



Direction Decisions

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 31 January 2019

Ref: FPS/M1900/14D/16, 17 & 18

**Representation by Dr Philip Wadey
Hertfordshire County Council**

Applications to

1) Add a restricted byway from The Street (a county road) to Byway Open to All Traffic 18 (ref. NH/216/MOD)

2) Add a restricted byway from The Street (a county road) to Byway Open to All Traffic 19 (ref. NH/217/MOD)

3) Add a restricted byway from the route from The Street (a county road) to Byway Open to All Traffic 18, to Footpath 19, and

Upgrade to restricted byway the Footpath 19 from the above junction to Byway Open to All Traffic 41 (ref. NH/218/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 Philip Wadey, dated 26 August 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to NH/216/MOD is dated 16 November 2010.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to NH/217/MOD is dated 16 November 2010.
 - The certificate under Paragraph 2(3) of Schedule 14 in relation to NH/218/MOD is dated 3 July 2010.
 - The Council was consulted about the representations on 5 September 2018 and the Council's response was made on 21 September 2018.
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Decisions

1. The Council is directed to determine the above-mentioned applications.

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
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- 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. In this case, the applications were each submitted some 8 or so years ago. The applicant indicates that, as of May 2018, the applications ranked 113, 208 and 252 respectively on the list of undetermined applications held by the County Council. The applicant is supportive in principle of the scheme of prioritisation operated by the County Council but considers that this scheme is only effective when all applications, and not just those afforded priority, are determined within the twelve months envisaged by the 1981 Act. It is the applicant's view that the scheme of prioritisation should not be held as justification for other applicants having to wait many years for their applications to be determined, or potentially indefinitely. In order to allow the County Council a degree of flexibility to accommodate urgent applications, the applicant requests that the County Council be directed to determine these applications within 12 months.
 4. In response, the County Council explains that all Modification Order applications are assessed in accordance with the policies agreed by its full Council in April 2011. The County Council investigates Modification Order applications in the order in which they are received. However, investigation is prioritised where public safety could be substantially improved, where a route is experiencing a high level of use or where the County Council's actions could result in a significant positive impact on the network. In addition, a higher priority is given to applications where, amongst other circumstances, the physical existence of the alleged route is threatened by development or where only user evidence is available.
 5. Within the prioritisation list, each application is dealt with in order of the date of receipt as a duly made application. The applications subject to the representations were scored 6, 1 and 12 respectively, albeit the County Council explains that the priority score can go up or down in response to changes in circumstances. Indeed, as of September 2018, the applications were ranked 118, 216 and 260 on the County Council's list of undetermined applications which, I note, was already a slippage in comparison with the positions in May 2018, just a few months previously. On average, the County Council determines some 24 Modification Order applications each year. The County Council therefore concedes that it may be many years before these applications are determined.
 6. 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. The statutory duty is to investigate applications as soon as is reasonably practicable. In this case, the applications were submitted over 8 years ago. It is apparent from the Council's response, its recent track record of determining applications and the fact that the applications have already slipped down the list of undetermined applications that the applicant would be unlikely to receive an outcome for many years to come. That cannot be considered reasonable by any standard.
 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 County Council will require some time to carry out its investigation and make a

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

decision on the applications, and I note that the applicant is content that the County Council be afforded a degree of flexibility to accommodate urgent cases. A further period of 12 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** Hertfordshire County Council to determine the above-mentioned applications not later than 12 months from the date of this decision.

Paul Freer

INSPECTOR