



Direction Decision

by **K R Saward Solicitor**

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

Decision date: 5 February 2019

Ref: FPS/M1900/14D/22

Representation by Dr P D Wadey

Hertfordshire County Council

Application to upgrade to restricted byway the footpath (part of Wigginton 11) from Hemp Lane to a point about 110 yards north of Crawley's Lane (Parish of Wigginton)

- An application was made by Dr P D Wadey on behalf of the British Horse Society to modify the Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
 - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 27 April 2016.
 - The Council's reference for the application is DAC/134/MOD.
 - A representation is made under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction to be given to Hertfordshire County Council to determine the application.
 - The representation made by Dr P D Wadey is dated 1 December 2018.
 - The Council was consulted about the representation on 4 December 2018 and its response is dated 22 January 2019.
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Decision

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

Reasons

2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the definitive map and statement.
 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 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
 4. This application is to upgrade an existing public footpath to a restricted byway. It was submitted to the Council on 30 March 2013 although it was not until 27 April 2016 that the applicant certified that the application had been served upon the landowners and occupiers of the land crossed by the route.
 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. As of 22 January 2019, the application was positioned at 113 out of 271 on the Council's list of applications awaiting determination.
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6. The Council determines applications in accordance with its Statement of Priorities. It has operated a prioritisation system since 2001 and the current system has been its adopted policy since 2011. This provides for applications to be dealt with according to 3 key principles namely (i) where public safety could be substantially improved (ii) according to the level of use and (iii) where the Council's actions could result in a significant positive impact on the network.
7. Higher priority is given where the physical existence of an alleged route is threatened by development, investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated and where only user evidence is available. There is no suggestion that any of these criteria apply to warrant the application being given higher priority.
8. The applicant is critical of this means of prioritisation. However, it has been subject to internal audit and as an approach I consider it entirely reasonable.
9. The Council draws my attention to a decision letter issued by the Secretary of State in January 2009 when Northchurch Parish Council applied for a direction to determine an application. In declining the request, the Secretary of State expressed concern with the direction request. He confirmed satisfaction with the Council's approach and felt that it was reasonable for the Council to be allowed to progress and determine the application in accordance with its current process.
10. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009¹. This explains² that 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.
11. Each case must therefore be considered in light of its particular circumstances.
12. The Council points out that in the 18 months prior to January 2019 it has received 39 new applications. Since October 2016 there have been 20 applications seeking directions. So far it has been directed to determine 6 of those within 6 months and another 6 within 12 months.
13. I recognise that the Council has a large number of outstanding applications and receives many new ones each year. The Council advises that officers are currently investigating 63 Definitive Map Modification Order applications with a further 271 awaiting investigation. I can sympathise that the Rights of Way Team has been reduced in size following a restructure and office move. This will invariably impact upon its ability to reduce the backlog. Nevertheless, the Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their

¹ Published by the Department for Environment, Food and Rural Affairs.

² At paragraph 4.9

- statutory duties with regard to the protection and recording of public rights of way.
14. There are other applications ranked higher in the Council's list. To issue a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council's prioritisation system including those where routes are at risk of being lost to development.
 15. However, those factors do not justify a direction not being given in this instance when the 12 month period³ has now long expired.
 16. No indication is given of when the Council anticipates being in a position to determine this application. Given the current ranking of the application and the Council's available resources it appears unlikely to be determined any time soon. The applicant is entitled to expect his application to be determined within a finite and reasonable period. No exceptional circumstances have been advanced by the Council.
 17. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 12 months as requested by the applicant has been allowed to make a determination.

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 decision.

K R Seward

INSPECTOR

³ The 12 month period commences on the date a valid certificate is submitted to the order making authority in accordance with paragraph 2(3) of Schedule 14