

From: **Hugh Craddock** hugh@craddocks.co.uk
Subject: Representations for para.3(2) directions: Hampshire County Council and Wokingham Borough Council
Date: 24 June 2016 at 10:25
To: rightsofway2@pins.gsi.gov.uk



Dear rights of way team

This email contains representations to the Secretary of State to request that she make directions under paragraph 3(2) of Schedule 14 to the Wildlife & Countryside Act 1981 in respect of two applications made by me under section 53(5) of the 1981 Act. The first application was made jointly to Hampshire County Council and to Wokingham Borough Council, and the second application was made solely to Hampshire County Council. A direction is sought in respect of the first application to both surveying authorities, and in respect of the second application, only to Hampshire County Council.

The applications were both made by me on behalf of the British Horse Society. I confirm that I am authorised by the Society to make representations to the Secretary of State under paragraph 3(2).

The applications are:

1. The Jouldings Lane application: to add to the map and statement a byway open to all traffic along Jouldings Lane in the borough of Wokingham from the turning to Jouldings Farm at Ordnance Survey grid reference SU75296351, southwestwards to the north side of Jouldings Ford (SU75256348), and a restricted byway from the said north side of Jouldings Ford southwestwards to the county boundary in Jouldings Ford (SU75246347), and then south-southwestwards in Hampshire to Well House Lane at SU75126322. The application was made on 8 May 2013, the paragraph 2 certificate was confirmed as received by Hampshire County Council and the application accepted as compliant on 6 August 2013 and awarded claim reference 1131; the paragraph 2 certificate was acknowledged by Wokingham Borough Council on 12 July 2013 and the application accepted as compliant on 31 October 2014.
2. The 'Riseley Common Road' application: to add to the map and statement a restricted byway from the turning on the minor road known as the Devil's Highway near Barossa Farm, Riseley at Ordnance Survey grid reference SU73626324, southwest and then south-southwest along an enclosed unsealed lane for a distance of 272 metres, to the turning on Mill Lane (SU73516300). The application was made on 27 December 2013, the paragraph 2 certificate was confirmed as received by Hampshire County Council and accepted by it on 10 March 2014, and awarded claim reference 1139.

I have attached, in each case, a copy of my original application form and a copy of my paragraph 2 certificate to the surveying authority of confirmation that I notified the landowners of my original application. I have not attached the document summaries accompanying the application forms, which include copies of the documents in support of the applications, as these have large file sizes and do not appear to be relevant. I will supply these on request, or a slightly updated version may be downloaded from www.craddocks.co.uk/apps/jouldings/index.htm (as regards the first application) and www.craddocks.co.uk/apps/heckfield/index.htm (as regards the second).

It follows that, in relation the first application, Hampshire County Council failed to determine the application within twelve months of receiving a certificate under paragraph 2(3) at the latest on 6 August 2014, and Wokingham Borough Council at the latest on 12 July 2014. In relation to the second application, Hampshire County Council failed to determine the application within twelve months of receiving a certificate under paragraph 2(3) at the latest on 10 March 2015. I therefore ask the Secretary of State to direct that the surveying authority in each case determines the outstanding application within one year of the date of the direction.

I asked both surveying authorities for their comments on the delay in determining my applications.

In an email dated 25 April 2016 from Mrs Liz Giles, Map Review Assistant for Hampshire County Council, I was informed that:

"The Map Review Officers have a considerable backlog of applications to have the Definitive Map modified. To be fair to all of the people concerned, we normally deal with them in date order. This means that an application made today may have to wait in the queue for some time. Currently the two Map Review Officers are investigating applications which were submitted in 2007. this will give you an indication of the backlog. Over the last

four years the staffing levels have been reduced, from 3.5 to 1.5 persons dealing with Definitive Map investigations."

I conclude from Mrs Giles' email that, having regard to the age of applications being investigated at the present time, my applications will not be investigated until at least around 2023, and therefore determined at some subsequent date. However, given the reduction in staff levels cited by Mrs Giles, it seems unlikely that present rates of progress will be maintained, and that delays will lengthen.

