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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 08 April 2025** |

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| **Ref: ROW/3357827**  **Representation by David Howerski on behalf of the Open Spaces Society**  **Herefordshire Council**  **Application to add a byway open to all traffic at Llanfrother Lane (Council ref. M273)** |
| * 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 Herefordshire Council (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by David Howerski on behalf of the Open Spaces Society (the applicant) and is dated 19 December 2024 with the special circumstances submitted on 7 January 2025. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 6 May 2004. |
| * The Council was consulted about the representation on 19 December 2024 and 8 January 2025 and the Council’s response was made on 12 February 2025. |
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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. As required by the 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 in question was made on 6 May 2004 and consisted of both user and historical evidence, albeit Ballingham, Bolstone and Hentland Parish Council (the Parish Council) in a letter of support for this appeal, stated that the original request was made in 1990. The parish Council were also concerned about recent attempts to prevent access by the landowner. The applicant in his appeal, considered that 20 years of waiting for the case to be determined, fell well outside of the 1981 Act duty of determination by the Council, to investigate ‘as soon as practicable after receiving a certificate’.
4. The applicant further felt that the Council had made a conscious decision not to fund the PROW department sufficiently to allow the department to fulfil its statutory duties, despite a funding recommendation from the Herefordshire Local Access Forum. The applicant believed that only 2 officers were working on the Definitive Map Modification Order (DMMO) application register which contained 316 applications yet to be determined.
5. The Council have a Statement of Priorities to rank their outstanding DMMO applications, with the application in question being allocated as medium priority. The Council advised that this application was one of five submitted by the Open Spaces Society, two of which were ranked as high priority and have since been determined. The medium priority cases are awaiting any high priority cases to be determined before they are actioned. Having received an influx of applications, some of which were ranked high priority, has pushed this and other medium and low priority cases further down the list.
6. The Council advised that they had reassessed the ranking of this application further to a request from the Parish Council in October 2024, however the additional evidence put forward was considered similar to that of the original application and the ranking has remained the same. Whilst they acknowledged the submission made by the Parish Council, that the original request for a DMMO was made in 1990, investigation has shown that a number of user evidence forms had been submitted but no accompanying documentation.
7. With regard to determination of this application, the Council advised that they had lost experienced DMMO staff and although they had 2.6 full time equivalent staff working on applications as well as a consultant, further training and experience were needed to effectively address the backlog. Their preference was to follow their Statement of Priorities and focus on high priority cases which had good evidence and provided useful routes on the network. There were 50 high priority cases awaiting determination and as a consequence, the Council considered it would be a considerable amount of time, possibly years, before the application could be actioned.
8. I recognise that there are a large number of applications awaiting determination and that the Council has a balanced and reasonable Statement of Priorities to ensure fair ranking. I also appreciate that the staffing resource issues have restricted its progress in determining outstanding applications, resulting in a large backlog.
9. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and the Council have a statutory duty to keep their Definitive Map and Statement up to date. Difficulty complying with this due to insufficient staff and a backlog are not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
10. 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 twenty years have passed since the application was submitted and no exceptional circumstances have been indicated. It would also appear that there may be threat to the route as outlined by the Parish Council.
11. Correspondingly, 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 time to carry out its investigation and make a decision on the application and taking this into consideration, a further period of 9 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** Herefordshire Council to determine the above-mentioned application not later than 9 months from the date of this decision.

A Behn

INSPECTOR