



## Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 31 July 2018

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**Ref: FPS/M1900/14D/10**

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

**Application to add a Restricted Byway from Dean Lane, Flamstead (Great Gaddesden 73 to Beachwood Lane) (OMA ref. DAC/87/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 D Wadey, dated 27 February 2018.
  - The certificate under Paragraph 2(3) of Schedule 14 of the 1981 Act is dated 16 June 2013.
  - The Council was consulted about the representation on 1 March 2018 and the Council's response was made on 30 May 2018.
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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 applicant<sup>1</sup>.
3. The Council determines applications in accordance with its published statement of priorities and states that there is nothing on file to indicate that the application should be taken out of the prioritisation order. The application is positioned at number 210 in the list of outstanding applications and has received a low score because the application route is an unclassified county road which is open and available for the rights claimed. The Council finds it difficult to provide an estimate as to when the application will be determined

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

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- but it is expected that the investigation into the application will not be started for a number of years.
4. 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, five years have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.
  5. It is reasonable for the Council to determine applications in accordance with its statement of priorities and it is noted that the Council's prioritisation policy has been audited and shown to be fair and balanced. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take more than five years with no prospect of determination in the near future. It is appreciated that the Council's Definitive Map Team has been reduced in size but 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. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. It is also noted that the application route is an unclassified county road and that the route is open and available. However, as stated above, it is unreasonable for an application to take more than five years before determination. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined; a further 6 months is allowed.
  7. The representation refers to Article 6(1) of the Human Rights Act 1998. Article 6(1) provides that in the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, my decision as to whether the authority has investigated and determined this application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act, and the determination of the application by the Council, does not amount to a decisive determination for the applicant's civil rights and obligations. Article 6(1) is not applicable.

### **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