



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 5 February 2020

Ref: FPS/M1900/14D/26

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

Application to:

- 1) Add a byway open to all traffic from Hatfield 49 BW (Point A) to Hatfield 53 FP (Point X)**
- 2) Upgrade to a bridleway the footpath from Point X to Point Y (Hatfield 56)**
- 3) Add a bridleway from Hatfield 53 FP (Point Y) to Hatfield 56 BOAT (Point B) (OMA ref. WH/116/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 Wadey, dated 28 August 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 13 August 2018.
 - The Council was consulted about the representation on 17 September 2019 and the Council's response was made on 1 October 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 expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
3. 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

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

normal circumstances. In this case, the application is positioned at number 19 in order of determination. The Council state that there is nothing to indicate that the application should be given higher priority in accordance with criteria set out in the Statement of Priorities. The Council say that it is difficult to estimate how long it will be before the application will be determined but estimate that investigations will commence in 2 to 3 years. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.

4. It is reasonable for the Council to determine applications in accordance with its Statement of Priorities. It is noted that the Council's prioritisation policy was audited in 2013 when it was found that the methodology for prioritisation of applications was 'fair and balanced'. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take, on current estimates, 3 to 4 years.
5. It is appreciated that the Council's Definitive Map Team has been reduced in size after a restructure and office move, has a large number of outstanding applications and receives many new applications each year. However, the Council has statutory duties to keep the definitive map up to date. Lack of resources to deal with applications is not a sufficient excuse for a delay in determining any application and does not amount to exceptional circumstances. 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.
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 investigations 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 Direction Decision.

Martin Elliott

INSPECTOR