



Direction Decision

by Alan Beckett BA, MSc, MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 6 August 2018

Ref: FPS/U3100/14D/7

**Representation by Sue Rumfitt on behalf of Mr Matthew Knight
Oxfordshire County Council**

Application to add a Restricted Byway from the High Street to St Mary's Church and the Stream in the parish of Chalgrove ('Frogmore Lane') (OMA ref 03436)

- 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 Oxfordshire County Council (the Council) to determine an application for an Order made under Section 53(5) of that Act.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 20 March 2017.
 - The representation, dated 3 April 2018, is made by Sue Rumfitt on behalf of Mr Matthew Knight.
 - The Council was notified of the representation on 3 May 2018 and submitted its response on 15 June 2018.
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Decision

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

Reasons

2. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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.
3. 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 applicant¹.
4. The applicant notes that the Council has estimated that it will be approximately 10 years before it will start to investigate the application. The applicant also notes that paragraph 3(1) of schedule 14 provides that "*As soon as reasonably practicable after receiving a certificate under paragraph 2(3) the authority shall investigate the matters stated in the application and....decide whether to make*

¹ Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

or not to make the order to which the application relates". The applicant submits that a delay in investigating the application of approximately 10 years cannot reasonably be said to be "*as soon as reasonably practicable*". It is the applicant's view that the Council is making very little real progress towards reducing its backlog of applications.

5. It is submitted that the applicant has undertaken extensive research of the official records and has compiled them in such a way as to make the Council's investigation of the matter as efficient as possible. This was done with a view to reducing the time the Council would require to undertake its investigation.
6. In addition to the documentary evidence submitted in support of the application, the application is also supported by evidence of use of the route by the public. The applicant is concerned that the Council will not begin its investigation before the evidence of some of those who have used the route is lost through the passage of time. One user witness has already passed away and others are approaching their 70s; there are a very limited number of witnesses available to be interviewed or questioned about their evidence.
7. The Council does not consider that the reasons given by the applicant amount to exceptional circumstances and does not believe that deferring consideration of the application would lead to significant consequences. As a result, the Council does not consider that the application should take priority over others on the application register.
8. The Council recognises the delay between an application being made and the likely date of investigation, but such delays are due to current and historic levels of resources available to the rights of way team and due to the duration of preceding cases. The Council states that many of the applications made to it are supported by user evidence and the availability of witnesses when an investigation commences is not always guaranteed. The Council submits that the provision of a file of documentary evidence will assist the investigation although it does not discharge the Council's duty to carry out its own research.
9. The Council has a three-fold statement of priorities. First is the updating and maintenance of the definitive map and statement; second is the processing of applications for definitive map modification orders; third is the investigation of other evidence to modify the definitive map and statement. With regard to its second priority, the Council states that it aims to process definitive map modification order applications in chronological order of receipt and that it aims to begin work on applications within 8 – 9 years of them being made; applicants are advised about the extent of the backlog of applications. The application stands at number 92 out of 102 on the Council's list.
10. Although the Council aims to deal with the backlog of applications it faces in chronological order, 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 circumstances². In this case, although only fifteen months have passed since the paragraph 2(3) certificate was submitted, the applicant raises legitimate concerns about first-hand evidence of use of the claimed restricted byway being lost through the passage of time; witnesses who are currently approaching their 70s may no longer be alive in 10 years'

² The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14

time. It seems to me that this is an exceptional circumstance which would justify taking the application out of turn.

11. Furthermore, the Council is expected to commence its consideration of an application as soon as reasonably practicable after receipt of the paragraph 2 (3) certificate; it is not considered reasonable for 8 or 9 years to elapse between an application and its determination, or for the Council to afford this level of uncertainty to applicants. It would appear unlikely that a determination will be made in the near future without intervention.
12. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. Although the applicant has sought to assist the Council by submitting a file of documentary evidence, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I consider it appropriate to allow a further 6 months for a decision to be reached.

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 Oxfordshire County Council to determine the above-mentioned application not later than six months from the date of this direction.

Alan Beckett

INSPECTOR