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Your Ref:
Our Ref: FPS/G3300/14D/5
Date: 10 November 2016

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Somerset County Council
Direction for Route known as Middle Hill Lane in Crewkerne

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 24 July 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 upgrade a footpath, known as Middle Hill Lane in Crewkerne, to the status of restricted byway, or, in the alternative, to the status of bridleway.
2. The Council was consulted about your request for a direction on 26 August 2016 as required by the Act. The Council's formal response was received on 4 October 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. The application for a modification order was made in June 2009, and the certificate certifying that affected owners and occupiers had been notified of the application was served in August 2011. In March 2015 you were assured that an investigation had been commenced on this application, but no further progress appears to have been made.

5. Your organization (the South Somerset Bridleways Association) understands that the Secretary of State normally considers an authority's published statement of priorities when deciding whether to issue a direction, but it believes that there are special reasons which apply to this case, showing that it should be progressed urgently. These are as follows; first, the application route is part of a network of routes that would enable riders to avoid the A30 and/or the centre of Crewkerne; second, given that the Council has been directed to make, and has subsequently made, a modification order for two routes linked to Middle Hill Lane, i.e. Butts Quarry Lane and Higher Easthams Lane, it would be prudent to have processed this application before or at the same time as this order is determined; third, if the order to upgrade Butts Quarry Lane is confirmed, riders using it would be obliged to ride along a difficult part of the A30 if there was no equestrian access to Middle Hill Lane; and fourth, the Council has stated that it will not process modification order applications for the foreseeable future.

The County Council's Case

6. The Council has prepared a Statement of Priorities under which it processes applications for modification orders. It points out that your application for an order in respect of Middle Hill Lane is effectively third in the list of the scored batch of applications received between 2008 and 2011, and that while it is difficult to provide a clear estimated timescale within which the application is likely to be determined, work is already well under way with progressing it and it is anticipated that, if no further directions are received in the near future, a decision should be reached within the next two years.
7. The Council comments as follows on the special reasons which you claim apply to this case.
8. Concerning the claim that the application route is part of a network of routes which would enable riders to avoid the A30 or centre of Crewkerne, the Council agrees that there would be a network of off-road routes available for horse riders if all the seven outstanding applications in the area resulted in confirmed orders, but states that this application has already received a significant score for its potential to keep users away from the road network and a strong score in respect of its potential to address the known vulnerable user accident history in the area.
9. Concerning the order which has been made to upgrade Butts Quarry Lane and Higher Eastham Lane, the Council states that although it tends to bunch applications within the same geographical area to make the best use of resources, it is not always practicable to fulfil the legal processes in respect of two different routes simultaneously. In this case, it believes, it might not be right to delay submission of the order relating to Butts Quarry Lane and Higher Easthams Lane (which has attracted objections) to the Secretary of State because parties who have an interest in that case have a legitimate expectation that, as the Council has been directed to make an order, their case will continue to be progressed.
10. With respect to the claim that riders emerging from Butts Quarry Lane would have to turn into and ride along the A30, the Council points out that it is far from certain, because of objections received, that the modification order it has made for that route will be confirmed.

11. With respect to the general point about the progression of applications for modification orders, The Council states that it is not correct that it will not be progressing applications for the foreseeable future. At the present time it is focussing its limited resources on submitting orders to which there have been objections to the Planning Inspectorate and making orders where directions have been issued. That is why work on the Middle Hill Lane application is currently suspended. When that work is complete the Council will again be determining applications.

Consideration

12. The Secretary of State has considered the way that the 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 *per se* by you.
13. She has considered the special reasons you claim should lead to a direction being issued. She understands that it might appear to have been (and might in fact have been) a sensible use of the Council's resources to investigate the historical evidence relating to Middle Hill Lane (and perhaps other nearby routes) while it was dealing with possibly similar evidence concerning the nearby routes, Butts Quarry Lane and Higher Easthams Lane, but she notes that the issue of 'batching' is carefully considered in the Council's explanation of its scorecard and, in any event, she is not in a position to 'turn the clock back' to the time when other routes in Crewkerne were prioritised.
14. Although the Secretary of State agrees with the Council that those concerned with the modification order to upgrade Butts Quarry Lane and Higher Easthams Lane have a legitimate expectation that the order will be progressed, she also believes that those who make applications for modification orders have a legitimate expectation that they will be dealt with reasonably promptly, even if not within the twelve months envisaged in paragraph 3 of Schedule 14 to the Wildlife and Countryside Act 1981. She does not therefore consider that it would necessarily be inappropriate to delay progress on an order if that delay resulted in a greater efficiency in dealing with another case.
15. The Secretary of State notes that the Council received an average of 39 applications for modification orders each year for the past 8 years, but determined only 26 applications in the 4 years from 2012 to 2015 inclusive, and that work on cases which were being actively investigated is currently suspended. Although she understands that councils have the difficult task of making decisions about the application of limited resources to the fulfilment of their statutory duties, she considers that, given the figures noted above, the use of the County Council's scorecard to prioritise applications may well be, for the majority of applicants, a more-or-less pointless exercise. She does not agree that a comparison of the rate at which applications are determined in Somerset with the rate in other counties with similar-sized networks justifies the Council's slow rate of progress in dealing with its backlog of applications.
16. Although she notes that the Council anticipates that your application should be determined within the next two years, the Secretary of State is concerned at the uncertainty it expresses over its estimate and the length of time – 8 years – you have already waited. She is pleased to see that, you having supplied it with apparently detailed historical evidence, work on progressing your application is well

under way. She appreciates that at the current rate of dealing with cases, to further prioritize your application might result in other cases being deferred, but she considers that that does not outweigh the need for a determination of this application within a reasonable time. Having considered your request in the light of all other information provided, the Secretary of State believes that it would be appropriate to issue a direction that your application be determined within a period of twelve months.

Decision

17. 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 1 December 2017.
18. 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

Peter Millman

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

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