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| **Direction Decision** |
| **by Martin Small BA(Hons) BPl DipCM MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 July 2022** |

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| **Ref: FPS/M1900/14D/30****Representation by The Ermine Street (Great Grove) Conservation Company Ltd****Hertfordshire County Council****Application to delete the Restricted Byway from Martin’s Green to Pembridge Lane, known as Brickendon No. 24 (Brickendon Liberty, Hoddesdon) (OMA ref. EH/460/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.
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| * The representation, made by The Ermine Street (Great Grove) Conservation Company Ltd, is dated 5 August 2021.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 12 September 2017.
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| * The Council was consulted about the representation on 22 November 2021 and the Council’s response was made on 31 March 2021.
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Decision

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

**Preliminary Matter**

1. In March 2022 the authority estimated 2 further months for determining the application. I therefore requested an update from the authority before making my decision. In its response dated 12 July 2022, the authority estimated another month for determination. I have taken this into account in my decision.

Reasons

1. 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.
2. 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[[1]](#footnote-1).
3. The application was originally submitted in September 2017. At that time it was 4th out of 260 outstanding applications. By December 2017 it had moved up to 3rd and the authority estimated that investigations would begin on the application within 4-6 months. However, since then the determination has been postponed on numerous occasions. The applicant is elderly and in poor health and contends that the delays have caused extreme anxiety and distress. He wishes to have the application brought to a positive and swift conclusion so that he can enjoy the rest of his retirement in peace.
4. The delays in determining the application are due to a combination of a complex and high profile case, directions from the Secretary of State being given priority and the Covid-19 pandemic. Nevertheless, in March 2022 the authority advised that investigation of the case had been started and, although not yet complete, it estimated 2 m months for determining the application. In July 2022 the authority further advised that the determination had been delayed by another contentious case but estimated another month for a decision.
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. In the case nearly 5 years have passed since the application was submitted. Although the authority anticipates making a determination shortly, that determination has been delayed previously on more than one occasion. Given this and the lapse of time, I consider that the applicant should be afforded greater certainty.
6. Whilst the authority has begun its investigation, that has been delayed and it is appreciated that it will still require some time to complete that investigation and make a decision on the application. A further period of 3 months has therefore been allowed.
7. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined and I consider it appropriate to allow a further 3 months for a decision to be reached.

**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** the Hertfordshire County Council to determine the above-mentioned application no later than 3 months from the date of this direction.

Martin Small

INSPECTOR

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