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Your Ref:  
Our Ref: FPS/M1900/14D/2  
Date: 18 January 2017

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Dear Sir

## WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Hertfordshire County Council

Application for a Direction in relation to claimed Byway Open to All Traffic between Blunts Lane and the M1 Motorway, known as Featherbed Lane, Hertfordshire

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 10 October 2016 for a direction to be given to Hertfordshire County Council (the Council) under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the Act"). The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the Act, to modify the Council's Definitive Map and Statement of public rights of way for the area so as to record a Byway Open to All Traffic on a route between Blunts Lane and the M1 Motorway, known as Featherbed Lane, Hertfordshire.
2. The Council was consulted about your request for a direction on 31 October 2016 as required by the Act. The Council's formal response was received on 21 November 2016.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether she should direct an authority to determine an application for an order within a specific period. These issues include 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 that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

### Your case

4. You made an application to the Council on 11 February 1997 seeking a modification

to the definitive map and statement so as to add a route from Blunts Lane to the side of the M1 motorway, known as Featherbed Lane, as a Byway Open to All Traffic. Some owners and occupiers of the land were only served with notice of the application in April 2010 and the certificate confirming notification was sent to the Council in April 2010. It was therefore in April 2010 that the Council confirmed by letter that the application was in the prescribed form and had been allocated a reference number. The Council's letter stated that the application would be prioritised according to the Council's policy and that the process would be a lengthy one and that there was a considerable backlog of cases.

5. You state that, in the most part, you are content that the Council has a prioritisation scheme that raises important cases to the top of the list. However you consider that there is nothing in the Council's prioritisation method that makes allowance for the age of an application. You state that it is unreasonable for any applicant to wait over 19 years for a determination, as you have done. You suggest that cases could be given an additional point in the prioritisation scheme for each year since the application was made in order to ensure that all cases eventually reach the top of the queue.
6. Furthermore, you consider that your case is relatively simple but that if there was a change in land ownership that may no longer be the case. The Council would then have to deal with a more difficult, "opposed" case and this would take more resources.
7. You also consider that your case should have been given a higher score by the Council due to the level of use.

### **The Council's Case**

8. The Council has a "Statement of Priorities" which came into force on 5 April 2011. In 2013 the Definitive Map Prioritisation Policy was internally audited and the overall outcome was that the methodology used for the prioritisation of applications was "fair and balanced".
9. On receipt each case is prioritised in accordance with the stated policies and added to the list of cases in the appropriate position according to the number of points scored. The Council's three key principles are where public safety could be substantially improved, according to the level of use and where the Council's actions could result in a significant positive impact on the network. A higher priority is also given where the physical existence of an alleged route is threatened by development, where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated and will provide significant cost or efficiency savings and where there is only user evidence available.
10. The Council considers that there is nothing to indicate that the application should be taken out of order and that is reflected in the prioritisation score of one point that it received. The Council does not award additional points for the age of the application as the system inherently makes an allowance for this. Where cases have the same priority they will be investigated in the order in which duly made applications are received.
11. The application is currently located at position 222 of 240 Modification Order applications awaiting investigation. The Council currently receives an average of 25 new applications per year, although as at 14 November 2016, 33 had been received

in 2016. At current staffing levels decisions are made on an average of 33 Modification Order Application investigations per year. 70 are currently under investigation. It is not likely that the application will be investigated for a substantial number of years and it will depend on how many new applications are received and the priority score they are given.

12. The route is an unclassified County Road on the Council's List of Streets and is therefore available for the public to use on foot, horseback, bicycle, horse drawn carriage and in mechanically propelled vehicles. There is nothing preventing the public from using the route and it is signposted at both ends as a public highway. The Council does not consider that a change in status to a Byway Open to All Traffic and a change in signposting to reflect that would lead to a change in the level of use of the highway which is assessed as low based on the local expertise of the Countryside Access Officer for the area.

### **Consideration**

13. The Secretary of State recognises the scale of the task facing the Council in dealing with its considerable backlog of cases. She accepts the need for a system of prioritising this work and considers that, in general terms, assessing the cases against a scorecard is a reasonable approach to take. She acknowledges that the application does not appear to meet any of the criteria necessary for the Council to give it a higher priority and notes that the route is available for use by the public as it appears on the Council's List of Streets. She also notes that although the application was made in 1997 it was not registered until 2010.
14. The Council has not given an estimate of when your case may be investigated other than that it is not likely to be for a substantial number of years. It states that estimating timescales is problematic as the situation is constantly changing. However, it appears from the information submitted that, at the current rate of investigation, even if no more applications are received, it would be a further 6-7 years before your application would be likely to be determined. In reality, it is likely to be much longer than this as although the Council states that it determines an average of 33 applications per year, it receives an average of 25. The Secretary of State notes from the list of outstanding applications that the Council has provided, that 19 received in 2015 and 15 received in 2016 are listed above your application. It is therefore likely that many applications received in future years will be prioritised above your application.
15. Although the Council states that the system makes allowance for the date of the application, it is clear that those with a low score are pushed further and further into the future. On the information available it appears that it could easily be 2030 before your application is investigated. The Secretary of State gives considerable weight to fact that your application obtained a low score. Nevertheless the length of time it is anticipated that it will take to determine this application is not reasonable.
16. It is appreciated that the Council will require some time to carry out its investigations and make a decision. The Secretary of State therefore proposes to allow the Council a further 12 months to investigate and determine the application.

## **Decision**

17. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the application should be determined. In exercise of the powers vested in her by paragraph 3(2) of Schedule 14 to the Act, the Secretary of State has directed the Council to determine this application not later than 19 January 2018.
18. A copy of the Secretary of State's letter of direction to the Council is enclosed, and a copy of this letter is being sent to the Council.

Yours faithfully

*Alison Lea*

Inspector

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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