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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: 16 October 2023** |

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| **Ref: ROW/3323201**  **Application to upgrade to a bridleway the footpath from Ickleford 4 BW to Ickleford 9 BOAT (OMA ref. NH/298/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 and is dated 28 May 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 12 October 2019. |
| * The Council was consulted about your representation on 14 June 2023 and the Council’s response was made on 11 July 2023. |
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Decision

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

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). 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 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 Council’s Statement of Priorities sets out a system for dealing with applications to change the legal record of rights of way, whereby all applications are prioritised where public safety could be substantially improved, according to the level of use, or where the Council’s actions could result in a significant positive impact on the path network. A higher priority is applied to DMMO cases where the physical existence of an alleged route is threatened by development, where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated and will provide significant cost or efficiency savings, or where there is only user evidence available. Such an approach appears reasonable.
4. The DMMO application was placed at number 85 of 339 cases in the priority system at the time of the Council’s response. The Council estimated that it would be a number of years until the application is investigated. The Council does not refer to any actions taken in respect of the application, although it considered that reasonable and structured actions were being taken to address the workload in an ordered manner.
5. The applicant submits that parliament expected DMMO applications to be investigated promptly and decisions on these to generally be reached within 12 months. He stated that over three and a half years had passed since the application met the requirement of paragraph 2 to Schedule 14 of the 1981 Act, compared to the 12-month period referred to in legislation.
6. The applicant states that he has written to the Council to request a review of its priorities for processing DMMOs, and that the Council has not offered to deal with the application by an alternative means in response. He considers that a legal event order may be made due to the circumstances of the route concerned.
7. Whilst I note the Council’s view that structured actions were being taken to address its workload in this regard, 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 your case, more than six years have passed since your application was submitted and no exceptional circumstances have been indicated. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined.
8. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly, a further period of six 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** the Hertfordshire County Council to determine the above-mentioned application not later than six months from the date of this decision.

*C Beeby*

INSPECTOR

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