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| **Direction Decision** |
| **By C Beeby BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 April 2022** |

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| **Ref: FPS/B0230/14D/1**  **Representation by Dr P D Wadey**  **Luton Borough Council**  **Application for the addition of a Restricted Byway from Selby Drive (Point A) to the borough/county boundary (Point C) in as much as the route falls within Luton and to add to the particulars for the path** |
| * 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 Luton Borough Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Dr P D Wadey, dated 30 April 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 28 April 2020. |
| * The Council was consulted about the representation on 16 July 2021 and made no response. |
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Decision

1. The Council is directed to determine the above-mentioned application not later than 12 months from the date of this decision.

**Preliminary Matter**

1. An accompanying application was made in respect of part of the same route which lies within Hertfordshire County Council’s area. The applicant has additionally made a representation seeking a direction to determine in respect of that application, which is the subject of a separate decision (FPS/M1900/14D/29).

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for a definitive map modification order (DMMO).
2. 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. 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 in accordance with paragraph 2(3) of Schedule 14.
3. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains the matters that the Secretary of State will take into account in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period. These are 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.
4. The Council has not commented on the direction request and therefore details of any priority system and actions already taken by the authority are not before me.
5. The applicant submits that a planning application affects part of the path. He raises concerns that the application may be determined without reference to the alleged restricted byway, a scenario which he considers may be problematic should the route ultimately be recorded in the definitive map and statement (DMS).
6. He submits that the Council had no DMMO applications awaiting a determination at the time when the application was submitted, and that he has not received a requested acknowledgement that the application has been duly made and certified.
7. The Council has a statutory duty to keep the DMS up-to-date. Circular 1/09 is 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.
8. 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, almost 2 years have passed since the application was submitted and no exceptional circumstances have been demonstrated by the Council. In the circumstances I have consequently decided that there is a case for setting a date by which time the application should be determined.
9. It is appreciated that the Council will require some time to carry out its investigation and to make a decision on the application. Accordingly, a further period of 12 months has been allowed. This includes an allowance to address working constraints arising from the ongoing coronavirus pandemic.

**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 Luton Borough Council to determine the above-mentioned application not later than 12 months from the date of this decision.

C Beeby

INSPECTOR