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| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 January 2024** |

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| **Ref: ROW/3320766**  **Representation by Aidan Harris**  **Buckinghamshire Council**  **Application to add a footpath from 51”42.474’N, 0”37.630’W to 51”42.524’N, 0”37.612’W Pednor, Chesham (OMA ref. 16855 CDE)** |
| * 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 Buckinghamshire Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Aidan Harris, dated 20 March 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 11 June 2021. |
| * The Council was consulted about your representation on 2 November 2023 and the Council’s response was made on 13 November 2023. |
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Decision

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

Reasons

1. On 11 June 2021 Aidan Harris made an application to the Council. This sought to record on the definitive map a public footpath at Pednor End, Chesham. The evidence adduced in support of the public footpath included documentary evidence and a number of user evidence forms.
2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the Definitive Map and Statement (DMS).
3. 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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2 of Schedule 14.
4. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains, at paragraph 4.9, that 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 DMS 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. Thus, each case must be considered on its individual facts.
5. The Council’s statement of priorities states that all applications will be dealt with in order of receipt unless the claimed route falls within one of three categories. It operates a two-tier system whereby higher priority is given to routes which meet these defined criteria.
6. The route claimed in the application falls within the second priority category ‘The application is partly or wholly supported by user evidence.’ The Council state that although the application is supported by user evidence it does not change its position on their priority list. It is currently positioned at number 17 on the priority list. On review the position may change as cases are processed and new cases are added, with some falling into the higher priority categories. The Council does not provide an estimate of when this application with be determined.
7. The application was made as a result of obstruction of the path, with the Council having served an enforcement notice (EN/21/0093). An appeal against the enforcement was dismissed (APP/X0415/C/21/3280234), the applicant states they believe the landowners have begun a High Court action concerning the enforcement. Therefore, determination of the application route before this stage would bring clarity and certainty to all interested parties.
8. This application is based on user evidence and documentary evidence. Some of the individuals are said to be elderly and the applicant fears that the state of affairs will soon be that these witnesses will not be able to give evidence or otherwise engage with the process due to poor health.
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 2 years have passed since the application was submitted and no exceptional circumstances have been indicated. This is not an acceptable situation; applicants should be able to expect a decision within a finite and reasonable time. In the circumstances, I have therefore decided that there is a case for setting a date by which time this application should be determined. However, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly, I propose to allow a further period of 6 months for a decision to be made.

**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 Buckinghamshire Council to determine the above-mentioned application not later than 6 months from the date of this direction.

Charlotte Ditchburn

INSPECTOR