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Mrs S Bucks  
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Your Ref:  
Our Ref: FPS/G3300/14D/11  
Date: 20 January 2017

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Dear Madam

## WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Somerset County Council

addition of bridleway on route known as Cold Harbour Lane in Hardington Mandeville

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 so as to add a bridleway to it. The route of the alleged bridleway is known as Cold Harbour Lane in the parish of Hardington Mandeville.
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 22 September 2008. 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 90 others have been considered. Eight 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. The Hardington Mandeville Parish Council is keen to have this route reinstated. The adjoining landowners are, according to the Parish Council, willing to dedicate rights over the lane.
8. The South Somerset Bridleways Association has said that it is currently in a position to offer help with any necessary physical works to bring the lane up to a passable standard.
9. The County Council has said that it will not accept or process any dedications. If they receive dedications they will add the paperwork to the application file but not process the dedication.
10. The best way to progress this is while the adjoining landowners are willing to dedicate rights along the lane. If this application is processed after a change in adjoining landowners, the process may not go so smoothly and the Bridleway Association may not be in a position to offer financial help.

### **The Council's Case**

11. 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.
12. The Cold Harbour Lane application is effectively 84<sup>th</sup> in the list of cases awaiting determination. At the current rate of progress it is likely to be 8 years before work begins on it.
13. 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.
14. 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.
15. At the moment, however, resources are being focussed on eight applications where directions to determine have been received from the Secretary of State.
16. 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.

17. With regard to the suggestion that the landowner in this case is willing to dedicate public rights over the application route, the County Council is willing to accept and process express dedications. The fact that an application is supported is not, however, taken into account when ranking it. When processing dedications, the County Council must adhere to defra guidance issued on 19 November 2012. Processing dedications is subject to the same resource pressure as applications, and each dedication requires detailed work to ensure it is processed and recorded correctly.

## **Consideration**

18. 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 is, however, concerned that the question of whether an application is supported by the relevant landowner is not taken into consideration.
19. 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 it is making good progress with bringing the Definitive Map and Statement up to date.
20. 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 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. The applicant has taken the time and trouble to seek a direction. The County Council argues in effect that she should not be given one because it has chosen not to direct sufficient resources, or resource efficiency, to clear the backlog of applications in a reasonable time. Sixteen years is not a reasonable time.
21. The Secretary of State is aware of the guidance issued by Mr D Waterman on behalf of defra concerning the express dedication of public rights of way. She notes the advisability of the landowner seeking legal advice, and of the surveying authority satisfying itself about landownership and the possible existence of charges on the land, as well as any archaeological or nature conservation issues affecting the land, and the possibility that the dedication of rights might lead to a nuisance. While she believes that it could be a good and efficient use of a surveying authority's resources to obtain a dedication while the landowner is willing to dedicate, however, it is not possible for her to issue a conditional direction such as a direction to determine within a particular time period provided that there is a continuing willingness on the part of the landowner to resolve the application by dedication.
22. Bearing these matters in mind, the Secretary of State considers that she should issue a direction in this case, and that such direction should take into account the apparent current willingness of the landowner to dedicate.

## **Decision**

23. 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 2019.
24. 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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