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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/M1900/14D/29**  **Representation by Dr P D Wadey**  **Hertfordshire County Council**  **Application to upgrade to a Restricted Byway the Footpath (part of Offley 39 FP) from Offley 8 FP (Point B) to the County Boundary (Point C) and to add to the particulars for the path (Parish of Offley (Order Making Authority ref. NH/313/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 is made by Dr P D Wadey, dated 30 April 2021. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 20 February 2019. |
| * The Council was consulted about the representation on 16 July 2021 and the Council’s response was made on 29 July 2021. |
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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 Luton Borough 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/B0230/14D/1).

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 determines applications in accordance with its Statement of Priorities. Applications are dealt with in chronological order although a higher priority may be given where any of a number of exceptional circumstances apply. Such an approach appears reasonable.
5. At the date of its response the Council had 314 DMMO applications outstanding. The application was ranked 57th in the priority list. The Council does not provide an estimate of the timescale for determining the application due to the constantly evolving nature of the number of preceding applications outstanding. It does, however, state that it is likely to be some years before the application is investigated.
6. The applicant expresses concerns relating to the lack of a determination by Luton Borough Council in respect of the application made to it. The applicant submits that it is logical to submit an accompanying application in respect of the section of path within Hertfordshire.
7. Whilst I sympathise with the pressures that the Definitive Map service is under, the Council still has a statutory duty to keep the definitive map and statement 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, more than 3 years have passed since the application was submitted and no exceptional circumstances have been demonstrated by the Council. I concur with the submission that it is desirable for DMMO applications which concern a single route within two local authority areas to be determined within a similar timescale, in order to ensure a coherent network, and this submission is unchallenged 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 Hertfordshire County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

C Beeby

INSPECTOR