



# Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 19 February 2018

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**Ref: FPS/M1900/14D/6**

**Representation by Christopher Beney for Bushey & District Footpaths Association**

**Hertfordshire County Council**

**Application to add a Byway Open to All Traffic from Point A: TQ 131, 960 to Point B: TQ 128, 965 (Finch Lane, Bushey) (OMA ref. HTM/115/MOD)**

- 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 Hertfordshire County Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 4 November 2017, is made by Mr Christopher Beney.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 22 October 1995.
- The Council was notified of the representation on 8 November 2017 and submitted its response on 20 December 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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## Reasons

1. 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. 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<sup>1</sup>.
2. Mr Beney made his application (on behalf of the Bushey and District Footpaths Association) following a slightly earlier application for the same route made by Dr P D Wadey (on behalf of the British Horse Society). Although originally given different reference numbers by Hertfordshire County Council ('the Council'), the claims were subsequently combined under the same reference, given above. Mr Beney supplied evidence of user, in addition to providing a

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

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- copy of a Prohibition of Driving Order dating from 1973 for the route in question.
3. Mr Beney's points out that his application was made at a time when national policy was to bring the legal record of rights of way up to date by the turn of the century, but it was moved further down the Council's priority list when the system of assessment was changed from a chronological one to a system based on points. At present the Council's system provides no mechanism for taking into account the length of time that the application has been waiting to be determined. Under the provisions of the European Convention on Human Rights as enacted in the UK by the Human Rights Act 1998, Mr Beney points out that he is entitled to a fair and public hearing within a reasonable time. The only way of achieving this is to apply for a direction.
  4. In response, the Council relies on its Key Principles for assessing priority which are set out in summary as follows:
    - i. Prioritise routes where public safety could be substantially improved;
    - ii. Priorities routes according to the level of use;
    - iii. Prioritise routes where the County Council's actions could result in a significant positive impact on the network.
  5. Other factors which are taken into account in dealing with applications include:
    - Where the physical existence of a claimed route is threatened by development;
    - Where investigation of a case would involve substantially the same evidence and forms part of or joins the route currently under investigation or about to be investigated and will provide significant cost or efficiency savings;
    - Where there is only user evidence available.
  6. The Council confirms that the application was re-assessed in 2011 and is currently in position 89 out of 264 outstanding applications. The Council currently receives about 25 new applications a year but staffing has been reduced. It is anticipated that an average of 28 applications will be investigated per year, but applications can go up or down the priority list depending on the scoring applied to new cases. The Council agrees that there is no inherent system for awarding points for the age of an application, other than where two applications have the same points; in that case the older application will be dealt with first. The application by Dr Wadey is at position 82. The policy adopted by the Council has been audited and approved as fair and balanced, and would require the approval of elected members if it were to be changed.
  7. In this case, the Council considers that the determination of the application would make no difference to the route in question, as it is already a vehicular highway maintainable at public expense, and even if its registration as a BOAT was successful, it would not affect the Prohibition of Driving Order. The maintenance liability would simply be transferred to the Rights of Way budget.
  8. Circular 1/09 makes it clear that authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way. They also have a duty to keep Definitive Maps and Statements as up to date as possible so as to provide an

- authoritative document of the highest attainable accuracy. Authorities should give priority to producing an up to date map and statement on which all public rights of way are recorded. I do not consider that claims of reduced staffing or the assumption of budgetary liability are acceptable reasons for failing to carry out statutory functions. The priority system operated by the Council does not give any certainty to applicants as to when their application will be determined. There has already been a delay of over 20 years in dealing with this application, and the Council can offer no indication of how much longer the applicant will have to wait. This cannot, under any circumstances, be considered a reasonable time to have to wait for a fair hearing.
9. Since there are two applications in relation to this route, determining one would automatically involve determining the other, thereby making financial savings in accordance with the Council's own policy. Given that the route is already acknowledged as being a highway, the investigation should not be that onerous.
10. 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<sup>2</sup>. In this case, over 22 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Nevertheless, in the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further six 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 Hertfordshire County Council to determine the above-mentioned application not later than six months from the date of this decision.

*Helen Slade*

INSPECTOR

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<sup>2</sup> 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