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Mr A P Rowe

Your Ref:

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Our Ref: FPS/D3450/14D/3

Date: 10 February 2017

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14
Application to upgrade Footpath 73 Longdon to Bridleway

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 Staffordshire 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 public footpath 73 Longdon to the status of a public bridleway.
2. The Council was consulted about your request for a direction on 31 October 2016 as required by the Act. The Council's formal response was received on 15 December 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 made an application to Staffordshire County Council on 1 December 1998 to upgrade footpath 73 in Longdon to the status of a public bridleway. Your application was accompanied by copies of documentary evidence and user evidence forms from individuals who had used the route as a bridleway for 20 years or more.

5. In the period between making your application and your current request to the Secretary of State for a direction to be given, a number of your witnesses have subsequently passed away and your concern is that all witnesses will have passed away before the application is determined. In December 1998 your application stood at number 186 on a list of 198 applications whereas in August 2016 you were told that your application had reached number 93; you estimate that at the current rate of progress another 36 years will pass before your application is considered.
6. You were informed by the Council that if there were any exceptional circumstances associated with the application then it may be given a priority. In the light of the Council's prioritisation criteria, you consider that further delay may threaten the loss of a right of way due to the loss of user evidence. In addition, you claim that the landowner has subsequently blocked further sections of the claimed bridleway and there is a risk of confrontation between the claimants and the owner or occupier of the land.

The Council's Case

7. This is the second application made to the Secretary of State for a direction to be given to the Council; the first application was made in 2010 and on that occasion the Secretary of State decided not to issue a direction to the Council.
8. The Council acknowledges that it has a backlog of 239 applications waiting to be dealt with and has limited resources available to investigate these claims. In the light of the constraints the Council finds itself under, a decision has been taken to address the backlog in the order of the date on which the application was received subject to a number of exceptions which would give a case a higher priority.
9. The exceptions are: (a) where delay would threaten the loss of the claimed right of way; or (b) where there is severe hardship or a risk of confrontation between the claimant and the owner / occupier of the land or there is evidence of a detrimental effect upon the health of the owner or occupier of the land; or (c) where in a case of an application to delete or downgrade a right of way, delaying the determination will result in severe hardship to the owner or occupier of that land; or (d) where having regard to the Council's Sustainable Transport Policies, in the case of an application to add a public path or to upgrade the existing status of a highway, the application relates to a path of actual, or potential, regional or national significance; or (e) where the route would be relevant to the achievement of another of the Council's statutory policy objectives.
10. The Council deals with applications in order of receipt unless a request for priority with accompanying relevant evidence is received. In this case, no such request has been received and the application will lie on file until it reaches the required rank for it to be investigated.
11. The Council considers it very difficult to set out a timescale in which this application will be determined. The application does not fall within any of the priority groupings identified and stood at number 98 in the list in August 2016. The application is not considered to warrant prioritization over other applications; even if determined for upgrading to a bridleway, the section of footpath 73 at issue would be a cul-de-sac at its southern end. The Council considers that even if the full length of footpath 73 was upgraded, the resulting circular route would not be heavily used by horseriders due to the requirement to cross the A51.

12. The Council appreciates the applicant's concerns about the time it may take to process the application and his wish to resolve the matter as quickly as possible. However, many other applicants have similar concerns to him.

Consideration

13. 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.
14. The Secretary of State also acknowledges those matters which the Council takes into account when assessing a definitive map modification order application to determine whether an individual application should be accorded priority. Whilst these 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.
15. Your assertion that your application would satisfy exceptions (a) and (b) in the Council's priority list is noted. However, it is for the Council to determine on a case by case basis whether an individual application does or does not meet its set criteria. Nonetheless, 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 18 years to determine this type of application. She accepts that the Council will require some time to carry out its investigations and to make a decision on your application. The Secretary of State therefore proposes to allow the Council a further 12 months to complete its research and to determine your application.

Decision

16. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time your 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 Staffordshire County Council to determine this application not later than 1 March 2018.
17. 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

Alan Beckett

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