



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 14 January 2019

Ref: FPS/M1900/14D/21

Representation by Dr Philip Wadey

Hertfordshire County Council

Upgrading to a Bridleway the Footpath (part of FP 21 Ridge) from Packhorse Lane to Mimms Lane (Parish of Ridge) (OMA ref. HTM/79)

- 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 Wadey, dated 29 October 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 of the 1981 Act is dated 17 February 1997.
 - The Council was consulted about your representation on 31 October 2018 and the Council's response was made on 14 November 2018.
-

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 applicant¹.
3. 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, 21 years have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.

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

4. It is reasonable for the Council to determine applications in accordance with its Statement of Priorities. It is noted that the Council's prioritisation policy has been audited and is shown to be fair and balanced, follows the necessary legal requirements and facilitates inclusion of all interested parties. I also note the conclusion of the Secretary of State in respect of an application for a direction in 2009 which supports the view that applications should be determined in accordance with the Council's processes at the time. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of an application to take more than 21 years; there is no indication as to when the application may be determined.
5. It is appreciated that the Council's Definitive Map Team has been reduced in size after a restructure and office move and is managing a large number of applications to the best of their ability. However, 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. I have decided that there is a case for setting a date by which time the application should be determined. The applicant suggests that a further 12 months be given from the date of the representation. 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 Council is dealing with a number of other directions to determine applications. In the circumstances I consider that a further 12 months from the date of this direction decision is appropriate.
7. It is noted that as a consequence of a large number of directions to determine applications other higher priority applications may not be processed. However, as noted above, it is unreasonable for the determination of an application to take more than 21 years.

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 12 months from the date of this direction decision.

Martin Elliott

INSPECTOR