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| **Direction Decision** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 May 2024** |

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| **Ref: ROW/3339912**  **Representation by the British Horse Society (BHS)**  **Wiltshire Council**  **Application to upgrade to restricted byway a bridleway between Calstone Wellington and Theobald's Green (OMA ref. D/2022/20)** |
| * 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 Wiltshire Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Will Steel is dated 1 March 2024. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 28 February 2023. |
| * The Council was consulted about the representation on 1 March 2024 and the Council’s response was made on 4 April 2024. |
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Decision

1. Wiltshire Council (the Council) is not 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. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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 BHS no longer supports the application because an order in the Magistrates Court stopped up vehicular rights over the application route and retained bridleway rights only. The bridleway has since been diverted to an alternative route. However, the application was duly made, and the Council is duty-bound to investigate it. The application causes distress to the landowners and this will continue to be the case until it is determined. They consider the determination should be straightforward as the necessary investigation has been undertaken. They also suggest the application could be rejected because public rights have been extinguished and diverted.
4. The Council has a large backlog of applications awaiting determination. To make the best use of limited staff resources, a prioritisation scheme has been produced. Applications are allocated a score based on factors relating to public benefit. Applications supported by user evidence are given the highest priority and applications affected by development or close to another application that could be done at the same time may also be given priority.
5. The application is based on documentary evidence and sits at number 317 on the list of documentary evidence applications. Officers deal alternatively with user and historical evidence based applications. This means the application sits at number 356 on the list of applications awaiting determination. The Council estimates it will be 50 years before this application is determined, assuming current resource levels and no additional higher-scoring applications.
6. However, in correspondence with one of the affected landowners and response to an internal complaint, Senior Council Officers have agreed to determine the application by the end of December 2024. The Council considers determining this application sooner would impact other applications. Furthermore, the legal orders did not affect the full application route. Therefore, they need to determine the application route in full and not reject it as suggested by the BHS.
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 twelve months under normal circumstances. In this case, just over a year has passed since the certificate under Paragraph 2(3) of Schedule 14 was submitted. The Council has agreed to determine the application by the end of 2024 but needs time to investigate the full application route.
8. Having considered all the circumstances, I have decided that there is not a case for setting a date by which time the application should be determined. However, that will not preclude the applicant from making further representations to the Secretary of State if the application remains undetermined.

Claire Tregembo

INSPECTOR