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| **Direction Decision** |
| **by Ian Radcliffe BSC(Hons) MRTPI MCIEH DMS** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 April 2023** |

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| **Ref: ROW/3308507****Representation by David Slade Allard****Hertfordshire County Council****Application to add a footpath which runs beside a hedge south of cottages on the east side of Biggin Hill in a NE direction before turning SE to the road which it joins approximately 216 metres from the entrance to the quarry (OMA ref. EH/364/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 is made by Mr D S Allard, dated 1 October 2022.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 11 February 2009.
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| * The Council was consulted about your representation on 10 November 2022 and the Council’s response was made on 21 November 2022.
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Decision

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

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. The Rights of Way Circular 1/09 Version 2, was published by the Department for Environment, Food and Rural Affairs in 2009. It advises that the Secretary of State in considering whether, in response to 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.
2. The representation has been made on the basis that the footpath would avoid a rural road which is quite dangerous to walk along and that well over twelve months have passed since the application for the Order was made. The applicant is elderly and is concerned that if it takes many years for the application to be processed he will not live to see it dealt with.
3. Hertfordshire County Council (‘the Council’) has published a Statement of Priorities which details how applications to modify the Definitive Map are dealt with. Applications are dealt with according to three key principles: where public safety could be substantially improved; according to the level of use; and, where the Council’s actions could result in a significant positive impact on the network. In addition, higher priority is given to applications where either the route is threatened by development, where there is only user evidence available (as large delays may mean that essential evidence is lost because witnesses are no longer available), or where there is a significant efficiency saving from investigating a case out of priority order.
4. As of 21 November 2022, the application was 108out of over 300 on the Council’s prioritised list of applications awaiting determination.
5. The adopted approach of the Council is logical and fair. However, the fact remains that the Council has a significant number of applications outstanding dating back more than ten years, with several dating back to the last decade of the last century. The Council is unable to indicate when it anticipates being in a position to determine this application. On the basis that in the 14 years since the application was made it is approximately a third of the way from the top of the list, and with the potential for newer higher scoring applications to be placed above it higher up the list, it may be many years before it is dealt with.
6. There are other applications ranked higher in the Council’s list. I appreciate that the issue of a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council’s prioritisation system. However, those factors do not justify a direction not being given in this instance when the 12 month period expired well over a decade ago.
7. 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, 14 years have passed since the application was submitted and no exceptional circumstances have been demonstrated.
8. Taking all of the above matters into account, I have decided that a date should be set by which the application should be determined. It is appreciated that the Council will require some time to conduct its investigation and make a decision on the application. A further period of 12 months has been allowed.

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

Ian Radcliffe

INSPECTOR