



## Direction Decision

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

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

Decision date: 2 October 2018

---

**Ref: FPS/M1900/14D/13**

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

**Application to add a Byway Open to All Traffic from Potters Bar 75 BW,  
known as 'Wash Lane', to Swanland Road (South Mimms)**

**Council ref. HTM/154**

- 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 (the Council) to determine an application for an Order, under Section 53(5) of that Act.
- The representation is made by Dr Philip Wadey (the applicant) on behalf of The British Horse Society, dated 25 May 2018.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 9 April 2012.
- The Council was consulted about your representation on 29 May 2018 and the Council's response was made on 25 July 2018.

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

---

### Decision

1. The Council is directed to determine the above-mentioned application.

### Reasons

2. Authorities are required to investigate applications as soon as is 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 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
3. 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>.

---

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

---

4. In this case, an application to add a bridleway to the Definitive Map and Statement was submitted on 28 February 2003. As I understand it the route forms part of the proposed South Mimms Parish Ride, a circuit for equestrians partly developed by Hertsmere Borough Council. The site notice and certificate are dated 8 April 2012 and 9 April 2012 respectively.
5. In 2003 the Council assigned a priority score of 6 to the application in accordance with its Evidential Modification Order Prioritisation. This was increased to 12 in September 2013 after an obstruction was placed across the route. According to the Council, the application is in position 119 on the waiting list and due to a lack of staffing pressures it is *'likely to be some years before the application is investigated'*.
6. It has been 15 years since the application was first made and over 6 years since the requirements of paragraph 2 of Schedule 14 of the 1981 Act were met. In my view that is not an acceptable period of time bearing in mind that the Council has a statutory duty to keep the Definitive Map and Statement up to date. Consequently the work involved in doing that cannot, in itself, be considered to be an exceptional circumstance.
7. Whilst I have some sympathy for the position the Council finds itself in, adequate resources should be provided to permit the Council to carry out its statutory functions. This is expressly supported by Circular 1/09 which states 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..."*. The existence of applications of longer-standing origin does not constitute a compelling reason for not dealing with this particular application within a reasonable time-frame.
8. Schedule 14 to the 1981 Act, allows applications to be made to the Secretary of State for a direction following the expiration of 12 months from the date the certificate is served on the surveying authority. Circular 1/09 refers to the need to *"...investigate applications as soon as reasonably practicable..."*. In this case, more than 6 years have passed since the application was submitted and no exceptional circumstances have been indicated.
9. It is appreciated that the Council will require some further time to carry out its investigation and make a decision on the application. Nevertheless, I have decided that there is a case for setting a date by which time the application should be determined and I consider it appropriate to allow no more than a further 12 months for a decision to be reached.

### **Direction**

10. 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 12 months from the date of this decision.

*D. M. Young*

INSPECTOR