



## Direction Decision

by **Susan Doran BA Hons MIPROW**

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

Decision date: 3 July 2019

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**Ref: FPS/M1900/14D/24**

**Representation by Helen Jarvis**

**Hertfordshire County Council**

**Application to add a Restricted Byway at Charlton Road, formerly Mill Lane (OMA ref. NH/302/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 dated 7 March 2019 is made by Helen Jarvis.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 17 August 2017.
  - The Council was consulted about the representation on 28 March 2019 and their response was made on 7 May 2019.
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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 Applicant seeks to expedite determination of the application, commenting they believe the evidence demonstrates that the claimed rights (or higher rights) exist. They are concerned about the effect on the route of the Natural Environment and Rural Communities Act 2006, and about the placing of 'private' notices and obstructions on it affecting both public and private use.
4. When dealing with such applications, Hertfordshire County Council applies the principles set out in its Statement of Priorities - where public safety could be

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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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substantially improved; according to the level of use; or where the Council's actions could result in a significant positive impact on the network. In addition to these criteria a higher priority is given where the physical existence of an alleged route is threatened by development; where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated; or where only user evidence is available. However, none of these criteria applies in this case. Consequently, the application which currently stands at 247 of 273 undetermined applications has been awarded a prioritisation score of 1 point. Accordingly, its investigation is unlikely to commence for some years, and the Council is unable to give any indication as to when it will be determined. Furthermore, the Council remarks that the application offers little in the way of benefit for the public or the wider rights of way network, with access rights over the appeal route to the applicants' property a private matter, regardless of the route's status on the Definitive Map.

5. I consider that the Council's approach to dealing with applications is a reasonable one and allows a structured system for dealing with its backlog. Nevertheless, 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. Less than 2 years have passed since the application was submitted, and no exceptional circumstances have been indicated by the Council. Further, although the reasoning for the low ranking of the application is noted, the legislation clearly sets out the Council's statutory duties in relation to its function as Surveying Authority. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation of it being addressed within 12 months, for the determination of the application to take a further unspecified number of years.
6. 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 6 months has been allowed.

### **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 6 months from the date of this decision.

*S Doran*

**Inspector**