Mrs Giles referred me to the council's [claims policy](#), which explains that applications are dealt with in chronological order, but provides for the expedition of certain applications by transferring them from list A to list B, and for other applications to be transferred to list C. Neither of my applications qualifies for transfer. Accordingly, the prioritisation of list B applications, and the unstated but implied prioritisation of list C applications, suggests that my applications may be further delayed beyond 2023.

In an email dated 7 June 2016 from Rebecca Walkley, public rights of way officer for Wokingham Borough Council, I was informed that "as most of the route is adopted highway (although status has not been determined) and that use is not being prevented by the land owner that we would not determine [my first application] at this point in time." However, the following comment, that "As most of the route lies within Hants it also makes more sense for them to process the application" appears to confirm previous correspondence that Wokingham hopes that Hampshire County Council will make an order for the entirety of the route, presumably on an agency basis as regards the part of the route in Wokingham. I therefore conclude that Wokingham Borough Council has no intention of fulfilling its duty to determine the application in its own right, but relies on its neighbouring authority to do so. However, Wokingham Borough Council has provided no evidence of discussion with Hampshire County Council as to their respective roles in determining my first application, still less taken steps to put in place an agency arrangement which would allow for the former's functions to be discharged by the latter.

Paragraph 3(1) provides that, "As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall—(a) investigate the matters stated in the application; and (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates." Paragraph 3(2) provides that: "If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3)", the applicant may make representations to the Secretary of State with a view to a direction being made on the applicant's behalf. Paragraph 3(2) gives rise to an expectation that a surveying authority will determine an application within twelve months, and that, in the ordinary course of events, and in the absence of any excuse on the part of the authority why it cannot comply with the usual timetable in any particular case for specific reasons, the Secretary of State will direct accordingly.

In Third Reading of the Wildlife & Countryside Bill in the House of Lords, on 30 March 1981, the Minister, Lord Bellwin, spoke to amendment 127 which included what is now paragraph 3(2). He [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 definitive maps 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 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."

The Minister's comments make clear that the Government saw the 12 month timetable as a backstop — that surveying authorities would determine the 'vast majority of applications' within 12 months, and that 12 months was seen as appropriate only where authorities were 'inundated with applications' and would need 'extra time'. The Government assured Parliament on behalf of an applicant that, "if after 12 months the authority has failed to reach a decision on his application, [the applicant would be able] to ask...the Secretary of State to intervene on his behalf by directing the authority to determine the application by a certain date". Accordingly, I now ask the Secretary of State to do exactly that.

Hampshire County Council will point to its backlog of applications and its inability to determine these within 12 months. But this is precisely the situation anticipated by the then Minister in amending the Bill to include paragraph 3(2). Moreover, the council has admitted that it has responded to its backlog by cutting the resources available for determining applications, and indeed, states on its website that: "The priority given to the investigation of claims made under s.53(5) Wildlife and Countryside Act 1981 as opposed to other aspects of rights of way work will depend on the Rights of Way Strategy and Statement of Priorities published from time to time." It therefore does not rule out a further diminution of resources for modifying the definitive map and statement in response, for example, to the introduction of the 'right to apply' provisions in the Deregulation Act 2015. Moreover, the council will be hard pressed to identify any similar backlog in determining applications to it for any other purpose. Must a taxi driver wait more than seven years for the determination of an application for a taxi driver's licence?

My applications under section 53(2) engage article 6 under the European Convention on Human Rights: the right to apply for a definitive map modification order under section 53(5) is a civil right, and in accordance with article 6, as implemented in domestic law under the Human Rights Act 1998, I am entitled to a 'fair and public hearing within a reasonable time'. A delay of at least seven years, and possibly much more, in determining the applications does not satisfy the Convention requirement for a fair and public hearing within a reasonable time, and the Secretary of State must exercise the powers she has available to her to remedy that failure.

regards

Hugh Craddock

