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Your Ref:
Our Ref: FPS/G3300/14D/12
Date: 20 January 2017

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Somerset County Council

upgrading footpath to bridleway on route known as Lily Lane in Abbas and Templecombe

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 23 September 2016 for a direction to be given to Somerset County 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 to as to upgrade a footpath to the status of bridleway. The alleged bridleway is known as Lily Lane in the parish of Abbas and Templecombe.
2. The Council was consulted about your request for a direction on 1 November 2016 as required by the Act. The Council's formal response was received on 28 November 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 applied for a modification order on 2 April 2009. At that time you were told that cases would be progressed in chronological order. That policy has since changed, to the disadvantage of the application.

5. The County Council has stated that your application will not be processed until approximately 150 others have been considered. Seven years have already passed since your application.
6. The County Council has now said that it will not start to process definitive map modification applications for the foreseeable future.
7. Among the documents supporting the application is a Quarter Sessions Diversion Order made in 1881, which is legally conclusive of the creation of bridleway rights on the application route.
8. This route offers a connection between Templecombe and the restricted byway in Stowell, and would add to the network of safe off-road routes for vulnerable users.

The Council's Case

9. Applications for modification orders are now dealt with in accordance with the County Council's Statement of Priorities, which the applicant does not criticise, although all applications received between 2008 and 2011 will be dealt with before work commences on those received after 2011.
10. The Lily Lane application is effectively 126th in the list of cases awaiting determination. At the current rate of progress it is likely to be over ten years before work begins on it.
11. Over the last eight years, an average of 39 modification order applications per year has been received. The County Council's aim is to determine 10 applications per year. It is currently making good progress with bringing the Definitive Map and Statement up to date.
12. The aim of the Statement of Priorities is that as much of the public as a whole benefits from those cases which are determined first. Although this application might result in an off-road route of benefit to horse riders, cyclists and walkers, determining it ahead of others in the queue would divert resources from these higher priority applications.
13. At the moment, however, resources are being focussed on eight applications where directions to determine have been received from the Secretary of State.
14. In the last six months the County Council has been directed to determine seven cases within twelve to twenty-four months. Should directions continue to be received at this rate there will inevitably come a point at which the County Council is unable to comply with them. While the Secretary of State will need to consider each case on its merits, it is requested that consideration is also given to the reasonableness of directing a single authority to determine a large number of applications in a short period of time.
15. With regard to the claim that a Quarter Sessions Diversion Order is a legal event and therefore conclusive proof of the existence of public rights, the County Council does not take into account the apparent strength of the evidence submitted with an application in determining its position in the queue.

Consideration

16. The Secretary of State has considered the way that the County Council prioritises applications for modification orders. It appears to her that it is generally well thought out, fair and comprehensive, and she notes that its rationale is not criticised by you. She notes the surveying authority's comment about the strength of evidence not being a consideration at the prioritising stage of applications, but is concerned that it might be somewhat too rigid with respect to evidence that a legal event creating a public bridleway has taken place. If this was confirmed the need for extensive consideration of other historical evidence might be obviated and could lead to the possibility of making a legal event order under section 53(3)(a) of the Act rather than evidential order under section 53(3)(c).
17. She understands that the essential factor in the County Council's lengthy delays in determining modification order applications is a lack of resources commensurate with the rate at which it has been receiving applications for a number of years. Because, however, the rate at which applications have been received over the past 8 years is far lower than the rate at which they are determined, she does not accept is making good progress with bringing the Definitive Map and Statement up to date. The Secretary of State reminds the County Council that the legislation appeared to envisage that only exceptionally would an applicant have to wait more than 12 months for a determination, and that in that context an expected wait of more than 18 years between application and determination cannot be considered reasonable.
18. It is not for the Secretary of State to direct the County Council to increase its resources in this area of its duties, or to consider whether its current resources are being used in the most efficient way, but at the same time she does not consider that she should therefore accept as inevitable the consequent delay in dealing with applications which the public expects to be dealt with in a reasonable time.
19. Bearing the above matters in mind, the Secretary of State considers that she should issue a direction in this case.

Decision

20. 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 Somerset County Council to determine this application not later than 31 December 2018.
21. 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

Peter Millman

Inspector

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

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