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Your Ref:  
Our Refs: FPS/D0121/14D/2 – FPS/D0121/14D/21  
Date: 21 March 2017

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Dear Madam

## WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

North Somerset Council

Applications for Definitive Map Modification Orders:

to upgrade footpath to bridleway at Spying Copse to the A38. MOD 18 (FPS/D0121/14D/2)  
to add a Byway Open to All Traffic ("BOAT") along Duck Lane and Pudding Pie Lane, Churchill.  
MOD 27 & 55 (FPS/D0121/14D/3 & 11)

to upgrade a footpath to BOAT, and to add a BOAT, at Mays Lane, Puxton. MOD 29  
(FPS/D0121/14D/4)

to add a footpath, upgrade a footpath to BOAT and add a BOAT at Puxton Moor. MOD 30  
(FPS/D0121/14D/5)

to upgrade a footpath to BOAT at Blackberry Lane, Weston in Gordano MOD 34  
(FPS/D0121/14D/6)

to upgrade a footpath to bridleway at Havycett Common. MOD 50 (FPS/D0121/14D/7)

to add a bridleway and upgrade a footpath to bridleway at Nye Drove, Banwell. MOD 51  
(FPS/D0121/14D/8)

to add a bridleway/BOAT along the Roman Road, Winscombe. MOD 53 (FPS/D0121/14D/9)

to add a BOAT at Duck Street, Churchill. MOD 54 (FPS/D0121/14D/10)

to upgrade a footpath to BOAT at Sandmead Drove, Winscombe. MOD 56  
(FPS/D0121/14D/12)

to upgrade a footpath to bridleway at Ruggs Road, Cleve. MOD 57 (FPS/D0121/14D/13)

to add a BOAT at Waterloo Farm, Moor Lane, Banwell. MOD 58 (FPS/D0121/14D/14)

to add a BOAT from Splot Paddock to King Road Corner, Churchill. MOD 59  
(FPS/D0121/14D/15)

to upgrade a footpath to BOAT from Fry's Lane to Rickford Farm, Burrington. MOD 60  
(FPS/D0121/14D/16)

to add a BOAT at Lilypool Drove, Claverham. MOD 61 (FPS/D0121/14D/17)

to add a BOAT at West Bow via Wharfe Road, Uphill. MOD 62 (FPS/D0121/14D/18)

to add a bridleway and delete a bridleway at Parson's Combe. MOD 64 (FPS/D0121/14D/19)

to upgrade a footpath to bridleway from Claverham Drove to Kenn Moor Drove, Claverham.  
MOD 63 (FPS/D0121/14D/20)

to add restricted byways at Bridewell Lane, Banwell. MOD 92 (FPS/D0121/14D/21)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 23 November 2016 for directions to be given to North Somerset Council ("the Council) under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the Act"). The directions you have sought would require the Council to determine your applications for orders, 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 rights of way to it, and upgrade rights of way already shown on it, as listed above.
2. The Council was consulted about your request for directions in letters dated 10 and 12 January 2017, as required by the Act. The Council's formal responses were received on 20 February 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 applications for orders 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 applications in question; the circumstances of the cases; and any views expressed by the applicant.

#### **Your case**

4. The applications for modification orders were made between 1994 and 2010, the great majority more than 10 years ago. The Council only anticipates making decisions 'before 2022', i.e. up to 26 years after the applications were made. Many of those who gave written evidence of using the claimed routes have already died or will die before the applications are considered.

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

5. The Council states that its 'current practice is to deal with these applications in a chronological order unless it is proven that circumstances affecting the site show that the application needs to be taken out of sequence'.
6. Council officers have compiled a Report which, it is stated, shows how the Council is seeking to address its backlog of modification order applications. If, the Council states, it deals with these applications in accordance with the recommendations of the Report it anticipates 'delivering' them by 2022.
7. The Council states that if it is required to deal with these applications out of sequence the result will be that others listed before any of them will be held back further. It asks that no directions be given by the Secretary of State.

#### **Consideration**

8. Paragraph 3(1) of Schedule 14 to the Act requires the Council, when it has received a certificate that the applicant has served notice of a modification order application on affected landowners, to investigate, and decide, as soon as reasonably practicable, whether or not to make an order. The wording of the Schedule, in stating that if no decision has been made after 12 months the applicant can ask the Secretary of State to issue a direction to the Council, suggests that 12 months is probably at the upper end of what might be considered 'reasonably practicable'.

9. Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, states: "*In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...*".
10. A modification order application has an effect not only on the rights of the public, but also the rights and obligations on the owners of land crossed by the alleged public right of way.
11. The Secretary of State does not consider that a wait of 15 years, let alone a wait of 26 years for the earliest application in this set of cases, could possibly be considered reasonable; it is, in fact, manifestly unfair on both affected landowners and the public.
12. The Secretary of State notes that currently the Council deals with applications in chronological order, but that officers produced a Report, presented to its Public Rights of Way Sub-committee in November 2016, which recommends ways of reducing the backlog of modification order applications and speeding up the process by which they are investigated. She notes further, however, that the principle of dealing with applications in chronological order is maintained; she also notes that no decision appears, as yet, to have been taken by the Committee about accepting any of the Report's recommendations. The date of 2022, which the Council gives as a possible date by which these applications will have been 'delivered' (which the Secretary of State understands to mean 'determined'), therefore seems unduly optimistic.
13. It is not for the Secretary of State to direct the 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 and effective way in dealing with modification order applications. She notes, however, that many authorities delegate decision-making on modification order applications to officers, and that the Act does not require consensus with landowners to be sought before it is determined whether or not an order should be made. She is aware, as well, that in many of these cases the applicants have stated the documentary source on which they base their belief that the route in question carries public rights of the class stated in the application. It would seem that there would be no need to interview a large number of users in such cases. She does not, in short, consider that a plea of lack of resources should lead to a conclusion that no directions should be given.

## **Decision**

14. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the applications 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 North Somerset Council to determine applications MOD 18, 27 & 55, 29, 30, 34, 50 and 51 not later than 31 December 2017; applications MOD 53, 54, 56, 57, 58 and 59 not later than 30 June 2018; and applications MOD 60, 61, 62, 63, 64 and 92 not later than 31 December 2018.

15. 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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