



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: 19 February 2018

Ref: FPS/M1900/14D/5

Representation by Dr P D Wadey

Hertfordshire County Council

Application to add to the particulars relating to Footpath South Mimms (formerly Potters Bar) 72, from the junction of St Albans Road and Dancers Hill Road to the county road west of Dancers Hill House

- 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 1 October 2017, is made by Dr P D Wadey.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 23 September 1995.
- The Council was notified of the representation on 2 October 2017 and submitted its response on 15 November 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 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 summary of Definitive Map Policies from 5 April 2011. It is County Council policy to deal

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

with applications in the order in which they were received but work is prioritised:

- 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.
4. 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.
5. The Evidential Modification Order Prioritisation form for this case, County Council reference HTM/71/MOD, of 16 June 2011 scored the application 28, whilst the amended form of 5 December 2013 gave a score of 7. The difference arose due to a misunderstanding of the intention of the application initially and the applicant was notified of the change on 21 January 2014. I note that the County Council say that although the route is currently available to walkers there have been issues about part of the width being restricted. It is unclear whether this is an ongoing situation, which would alter the score for the application. As the County Council note, with the width recorded they can enforce on this matter.
6. The list of outstanding Modification Order applications as at 14 November 2017 shows 263 applications to be determined, with this application at position 163. The County Council are currently investigating 63 applications and receive an average of 25 new applications every year. Estimating timescales for determination of applications can be problematic but it is likely to be some years before this application is determined.
7. The applicant notes that 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...*". Also that Schedule 14 to the 1981 Act, in allowing for applications to the Secretary of State for a direction 12 months after the certificate² is served on the surveying authority, envisages a time scale in the order of a year for determination of an application.
8. Reference was also made to the speech of Lord Bellwin during the third reading of what became the 1981 Act, which suggests that Parliament expected applications to be investigated promptly, usually within 12 months. Additionally, the Department for Environment, Food and Rural Affairs Rights of Way Circular (1/09) refers to the need to "*...investigate applications as soon as reasonably practicable...*".

² Paragraph 2(3)

9. The applicant suggests how the prioritisation system could be altered to take account of older cases, although the County Council say that there is some provision within the existing system, with cases in each block of scores being dealt with in date order. I consider alteration of the prioritisation system to be a separate matter from the issues before me. However, I agree that waiting for over 22 years for an application to be determined is not reasonable.
10. Taking account of all the circumstances I have decided that there is a case for setting a date by which time the application should be determined. Taking account of the view of the applicant as to the time which should be sufficient to determine the matter I consider it appropriate to allow a further 12 months for a decision to be reached.

Direction

11. 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 28 February 2019.

Heidi Cruickshank

INSPECTOR