



Direction Decision

by **Heidi Cruickshank** BSc (Hons), MSc, MIPROW

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

Decision date: 7 November 2017

Ref: FPS/M1900/14D/4

Representation by Dr P D Wadey

Hertfordshire County Council

Application to upgrade Footpath No 68 Aldenham from Watling Street to the junction of The Heath and The Avenue to the status of bridleway

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 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 3 September 2017, is made by Dr P D Wadey.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 2 October 1995.
- The Council was notified of the representation on 14 September 2017 and submitted its response on 26 September 2017.

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

Reasons

1. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") 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.
2. 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 and Statement ("the DMS") 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, as set out in the Circular¹.
3. Hertfordshire County Council ("the County Council") referred to their Statement of Priorities for both Evidential Modification Orders, such as this, and Public Path Orders, updated January 2016. They also included a summary of the Definitive Map Policies from 5 April 2011.

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

4. The list of outstanding Modification Order applications as at 26 September 2017 showed 260 to be determined, with this application² in position 79. It is the policy of the County Council to deal with applications in the order in which they were received unless they meet specific criteria:
 - Where public safety could be substantially improved; or
 - Where a route is experiencing a high level of use (more than 12 times a day); or
 - Where the County Council's actions could result in a significant positive impact on the network.
5. In addition a higher priority will be given to applications where:
 - The physical existence of an alleged route is threatened by development; or
 - Investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated; or
 - Only user evidence is available.
6. The County Council said that there was nothing in the file to indicate that this application should be taken out of order, which was reflected in the prioritisation score. Scoring was undertaken in 2002 and updated in 2011. The County Council receives an average of 25 new applications per year, making decisions on an average of 33 Modification Order investigations. The timescale for determination of this application is difficult to set out as it will depend on how many new applications are made and the priority score of those. However, it is likely to be several years.
7. The applicant indicates that for the most part he is content with the prioritisation scheme but notes the statutory period of twelve months given in the 1981 Act after which the right to apply to the Secretary of State for a direction arises. He makes a suggestion as to how the existing prioritisation system could be altered to take account of older cases; however, this is a separate matter from the issues before me. Nonetheless, I agree with his comment that it seems unreasonable for any applicant to have to wait for over 21 years (as it was at the time he wrote) for an application to be determined.
8. The Circular refers to the need to "*...investigate applications as soon as reasonably practicable...*" which arises from the 1981 Act³. Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, sets out that "*In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...*".
9. I accept the view of the County Council that there appears to be no reason to prioritise this application in relation to their policy. However, this claim was made twenty-two years ago and will not be dealt with for 'several years'. I consider that such a time period exceeds what could be regarded as having the

² County Council reference HTM/68/MOD

³ Schedule 14, paragraph 3(1)

matter dealt with "...as soon as reasonably practicable..." or "...within a reasonable time...".

10. The right of an applicant to seek a direction from the Secretary of State does give rise to the expectation of a determination of that application within 12 months under normal circumstances⁴. I consider that this indicates the timescale which was thought reasonable to expect such matters to be determined. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application.
11. 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 6 months for a decision to be reached.

Direction

12. 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 31 May 2018.

Heidi Cruickshank

INSPECTOR

⁴ 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
