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| **Direction Decision** |
| **by Nigel Farthing Solicitor**  |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 February 2023** |

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| **Ref: ROW/3309598****Hertfordshire County Council****Application to add a Restricted Byway “Drovers Path” running from Green End Common from the county road running towards The Carriers and then SE from there along the stream forming part of the River Rib for a distance of approximately 800m until it reaches the permissive bridleway over Hyde Hall fields (OMA ref. NH/3326/MOD)** |
| * An application was made by Bridget Wheeler to Hertfordshire County Council for an order to modify its Definitive Map and Statement of Public Rights of Way (‘DMS’) under Section 53(2) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) (‘the application’). The Council’s reference for the application is NH/326/MOD
* The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 5 May 2020.
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| * A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application. The representation is dated 24 October 2022. The Council was consulted about the representation on 24 November 2022 and its response is dated 29 November 2022.
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Decision

1. The Council is directed to determine the application not later than twelve months from the date of this decision.

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS.
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers 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, at paragraph 4.9, that 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. Each case must therefore be considered in light of its particular circumstances.
4. The claimed restricted byway is described by the applicant as an ancient route known as the ‘Drovers Path’ and she claims that it is recorded on the Sandon Inclosure Map and Award (1842). The application is also supported by user evidence.
5. As of 29 November 2022, the application was positioned at 11 out of 336 on the Council’s list of applications awaiting determination.
6. The Council determines applications in accordance with its Statement of Priorities effective from 5 April 2011. This provides for applications to be prioritised on the basis of three key principles relating to public safety, level of use and impact on the network. A higher priority can be given where: (1) the physical existence of the alleged route is threatened by development (2) investigation of a case would involve substantially the same evidence as a route currently under investigation and will provide significant cost or efficiency savings (3) there is only user evidence available.
7. The applicant claims as a special circumstance that ‘there is a pending development at a property located off this path which can only be accessed by the path and which threatens the path if used by large (or any) vehicles.’ I am provided with no further details. I do not understand this to suggest that the physical existence of the route is threatened, but rather that its use by vehicles would be detrimental to public use.
8. The Council explains that although the applications sits in eleventh place on the prioritised list, it is unlikely that investigation will commence for at least 12 to 24 months, and that once started the process may take several further months.
9. 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.
10. The applicant is entitled to expect her application will be determined within a finite and reasonable period and the legislation gives rise to an expectation of a determination within 12 months under normal circumstances. My task is to balance the legitimate expectation of the applicant against the approach of the Council. I am satisfied that the policy adopted by the Council is reasonable and I recognise that this has resulted in the application reaching an elevated position on the list. However, more than two years have elapsed since the application was submitted, and the Council have not been able to put forward any exceptional circumstances.
11. It is appreciated that the Council will require some time to carry out its investigation and to make a decision on the application. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

**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.

Nigel Farthing

INSPECTOR