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Your Ref:
Our Ref: FPS/G3300/14D/14
Date: 23 February 2017

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Somerset County Council

addition of a bridleway running from 512184 to 505180 in Montacute and 512184 to 515188 in Chilthorne Domer (route known as Girdlefield Lane)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 16 November 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 add a bridleway running from 512184 to 505180 in Montacute and 512184 to 515188 in Chilthorne Domer (route known as Girdlefield Lane).
2. The Council was consulted about your request for a direction on 1 December 2016 as required by the Act. The Council's formal response was received on 12 January 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 5 May 2011. 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 150 others have been considered. More than five 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 historical evidence is overwhelming, yet the County Council do not take this into account in their scoring procedure. The route would form part of a loop thus enhancing the public rights of way available.

The Council's Case

8. Applications for modification orders are now dealt with in accordance with the County Council's Statement of Priorities and ranked by a scoring process, although all applications received between 2008 and 2011 will be dealt with before work commences on those received after 2011. The intention of the scoring process is to give priority to those applications which, if successful, would be most beneficial to people wishing to use the wider rights of way network.
9. This application is currently ranked 146 and 13 of the applications above it have already been dealt with. Based on the current rate at which it is possible to deal with cases it is likely that it will be 14 years before work begins on this application.
10. At present, however, resources are being focussed on applications where directions to determine have been received from the Secretary of State.
11. The County Council has been directed to determine seven cases within twelve to twenty-four months and another within 4 years (6 of these were applications made by SSBA) and another 10 are awaiting determination, including the current case (all made by SSBA). 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.
12. Any direction to deal with the current application would inevitably divert resources from those ranked above it which would be more beneficial to rights of way users.
13. The County Council does not consider the likelihood of an application being successful when determining the priority of cases. The outcome of the application is not known until all the evidence has been evaluated. Factors such as the creation of an off-road route were considered when the case was prioritised. The potential benefit of the claimed route is not disputed but cases which have been given a higher priority are considered to be of even greater benefit.

Consideration

14. 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.

15. 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. However, the rate at which applications have been received over recent years appears to be far greater than the rate at which they are determined and therefore she cannot accept that the Council is making good progress with bringing the Definitive Map and Statement up to date. The Secretary of State reminds the Council that the legislation appeared to envisage that only exceptionally would an applicant have to wait more than 12 months for a determination, and that in that context an expected wait of more than 19 years between application and determination cannot be considered reasonable.
16. 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 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.
17. Bearing the above matters in mind, the Secretary of State considers that she should issue a direction in this case, although she is inclined to extend the time within which the application is to be determined beyond what she might normally allow. Such an extension should enable the County Council to consider whether it is reasonable to limit the resources it is willing to provide for this aspect of its work and whether it can use its resources more efficiently.

Decision

18. 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 2021.
19. 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

Barney Grimshaw

Inspector

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