

|  |
| --- |
| **Direction Decision** |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 November 2024** |

|  |
| --- |
| **Ref: ROW/3351113**  **Representation by Phil Wadey**  **Hertfordshire County Council**  **Application to upgrade Footpath 9 Markyate from the A5183 to Millfield Lane to a Bridleway (OMA ref. DAC/162/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, dated 24 August 2024, is made by Phil Wadey. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 10 April 2019. |
| * The Council was consulted about the representation on 4 September 2024 and their response was dated 5 September 2024. |
|  |

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. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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 application was submitted to the Council on 1 March 2019. The Appellant considers it should be investigated out of turn because, in practice, the backlog of cases and priority scoring system adopted by the Council means that cases scoring less than 25 points will not be considered for many years to come. (According to the Council’s list of applications awaiting determination, this application scores 16 points). In addition to providing a short cut for equestrians, the claimed route connects to a more comprehensive network of definitive map modification order applications in neighbouring Bedfordshire. Limited research is required in investigating the case since the route was awarded bridleway status through the Inclosure process, and in the absence of a subsequent stopping-up order remains a bridleway. The Appellant draws attention to the expectation of Parliament as reflected in the legislation and guidance that such applications would ordinarily be determined in around a year following submission; and comments that sufficient Council staffing to deal with such applications in a timely manner would go some way to achieving this.
4. The Council’s Statement of Priorities policy, adopted in 2011, is based on three 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. Higher priority is awarded 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 provide significant cost or efficiency savings; or where there is only user evidence available. When new cases are prioritised, existing prioritised cases may move down the list awaiting investigation. Where cases have the same priority, they are investigated in order of date receipt and completeness. Council officers are currently investigating 49 applications and large numbers of applications continue to be received. This application is currently listed as 108 of 355 applications outstanding and, the Council says, it is unlikely it will be investigated for some time unless a Direction is granted, following which it may take several months thereafter to determine.
5. Whilst the Council’s Statement of Priorities is reasonable and it is making progress in dealing with the large backlog of cases to bring the Definitive Map and Statement up to date, 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, some 5 years have passed since the application was made and no exceptional circumstances have been indicated by the Council for it not having been determined within this period. Therefore, 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 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.

S Doran

**Inspector**