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Mr A M Phillips
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Your Ref:
Our Ref: FPS/K2800/14D/6
Date: 21 December 2015

Dear Mr Phillips

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Northamptonshire County Council
Application for Modification order - Apethorpe No. 108

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 9 November 2015 for a direction to be given to Northamptonshire County Council under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981. 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 a public footpath between Kings Cliffe Road, Apethorpe and Bridge Street, Apethorpe along a way known as Manor Farm.
2. The Council was consulted about your request for a direction on 23 November 2015 as required by the Act. The Council's formal response was received on 10 December 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 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. An application was made to the Council on 7 March 2010 in relation to a footpath which is considered by the Apethorpe Village Meeting to be a public right of way as the route has been used by many people (not just villagers) for a period in excess of 30 years.

5. It is your view that a decision on the application is taking an inordinately long time and you state that this delay is resulting in bad feeling within the village. You also state that there is considerable pressure from villagers for a decision on this application and you understand that there is a legal time limit by which such matters should be determined.

The Council's Case

6. The resources within the Definitive Map Team of the Council have changed considerably over the past few years. Currently there is one full time and one part-time officer dealing with definitive map casework, diversions, extinguishments, creations, landowner deposits and land searches. In addition there are several hundred known definitive map anomalies which require attention. Due to staff having left the authority there are a number of applications where investigations have commenced but have not yet been completed; the Council would wish to see these applications determined before commencing investigations into new applications.
7. The investigation of the application commenced in 2010 and eight witnesses were interviewed. The current rights of way officer is unsure of the reasoning behind the decision to commence preliminary interviews but believes that it may have been due to the case appearing straightforward and one which had the potential to be resolved very quickly.
8. The Council operates a system whereby definitive map modification order applications are prioritised. The priority ranking of an application is determined on a number of criteria; the quality of the user and / or documentary evidence; whether the application is supported by a district council or user group; and whether any community benefit would arise from the path such as avoiding road crossings, connecting people to services or making a circular route. The Council says that one of the reasons why the application did not score highly on its user evidence is because many of the witnesses indicated on their user evidence forms that they had permission to use the claimed route. The application also scored poorly as there was little community benefit and there was an alternative route nearby.
9. A prioritisation panel was held on 8 December 2015 following the receipt of additional evidence relating to other applications. The result of this recent panel meeting was that the application has risen to number 2 in the priority rankings due to points awarded as the application increases in age. The application has yet to be reallocated to an officer to complete the investigation commenced in 2010.
10. As the application has not been reallocated to a case officer it is not currently being investigated. It is anticipated that determination of the application would be unlikely within the next three years.

Consideration

11. The Secretary of State recognises the scale of the task facing all surveying authorities dealing with definitive map modification order and other rights of way casework and acknowledges that the Council has limited resources available to it. She recognises that the Council has developed a prioritisation scheme to assist in the allocation of those scarce resources.
12. The Secretary of State notes that in prioritising those applications still outstanding the Council has taken into account factors such as community benefit and whether

there is another route in the vicinity. Whilst there are matters which assist the Council in setting its priorities, they are not matters to be taken into consideration when determining whether a right of way has come into existence through long use. Whilst nothing is apparent to suggest that the adopted policy is unreasonable, the limited resources available to the Council means that there is uncertainty for applicants regarding when a decision is likely to be reached.

13. The Secretary of State notes that the Council undertook a preliminary investigation of the application shortly after receipt apparently on the basis that the case appeared to be straightforward and could be resolved quickly. Despite this initial assessment and the work undertaken in interviewing witnesses, five years have passed since the application was made and the Council anticipates that another three years will pass before it will be in a position to determine the application.
14. Although you have not demonstrated that there are any exceptional circumstances as to why the application should take priority over other applications which the Council has received, the Secretary of State is aware that the legislation leads applicants to expect a decision within 12 months under normal circumstances. The Secretary of State does not consider it reasonable for an authority to take 8 years to determine this type of application.
15. It is the Secretary of State's view that it would be reasonable for the matter to be concluded in light of the investigations already undertaken by the Council. Given the period of time that has elapsed since the application was first made, the Secretary of State considers that the imposition of a date by which the application should be determined would reassure interested parties that the application would be brought to a conclusion within a reasonable timescale.
16. In reaching this decision it is appreciated that sufficient time should be allowed to undertake any further enquiries, carry out the required consultations and for a report to be placed before the relevant Council Committee or Panel. As such, the Secretary of State takes the view that a period of 12 months should be allowed for the determination of the application.

Decision

17. 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 the Schedule 14 to the 1981 Act, the Secretary of State has directed Northamptonshire County Council to determine this application not later than 1 January 2017.
18. 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 authority.

Yours sincerely,

Alan Beckett
Inspector

DIR DL1