



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: 29 October 2018

Ref: FPS/M1900/14D/12

Representations by Dr Philip David Wadey

Hertfordshire County Council

**Application to add a restricted byway from Sheaf Green Lane to Tatlers Lane, Ashton
(Council ref. EH/381/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, under Section 53(5) of that Act.
 - The representation is made by Dr P D Wadey, dated 30 April 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 14 November 2010.
 - The Council was consulted about the representation on 3 May 2018 and the Council's response was made on 18 May 2018.
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Decision

1. The Council is directed to determine the above-mentioned application as set out in the formal direction below.

Reasons

2. 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.
3. The Council has a policy statement for prioritising applications under section 53(5) of the 1981 Act. This policy gives priority to cases in accordance with the following principles:
 - (a) where public safety could be substantially improved,
 - (b) according to level of use, and

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

- (c) where the Council's actions could result in a significant positive impact on the network; and
- in addition the following policies generate a higher priority:
- (d) where the physical existence of an alleged route is threatened by development,
- (e) 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
- (f) where there is only user evidence available.
4. The Council have ranked the application 170th out of 262 pending applications. The Council estimates that it will be 6 or 7 years before they commence investigating this case.
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 circumstances². In this case, the applicant has waited over 7 years before seeking a direction from the Secretary of State. The statutory duty is to investigate applications as soon as is 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. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to recording public rights of way³.
6. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 6 months has been allowed.

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** Hertfordshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Michael R Lowe

INSPECTOR

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.

³ Paragraph 1.8, Rights of Way Circular 1/09 Version 2, October 2009