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| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 March 2024** |

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| **Ref: ROW/3332666****Representation by Dr Philip Wadey****Hertfordshire County Council****Application to add a byway open to all traffic known as Dyrham Lane from Trotters Bottom to the verge of the A1 road (OMA ref. HTM/164)** |
| * 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 (‘the 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. Phil Wadey, dated 23 October 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 29 October 2012.
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| * The Council was consulted about the representation on 7 November 2023 and the Council’s response was made on 12 December 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 twelve 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 contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: 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.
3. The Council’s Statement of Priorities sets out a system for dealing with applications to change the legal record of rights of way. 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 54 of over 300 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 did 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 application is based on the evidence of 17 witnesses and as time progresses it is likely that there will be a loss of first-hand evidence. Electric gates have been erected over the application route and the Council re-prioritised the application due to the gates. The applicant asserts that proving the highway rights would enable the investigation into any lawful limitations.
6. The applicant submitted that parliament expected DMMO applications to be investigated promptly and decisions on these, to generally be reached within 12 months. He stated that over 11 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.
7. The applicant states that he has differing views to the surveying authority about how its priorities for processing DMMOs should work, and that the Council has not offered to deal with the application by an alternative means in response.
8. 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 this case, more than 18 years have passed since the 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.
9. 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 6 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 6 months from the date of this decision.

Charlotte Ditchburn

INSPECTOR