



Direction Decision

by **Helen Slade MA FIPROW**

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

Decision date: 21 March 2019

Ref: FPS/M1900/14D/23

**Representation by Dr P D Wadey
Hertfordshire County Council**

Order Making Authority Application References NH/48 and NH/305

- **Application to upgrade to a Restricted Byway the Bridleway (part of Offley 48) from A505 slip road (Point A) to Point B.**
 - **Adding the Restricted Byway from Point B to Point D.**
 - **Upgrading to a Restricted Byway the Bridleway (part of Offley 31) from Point D to Hexton Road (Point E).**
 - **Adding to the particulars relating to the Bridleway/Restricted Byway from A505 slip road (Point A) to Hexton Road (Point E) by providing that the width is that shown excluded from the hereditaments on the Finance Act 1910 Valuation Plan and that there are no limitations or conditions on the use of the route by the public.**
 - 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 ('the Council') to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Dr Phil Wadey and is dated 5 February 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 5 February 2018 .
 - The Council was consulted about your representation on 6 February 2019 and the Council's response was made on 7 February 2019.
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Decision

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

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
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- expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
3. The applicant has pointed out that although his own application was made barely 12 months ago, another application was made for part of the affected route in 1998 by Mr Ken Payne, who has unfortunately passed away and is therefore unable to seek a direction to determine on his own application.
 4. Dr Wadey cites several reasons why he considers that his application ought to be expedited. Firstly because there has already been a delay of over 20 years since the first application in respect of this route; secondly because the route may be threatened by development; thirdly because the Council has failed to modify its prioritisation policy to take account of old applications; and fourthly because the reduction in staffing at the Council means that it cannot adequately resource its statutory function. This is only likely to get worse as 2026 approaches and the number of applications increases. In recognition of the need for the Council to retain some degree of flexibility, Dr Wadey seeks a direction to determine the application within a further period of 12 months.
 5. The Council indicates in its response that it is likely to be at least three years before Dr Wadey's application would be dealt with (it is currently at position 70 on their priority list) and that it would incorporate Mr Payne's application in the investigation. Having considered whether Dr Wadey's application should receive more priority, the Council's officers were satisfied that the route was not under threat at that time. Whilst acknowledging that the Council has a large number of outstanding applications, reasonable and structured actions are being taken to deal with the back log in an ordered manner.
 6. I agree that I can only deal with Dr Wadey's request for a direction in respect of his own application, but I note that Mr Payne's much older application is nevertheless at position 109 on the priority list. I also note that Dr Wadey's application has slipped from 55 (on the information supplied by him) to 70 (on the information supplied by the Council). The situation is therefore clearly worsening and not improving, as far as his application is concerned. Having complained about the delay and the staff reductions which are exacerbating it, he was pointed to the direction process by the Council itself and, unsurprisingly, has availed himself of it.
 7. 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. In this case, that time period has passed since Dr Wadey's application was submitted and the Council has not been able to identify any exceptional circumstances to justify its failure to determine it. By dealing with this application, the Council will be able to achieve one of its policy objectives by combining the investigation with that of another application, thereby making some cost or efficiency savings.
 8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Dr Wadey has acknowledged this, and I therefore consider that to allow a further period of 12 months would be reasonable. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

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

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 12 months from the date of this direction

Helen Slade

INSPECTOR