



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: 17 July 2018

Ref: FPS/M1900/14D/11

Representation by Dr P D Wadey

Hertfordshire County Council

Application to add a Restricted Byway from Offley 28 (Hoar's Lane) to Preston 6 and Charlton Road (OMA ref. NH/252/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 PD Wadey, dated 24 March 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 16 September 2013.
 - The Council was consulted about your representation on 27 March 2018 and the Council's response was made on 2 May 2018.
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Decision

1. The Council is directed to determine the above-mentioned application not later than 12 months from the date of this direction.

Reasons

2. The Council has pointed out that the claimed Restricted Byway actually runs from Hitchin 28 rather than Offley 28. It is not suggested that this minor error has resulted in any confusion or affected consideration of the application in any way.
3. 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.
4. In this case the Council states that applications are dealt with in accordance with a Statement of Priorities which was adopted in 2011. This application is

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

currently ranked 211. The Council state that staffing levels have recently been cut and it is expected that an average of 28 decisions on such applications will be made per year which means that it is likely to be at least 7 or 8 years before this application is determined. In addition the Council currently receives an average of 25 new applications per year some of which may be allocated higher priority and further increase the time before this application is considered.

5. 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, almost 5 years have passed since the application and associated certificate were submitted and no exceptional circumstances have been indicated. In addition, it appears that a previous application was submitted in respect of the same route in 1998 but the applicant passed away before that application had been dealt with.
6. The information provided by the Council suggests that it is likely to be a minimum of 12 years after the submission of the current application before it is dealt with and possibly considerably longer. This is not a reasonable period for the applicant to have to wait and suggests that the Council is allocating insufficient resources to the determination of such applications. In the circumstances I have therefore decided that there is a case for setting a date by which time this application should be determined.
7. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Also, the applicant has suggested that it would be appropriate to allow a period of 12 months so that the Council is left with some discretion to deal with newly emerging high priority cases. This seems very reasonable in my view.

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.

Barney Grimshaw

INSPECTOR