



Direction Decision

by **Barney Grimshaw BA DPA MRTPI (Rtd)**

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

Decision date: 19 February 2018

Ref: FPS/M1900/14D/7

Representation by Dr Philip Wadey

Hertfordshire County Council

Application to add a Byway Open to All Traffic from Shenley Lane to the North Orbital Road (St Albans City) (OMA ref. STA/57/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 made under Section 53(5) of that Act.
- The representation, dated 1 December 2017, is made by Dr PD Wadey.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 3 January 2007.
- The Council was notified of the representation on 4 December 2017 and submitted its response on 22 January 2018.

Summary of Decision: The Council is directed to determine the above-mentioned application not later than 6 months from the date of this Direction.

Reasons

1. Authorities are required to investigate applications 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. 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.
2. The original application to record a Byway Open to All Traffic running from Shenley Lane to North Orbital Road A405, St Albans was made by Dr Wadey in February 1998. In accordance with an Agency Agreement then in force, the application was passed to St Albans District Council. However, that authority declined to deal with it as the route was already regarded as an Unclassified County Road carrying full public vehicular rights. On subsequent appeal to the Secretary of State Dr Wadey was advised that after the elapse of a period of 1

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

- year from the application he could seek a direction that the council determine it within a reasonable period.
3. In April 2000 the Agency Agreement came to an end and outstanding applications were passed back to Hertfordshire County Council (HCC). In 2001, HCC adopted a prioritisation process for dealing with applications and as the route referred to in the current application was already open and available for use it was placed well down on the priority list.
 4. In 2007, the applicant sought to increase the priority of the route in the light of a planning application which he considered might affect users of the route. He also sent HCC the appropriate Certificate of Service of Notice at this time.
 5. Nevertheless, in January 2018 the application route was at position 182 out of 259 awaiting investigation. HCC state that the number of staff available to deal with applications has recently been reduced and that it is anticipated that an average of 28 applications per year will be able to be investigated. Also, an average of 25 new applications are received each year some of which may be afforded higher priority than the current application. Accordingly, the council cannot predict when this application will be determined but state that it is likely to be many years before it is investigated.
 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 circumstances². In this case, 20 years have already passed since the application was made and 11 since HCC received the relevant certificate. No exceptional circumstances have been indicated except for the fact that the council does not appear to be allocating sufficient resources to carrying out its duties within a reasonable time. This is not an acceptable situation.
 7. Accordingly, I have decided that there is now a case for setting a date by which time this application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application and I therefore propose to allow a further 6 months for a decision to be reached.

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.

Barney Grimshaw

INSPECTOR

² 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