at least a further 3 years in addition to the 3 years that have passed since the application was submitted.
8. 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 suffered from staff shortages since October 2022. 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.
9. 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 3 years has passed since the application was submitted and no exceptional circumstances have been indicated.
10. 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 investigation and make a decision on the application. I conclude it would be reasonable to allow a further period of 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.

J Ingram

INSPECTOR