



Direction Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 21 July 2017

Ref: FPS/Q1770/14D/2

**Representation by the British Horse Society
Hampshire County Council**

Application to add a restricted byway from Jouldings Ford at OS grid ref. SU75246347 to Well House Lane at SU75126322 (Council claim ref. 1131)

- 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 to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mr H Craddock on behalf of the British Horse Society, dated 24 June 2016.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 May 2013.
 - The Council was consulted about your representation on 16 January 2017 and the Council's response was made on 23 February 2017.
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Ref: FPS/X0360/14D/1

**Representation by the British Horse Society
Wokingham Borough Council**

Application to add a byway from the turning to Jouldings Farm at OS grid ref. SU75296351 to the north side of Jouldings Ford at SU75256348 and add a restricted byway from that point to the Borough / County boundary at Jouldings Ford at SU75246347

- 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 Wokingham Borough Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Mr H Craddock on behalf of the British Horse Society, dated 24 June 2016.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 May 2013.
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Decision

1. Hampshire County Council and Wokingham Borough Council are both directed to determine the above-mentioned application with regard to their respective areas.

Preliminary Matter

2. The application route runs across land within both Hampshire County Council and Wokingham Borough Council's areas. Accordingly the British Horse Society made a joint application to Hampshire County Council and Wokingham Borough

Council to add a route from near Jouldings Farm to Well House Lane seeking part byway and part restricted byway status. Wokingham Borough Council has given its authority for Hampshire County Council to process the application within its jurisdiction on its behalf. However, I have issued directions to both authorities on the basis that it is a matter for the respective councils to determine how they discharge their duties.

Reasons

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 twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers. 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. Hampshire County Council has policy guidelines for determining applications under section 53(5) of the 1981 Act. Under those guidelines applications are processed chronologically according to the date on which the application was submitted, unless the application route is under threat from development or if the application meets one or more of the criteria set out in the Council's Rights of Way Improvement Plan. The Council estimates that the application in question would be investigated in 2023, the application being ranked 49 out of 68. I have not been given any information as to Wokingham Borough Council's policy on the basis that Hampshire County Council is processing the application on its behalf.
5. 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. Mr Craddock has submitted an extract from Hansard in this regard. In the House of Lords on 30 March 1981, at the third reading of the Wildlife and Countryside bill, the Minister, Lord Bellwin said:

"The last point I should like to mention concerns the right of an applicant, if after 12 months the authority has failed to reach a decision on his application, to ask my right honourable friend the Secretary of State to intervene on his behalf by directing the authority to determine the application by a certain date. The provision has been included in the hope that it will assist the smooth transition from the present procedure. I think it is generally recognised that, in the early years of the new system at least, a backlog of applications could build up. That the conclusive evidential effect of the definitive map and statements is without prejudice to the existence of higher rights will help to alleviate the situation, since there will no longer be the same pressure to submit applications. None the less, authorities could easily be inundated with applications to the extent that they will need extra time to enable them to cope. This provision would give them that time and thus prevent authorities, conscious of the

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

pressures upon them, from giving insufficiently careful consideration to applications. Obviously we are hopeful that the vast majority of applications will be determined within the 12 months and that, where they are not, the applicant will only come to my right honourable friend the Secretary of State as a last resort after exhausting all other avenues with the authority."

6. In this case, the applicants for the Orders have waited more than three years before seeking a direction from the Secretary of State. Hampshire County Council has not indicated any exceptional circumstances as to why the application has not been determined. The statutory duty is to investigate applications as soon as reasonably practicable. The statement by the authority setting out its priorities for bringing and keeping the definitive map up to date is only reasonable if it is able to implement those priorities in accordance with the statutory duty and, under normal circumstances, within 12 months.
7. In the circumstances, I have decided that there is a case for setting a date by which time the applications should be determined. It is appreciated that the Councils will require some time to carry out their investigations and make a decision on the applications and to co-ordinate their assessments. A further period of 8 months has been allowed.

Directions

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 so far as it relates to their area not later than 8 months from the date of this decision.

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 Wokingham Borough Council to determine the above-mentioned application so far as it relates to their area not later than 8 months from the date of this decision.

Michael R Lowe

INSPECTOR