



Direction Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 3 April 2019

Ref: FPS/G3300/14D/40

**Representation by South Somerset Bridleways Association
Somerset County Council**

Application for the addition of a Restricted Byway which runs from 540297 (junction with Combe Lane) to 542296 and from 543295 to 549290 (junction with A37) and to upgrade to a Restricted Byway the Footpath which runs from 542296 to 543295 (Witheybed Lane, Charlton Mackrell) (OMA ref. RW/637M/ED)

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Somerset County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation is made by Sarah Bucks on behalf of the South Somerset Bridleways Association, dated 6 December 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 7 December 2012.
 - The Council was consulted about the representation on 10 December 2018 and the Council's response was made on 25 January 2019.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, 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.
3. In this case, the application was submitted in February 2009. The applicant explains that the County Council had initially assured South Somerset Bridleways Association that the application would be processed in chronological order but subsequently changed its policy to 'scored' applications. This change

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

in policy moved the application further back in the queue of applications to be determined and, in the applicant's view, disadvantaged them. The applicant now understands that the County Council is not presently intending to start the processing of any further DMMO applications, such that it will be many years before this application would be considered.

4. In response, the County Council confirms that a new Statement of Priorities adopted in December 2018 re-introduced the policy of processing applications in chronological order that existed prior to 2008. During the intervening period, and therefore at the time at which this application was submitted, applications were usually scored against criteria set out in the Statement of Priorities then in force. The County Council explains that it has received a disproportionately large number of applications and concedes that it has a significant backlog that will take many years to process. The County Council goes on to explain that, contrary to the contention made by the applicant, it continues to investigate new cases and aims to determine 10 applications per year. The application in this case is ranked 108th in the list of cases awaiting determination and the County Council acknowledges that, at the current rate of determination, it is likely to be at least ten years before work begins on the application in question.
5. 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. The statutory duty is to investigate applications as soon as is reasonably practicable. In this case, some 10 years have already passed since the application was submitted. It is apparent from the County Council's response, the rate at which it aims to determine applications and the position of the application on the list of undetermined applications, that the applicant would be unlikely to receive an outcome for many years to come. Indeed, by the County Council's own admission, it is unlikely that the applicant will receive an outcome within twenty years of the application being submitted. That cannot be considered reasonable by any standard.
6. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. The County Council has indicated that it already has a significant number of applications that it has been directed to determine by the end of 2021 and I am mindful of the cumulative effect of the County Council being directed to determine all these applications within a relatively short period of time. I am also mindful that the County Council will require some time to carry out its investigation and to make a decision on the application in this case. Taking those considerations into account, a further period of 12 months has been allowed.

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 applications not later than 12 months from the date of this decision.

Paul Freer

INSPECTOR