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Your Ref: KL-COV-0512 SE
Our Ref: FPS/Z4718/14D/4
Date: 17 February 2017

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14
Kirklees Council
addition of footpath at Cellars Clough, Marsden

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 30 November 2016 for a direction to be given to Kirklees 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 add to it a footpath at Cellars Clough.
2. The Council was consulted about your request for a direction on 21 December 2016 as required by the Act. The Council's formal response was received on 9 February 2017.
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 7 April 2009. At that time you were told that due to the large number of applications awaiting investigation it would be 'some time' before work began on your application.
5. You accept that the Council's statement of priorities for dealing with applications is reasonable and sensible; the problem is, as you put it, that 'the present level of

staffing in the Council means that only a handful [of the 121 outstanding applications] is resolved each year'. You fear that potential witnesses may die before their evidence is put to the test.

The Council's Case

6. Applications for modification orders are dealt with in accordance with the Council's Statement of Priorities. There are currently 26 cases to be considered before this one is reached.
7. It is difficult to give an estimated date for this application to be decided.
8. The Council asks the Secretary of State to resist the request for a direction, since if granted it would affect the consideration of other applications for modification orders of higher priority to the Council.

Consideration

9. The Secretary of State notes that the essential factor in the Council's lengthy delays in determining modification order applications is a lack of resources commensurate with the number of outstanding applications. The implication of the Council's argument is that it should not be given a direction because it has chosen not to direct sufficient resources, or resource efficiency, to clear the backlog of applications in a reasonable time.
10. It is not for the Secretary of State to direct the Council to increase its resources in this area of its duties, or to direct it 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. An 8 year delay already, with the prospect of a further unspecified period before determination is, in her view, unreasonable.
11. Bearing this in mind, the Secretary of State considers that she should issue a direction in this case.

Decision

12. 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 Kirklees Council to determine this application not later than 31 December 2017.
13. 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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