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| **Direction Decision** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 January 2024** |

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| **Ref: ROW/3325631****Representation by Dr. Philip Wadey****Hertfordshire County Council****Application to add a restricted byway from Pennyfather Lane to Welwyn 33 and upgrade footpath to restricted byway from Pennyfather Lane to Burnham Green (OMA ref. W+H109MOD, W+H110MOD, EH451MOD)** |
| * 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 Dr. Philip Wadey, dated 8 July 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 21 June 2017.
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| * The Council was consulted about the representation on 28 July 2023 and the Council’s response was received on 31 July 2023.
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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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
2. 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.
3. The Council’s Statement of Priorities sets out how they prioritise applications to change the legal record of public rights of way. Applications are prioritised according to three key principles; where public safety could be substantially improved, level of use, and where the Council’s actions could result in a significant positive impact on the network. Higher priority is also given to applications 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 which will provide significant cost or efficiency savings, and where there is only user evidence available. Applications with the same score will then be dealt with in order of receipt.
4. The applicant is satisfied applications should be prioritised. However, they consider this should not result in applications taking over five years to be investigated. He advises that equestrian user groups consider this application to be one of their top six priorities on the Councils Register of Applications.
5. Although only one application was made, the Council have split it into three cases which sit at numbers 95, 96 and 97 on their list of 341 applications awaiting determination. They do not anticipate commencing investigation of the application until at least 2025.
6. The Council has several applications dating back to the early 1990s and one from 1979. There is also the potential for applications to move down the priority list if higher scoring applications are received. I appreciate a direction to make a determination on the application before me would disadvantage applicants who have been waiting longer and delay applications with higher priority ratings. However, I do not consider these higher scoring applications should be grounds to not justify giving a direction when the 12 month determination period has passed.
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, more than six years have passed since the application was submitted and no exceptional circumstances have been indicated.
8. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. 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.

Claire Tregembo

INSPECTOR