



The Planning Inspectorate

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West Horrington Ladies Circle
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Your Ref:
Our Ref: FPS/G3300/14D/4
Date: 4 October 2016

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Somerset County Council

Application for a Direction in relation to claimed footpath from Upper Breach to Bath Road (B3139), South Horrington

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 2 June 2016 for a direction to be given to Somerset County Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the Act"). The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the Act, to modify the Council's Definitive Map and Statement of public rights of way for the area so as to record a footpath from Upper Breach to Bath Road (B3139), South Horrington.
2. The Council was consulted about your request for a direction on 8 July 2016 as required by the Act. The Council's formal response was received on 3 August 2016.
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 authority 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 the Council on 17 November 2010 seeking a modification to the definitive map and statement so as to add a public footpath. This followed the blocking of the route in 1991 and various attempts to open the route by virtue of a

Section 106 agreement entered into in 1994 and negotiations to secure a dedication agreement under S25 of the Highways Act 1980.

5. Your application included user evidence from 34 people which you submit provides a compelling case in support of the route. However, you are concerned that a consequence of the delay in determining this application is the gradual loss of this evidence, given the age of many of those who completed evidence forms. You point out that 2 have died since submission of the application and that many are aged over 75 or indeed 80. Given that an Order may be subject to objections leading to further delays you fear that there is a significant risk that many of those who intend to give evidence may not survive to do so, or may have moved away.
6. You applied in 2012 for your application to be taken out of turn. At that time the Council stated that up to 10 applications were being processed annually and that it would fall to be determined in around 7 years' time (ie 2019). You have now been informed that it is unlikely that it will reach the top of the queue by 2019.

The Council's Case

7. Since 2008 Somerset County Council has assessed all applications against criteria set out in a scorecard. The resulting scores are then used to rank each application and produce a prioritised list. To date, applications received between 2008 and 2011 have been scored and ranked. Applications received after 2011 are due to be scored later this year but irrespective of their score, all applications received between 2008 and 2011 will be determined before work commences on those received after 2011.
8. Your application (704M) is ranked number 73 with 13 of the applications above it having been determined. Due to the way in which some applications have been grouped that accounts for 9 entries in the priority list meaning that your application is now 65th in the list of cases awaiting determination. The Council states that it is difficult to provide a clear estimated timescale within which it is likely to be determined due to the number of factors that can influence the rate at which cases are dealt with. However, it states that based on current rates it is likely to be several years before work begins on the application. The Council states that the number of applications determined in recent years is 8 in 2012, 8 in 2013, 4 in 2014 and 6 in 2015.
9. The Council states that there are provisions within the Council's statement of priorities which allow for applications to be "taken out of turn" and that it is not uncommon for those provisions to be successfully employed. However, the Council's view is that when you applied in 2012 for the application to be taken out of turn you failed to demonstrate that there were any "exceptional circumstances" and that the Committee noted that to take the application out of turn would have a serious delaying effect on other applications which had been afforded higher priority. The Council now states that if they are directed to determine this application it is likely that other, arguably more beneficial, applications will suffer.

Consideration

10. The Secretary of State recognises the scale of the task facing the Council in dealing with its considerable backlog of cases. She accepts the need for a system for prioritising this work and considers that in general terms assessing cases against a scorecard is a reasonable approach to take. She also acknowledges that you have

not demonstrated the exceptional circumstances which the Council requires in order for it to justify taking an application out of turn.

11. Your application appears to rely primarily on evidence from users of the claimed route and, particularly given the age of many of those who completed evidence forms, there is a danger that vital witness evidence relevant to your case may be lost with the passage of time. The Council has not provided an estimate of the timescale within which it anticipates that the application will fall for determination, but has set out the number of applications it has determined in each of the last 4 years. If the Council continues to determine applications at a similar rate of between 4 and 8 per year, then, given that your application is ranked 65th, it is likely that your application would be determined somewhere between 8 and 16 years from now.
12. Having regard to the above, the Secretary of State is of the opinion that the length of time it is anticipated that it will take to determine this application is not reasonable. Nevertheless she accepts that 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 investigate and determine the application.

Decision

13. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the application should be determined. In exercise of the powers vested in her by paragraph 3(2) of Schedule 14 to the Act, the Secretary of State has directed the Council to determine this application not later than 4 October 2017.
14. A copy of the Secretary of State's letter of direction to the Council is enclosed, and a copy of this letter is being sent to the Council.

Yours faithfully

Alison Lea
Inspector

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

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