



Direction Decision

by Sue Arnott FIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 July 2017

Ref: FPS/G3300/14D/21

**Representation on behalf of Mendip Bridleways and Byways Association
SOMERSET COUNTY COUNCIL**

**Application to add to the definitive map and statement a bridleway in the
Parish of Pilton, known as 'Westholme Lane Track' (ref. 705M)**

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Somerset County Council to determine an application for an order made under Section 53(5) of that Act.
- The representation, dated 18 February 2017, is made by Mendip Bridleways and Byways Association.
- The certificate required by Paragraph 2(3) of Schedule 14 is dated 25 March 2011.
- The Council was invited to respond to the representation on 27 March 2017 and submitted its response on 5 May 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers. The Secretary of State, in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account 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 already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
2. In this case the application was submitted some six years ago although the status of the way in question has been at issue since the 1950s with the promise of review in the 1980s. Mendip Bridleways and Byways Association (MBBA) has set out the lengthy background to its application and notes that Somerset County Council (SCC) has, in the past, acknowledged the existence of a public highway along the claimed route in the past. MBBA has put forward six key reasons why it considers this case should be dealt with as a priority and without further delay.

¹ Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs.

3. Firstly it points to the quantity of historical evidence submitted to show that the claimed way is an ancient carriageway. Secondly, the route was used by local horse riders until 2005 when a new landowner padlocked gates across the route so access is now denied. Thirdly, the Council prioritised this application on the basis that a new bridge would be needed which (MBBA argues) it would not. Fourthly, it is submitted that the Council's priority scoring system has failed to take into account the highway authority's agreement, in writing, in 1980 that the track is a public right of way which should have been included on the definitive map. Fifthly, the Council's obfuscation over the last 60 years has caused an immense waste of time and money and fostered a feeling of frustration and anger by local people. Sixthly, at the current rate of progress in dealing with applications and the priority afforded to this case, horse riders are unlikely to be able to use the route again for a further decade at least.
4. In response, Somerset County Council confirmed that a system for prioritising applications was introduced in 2008 in order to rank casework². The intention of the scoring process was to give priority to those applications which, if successful, would be of most benefit to people wishing to use the wider rights of way network.
5. Application 705M (Westholme Lane Track) is ranked 113³ in the list of cases awaiting determination. SCC cannot put a firm timescale on investigation of this application but estimates it will be at least 11 years before it receives attention.
6. In reply to the Association's 6 points, the Council points out that its scoring system does not take account of the quality or quantity of evidence supporting an application. It cannot take action to re-open a claimed route unless a public right of way is shown to subsist. If there is no need for a bridge on Westholme Lane Track, the scoring system can be adjusted. Until the case is determined, no assumption can be made about the rights the route may carry.
7. The Council's resources are currently focused on the 18 applications it has been directed to determine by the Secretary of State and, with limited resources, it is unlikely to return to its list of priorities until these cases have been completed. SCC aims to process 10 cases per year but an increased number of applications in recent years has brought additional pressure on the system.
8. The Council draws attention to the cumulative effect of directing it (SCC) to determine multiple applications. Should directions continue to be issued at this rate there will inevitably come a point at which the Council is unable to comply with them. While it acknowledges that the Secretary of State will consider each case on its own merits, SCC requests that consideration be given to the reasonableness of directing a single authority to determine a large number of applications.
9. However, an applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances. In this case, 4 years have already passed since the application was submitted although the issue had been listed for review by SCC many years before that. More importantly, it is not anticipated that this case will be dealt with for a further 11 years; that cannot be considered reasonable by any standard.

² However this was suspended in 2011.

³ It is listed as 122 but, accounting for group applications, is 113th in line for investigation.

10. In the circumstances I have concluded that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 6 months for a decision to be reached.

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** Somerset County Council to determine the above-mentioned application not later than 31 January 2018.

Sue Arnott

Inspector