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Mr K Cheslett
16 Woodroyd Gardens
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Your Ref:
Our Ref: FPS/A4710/14D/2
Date: 1 October 2015

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Calderdale Metropolitan Borough Council
Footpath from Woodroyd Gardens to Timmey Lane, Luddenden Foot, Halifax

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 10 July 2015 for a direction to be given to Calderdale Metropolitan Borough Council ('the Council') under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ('the 1981 Act'). The direction you have sought would require the Council to determine your application for an order under section 53(5) of that Act to modify the Council's Definitive Map and Statement of public rights of way for the area so as to add a public footpath between Woodroyd Gardens and Rose Grove Lane/Timmey Lane, Luddenden Foot.
2. The Council was consulted about your request for a direction on 28 August 2015 as required by the 1981 Act. The Council's formal response was received on 13 August 2015.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether she should direct an authority to determine an application for an order within a specific period. These issues include any statement made by the Council setting out its priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any actions that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case, and any views expressed by the applicant.

Your case

4. You made an application to Calderdale Metropolitan Borough Council on 25 August 2011 seeking a modification to the definitive map and statement so as to add a public footpath.

5. Your application included evidence from 42 local people who had used this route and who could therefore offer direct evidence of using what you consider has become established as a public right of way. This was supplemented by other plans, letters and photographs.
6. The claimed footpath has been blocked by building work since 2011. The path leads through a wood beside a small estate. Until the development started around 5 years ago, the path ran past a group of garages adjacent to Rose Grove Lane. Planning permission was granted for the construction of a dwelling on the site with a condition that a 1.8m passage is retained for the footpath and a 2m high fence is erected between the path and the dwelling before the house is occupied. With a subsequent change in ownership, a revised plan was approved enabling a slight diversion of the footpath to be made but which would be unsatisfactory.
7. You have no confidence in the Council's capacity to determine your application impartially given its failure to address complaints made to it by yourself and other residents about various aspects of this matter. Nevertheless, you wish to seek a direction to require the Council to determine your application.

The Council's case

8. Calderdale Metropolitan Borough Council has confirmed that your application has been logged in its Register of Applications under Section 53(3) of the Wildlife and Countryside Act 1981 but that it remains in its backlog of cases awaiting attention where it is currently ranked 49 out of 77 similar claims.
9. In determining the priority to be afforded to applications, the Council weights each case taking into account the impact on the local community, the value to the rights of way network, any threats to the route, the time the case has waited and the time needed to determine it. Although your application was received more recently than many others, it has been assigned a higher score under the criteria 'impact on local community' and 'threat to route', the latter being weighted more heavily than other criteria.
10. Given the level of available resources, there being only a single member of staff assigned to investigations of definitive map modification order casework since August 2015 (together with public path order applications), it is unlikely that the Council will be able to determine more than 4 claims per year. As a result it is estimated that it will not be in a position to determine your application until 2023.
11. As background to this case, the Council has explained that although the original planning permission required the construction of a 1.8m wide path along the northern boundary of the development, the constrained nature of the site led to an amendment of this condition in 2011 reducing the width of this path to 1.2m. Subsequent to the submission of your application, and accepting that your claimed public footpath existed, the original developer applied to divert the part of the path affected by the development on to the path referred to in the planning condition. However the property has since been sold and the current owners do not wish to proceed with the diversion, preferring to wait for the outcome of your application. If the claimed footpath is eventually recorded on the definitive map and statement as a public right of way, the Council states that it would then be in a position to take enforcement action to re-open the path or to process an application for its diversion if the owners choose to pursue such an option.

Consideration

12. The Secretary of State recognises the scale of the task facing Calderdale Metropolitan Borough Council in dealing with its considerable backlog of definitive map modification order and other rights of way cases. She accepts the need for a system for prioritising this work and acknowledges the Council's statement of priorities for addressing this task and the factors this takes into account. In general, she considers this a reasonable approach to take in the circumstances.
13. The Council has acknowledged that your application deserves priority on account of its impact on the local community and because of the threat to the route itself, these being two of the most heavily weighted factors it takes into consideration. Even so, given the resources it has available for dealing with this type of work, the Council does not anticipate dealing with your application for another 8 years.
14. Your application appears to rely primarily on evidence from users of the claimed footpath and there is a danger that vital witness evidence relevant to your case may be lost with the passage of time. Also, further delays in establishing the status of this route will not best serve the interests of the present owners of the new property that is preventing use of the claimed footpath. Whilst it is not necessary for a public right of way to be recorded on the definitive map in order for action to be taken to remove an obstruction preventing public passage, it is understandable that the Council prefers to establish the legal status of the claimed footpath before commencing formal proceedings.
15. However, given the facts of this case, the Secretary of State does not consider it reasonable for the determination of your application to wait until 2023. She accepts the Council will require some time to carry out its investigations and to make a decision. The Secretary of State therefore proposes to allow the Council a further 12 months to complete its research and to determine the application.

Decision

16. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time your application should be determined. In exercise of the powers vested in her by paragraph 3 (2) of the Schedule 14 to the 1981 Act, the Secretary of State has directed Calderdale Metropolitan Borough Council to determine your application not later than 1 October 2016.
17. A copy of the Secretary of State's letter of direction to the authority is enclosed, and a copy of this letter is being sent to the Council.

Yours faithfully

Sue Arnott

INSPECTOR

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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