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**Direction Decision**

**by Grahame Kean** **B.A. (Hons), Solicitor HCA**

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

**Decision date: 02 March 2022**

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**Appeal Ref: FPS/M1900/14D/31**

**Representation by Alison Williamson for the National Trust**

**Hertfordshire County Council**

**Application to add the particulars relating to the byway open to all traffic (Byway 71 Aldbury) from B4506 to the proximity of Bridgewater Monument by providing that the width of the byway is formally recorded as approximately 5.5m, reflecting the surfaced area of Monument Drive.**

* 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 s53(5) of that Act.
* The representation is made by Alison Williamson on behalf of the National Trust, dated 1 November 2021.
* The certificate under Paragraph 2(3) of Schedule 14 is dated 7 June 2019.
* The Council was consulted about the representation on 22 November 2021 and the Council’s response was made on 14 December 2021.

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**Decision**

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

**Reasons**

1. Local authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to decide whether to make an order on the basis of the evidence discovered.
2. Applicants have the right to ask the Secretary of State to direct the Council as the surveying authority to reach a decision on an application if no decision has been reached within twelve months of the Council’s receipt of certification that the applicant has notified the application to affected landowners and occupiers.
3. In considering whether to make a direction account is taken of any Council statement as to its priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any actions already taken by the local authority or expressed intentions of further action on the application in question; the circumstances of the case; and any views of the applicant.[[1]](#footnote-1)
4. The application has been outstanding for over two years which is not satisfactory. When first submitted in June 2019 and prioritised according to the Council’s policies, the application was placed number 94 out of 275. I read that as of 13 December 2021 it was at number 108, which is worse than when first submitted. The Council cannot confirm when the application will be determined other than to say it “*is likely to be several years*”. I note the current workload and lack of resources stated by the Council but the delay is still unsatisfactory.
5. There is no reason to believe that the policy for prioritising applications, details of which I have considered, is irrationally conceived. It is sophisticated and no doubt a product of the need to justify not dealing with applications timeously in the first place, but also in recognition of the fact that applications may need to be re-ordered depending on changes in circumstances from time to time, including new applications given greater priority according to the basic criteria. However, it is unreasonable not to provide a specific estimate of when this application will be determined.
6. An applicant’s right to seek a direction from the Secretary of State must perforce give rise to the expectation that their application may be reordered, although there is no power other than to impose a specific time limit within which a decision on the application has to be made and in any case I am not in a position to evaluate the whole list.
7. However, the perception of harm to a Special Area of Conservation and Site of Special Scientific Interest by the use of motorised vehicles, among other matters has prompted the National Trust to make the application. There are compelling reasons in my view to require its determination, and that with expedition. It is no defence to delaying matters further by suggesting possible alternative solutions. The applicant is perfectly entitled to pursue an application validly made and have it determined.
8. Furthermore, the Council in its response dated 14 December 2021 apparently makes it an additional criterion for consideration of the application that if an order were made, it would “*make it a more dangerous route for non-motorised users*”. That is a merits-based judgement that has no place in the determination of applications to modify the definitive map and statement, which are decided on the facts and the law. It must be equally impermissible to introduce such judgements as an ad hoc addition to the criteria for ordering applications. When considered with the lack of an ascertainable date by which the application will be decided, such actions effectively deny the applicant her right to a determination under statute.
9. I consider in all the circumstances that a further period of two months should be granted to determine the application and I will make a direction to that effect.

**Direction**

1. 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 Application not later than two (2) months from the date of this Decision.

Grahame Kean

INSPECTOR

1. Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 Version 2, October 2009. [↑](#footnote-ref-1)