



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: 10 October 2018

Ref: FPS/M1900/14D/14

Representation by Dr P D Wadey

Hertfordshire County Council

to add the byway open to all traffic known as Millhouse Lane from Millhouse Farm, Millhouse Lane, Bedmond to Searches Farm, Searches Lane, Bedmond (OMA ref. STA/93/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 Philip Wadey (the applicant) on behalf of The British Horse Society
- The certificate under Paragraph 2(3) of Schedule 14 is dated 4 May 2010.
- The Council was consulted about your representation on 17 July 2018 and the Council's response was made on 5 September 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. Schedule 14 to the 1981 Act, allows applicants to ask the Secretary of State for a direction following the expiration of 12 months from the date the certificate is served on the surveying authority. 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.
3. The application form to add a Byway is dated 29 July 2003. The application is made on the basis of user evidence which the applicant states could not have been available to the Council at the time the Definitive Map was first prepared. In accordance with its Definitive Map Prioritisation Policy, the Council assigned

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

a score of 12 to the application in October 2003. There are 64 modification orders currently under investigation with an additional 271 awaiting investigation. The above-mentioned application is in position 103 on the list. The Council states that it cannot give any specific timescales in relation to the application but concedes that due to a decrease in staff it is likely to be many more years before the application is investigated. The applicant points out that if the application is not determined before 1 January 2026 then it will not be recordable.

4. Whilst I have some sympathy for the Council, adequate resources should be provided to permit the Council to carry out its statutory functions. This is confirmed 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 Circular also highlights the need to "*...investigate applications as soon as reasonably practicable...*".
5. Whilst the principle of prioritisation is a good one, this does not obviate the need to investigate applications as soon as reasonably practicable. It has now been 15 years since the application was first made and over 8 years since the requirements of paragraph 2 of Schedule 14 were met. By any measure and irrespective of the prioritisation policy, that cannot be considered acceptable bearing in mind that the Council has a statutory duty to keep the Definitive Map and Statement up to date.
6. Sufficient resources should be made available to that end and 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. 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

7. 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 decision.

D. M. Young

INSPECTOR