



Direction Decisions

by Mark Yates BA(Hons) MIPROW

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

Decision date: 29 January 2021

Refs: FPS/G3300/14D/45-47

**Representations on behalf of the South Somerset Bridleways Association
Somerset County Council**

**Application to add a restricted byway to the definitive map and statement
over the route known as Huish Drove in the parish of Huish Episcopi
(Council ref. 681M)**

**Application to add a restricted byway to the definitive map and statement
over the route known as Frog Lane in the parish of Huish Episcopi (Council
ref. 682M)**

**Application to add a restricted byway to the definitive map and statement
over the route known as Park Lane in the parish of Huish Episcopi (Council
ref. 683M)**

- The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking directions to be given to Somerset County Council ("the Council") to determine applications for orders, under Section 53(5) of that Act.
 - The representations, dated 11 September 2020, are made by Ms S. Bucks on behalf of the South Somerset Bridleways Association ("SSBA").
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 16 August 2011 and 17 August 2011¹.
 - The Council was consulted on the representations on 26 October 2020 and the Council's response was made on 11 December 2020.
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Decisions

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

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

¹ Stated by SSBA to have been served on 30 August 2011.

- expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant².
3. The Council acknowledges that it has a significant backlog of applications awaiting determination which will take many years to process. The backlog is said to have arisen due to a disproportionate number of applications having been received, as the Council's rate of determination of applications is said to be comparable with other surveying authorities with a similar size public rights of way network. The Council outlines that it has significantly increased staff resources and is making reasonable progress in bringing its definitive map and statement up to date.
 4. The Council's Statement of Priorities specifies that applications made between 2008 and 28 November 2011 were given a score in accordance with the previous Statement of Priorities and this determines the order each application will be considered. Applications submitted after this date will ordinarily be dealt with in chronological order. Whilst SSBA states it was originally informed the applications would be considered in chronological order, this does not appear to be the case from the information supplied by the Council.
 5. There is nothing to suggest that the scoring system employed for cases submitted prior to 28 November 2011 was an unfair approach to ranking the order for applications to be determined. There is nonetheless some uncertainty regarding when an application will ultimately be considered given that more recent applications can be taken 'out of turn' in certain circumstances. It is anticipated in light of the current rate of progress that the applications will be determined in around 15 years, but this could potentially be brought down to 8 years due to the increased staff resources provided.
 6. I recognise that there are a large number of applications awaiting determination and the Council has provided some additional resources in an attempt to reduce the backlog. It has a Statement of Priorities in place to rank the order for applications to be determined and I agree with the Council that the special circumstances outlined by SSBA are likely to apply to numerous other cases awaiting determination.
 7. Nonetheless, 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. It is over 9 years since the certificates in accordance with paragraph 2(3) were served and I do not view this to be reasonable. Further, it is anticipated that a decision will not be reached on these applications for another 8 to 15 years. Therefore, I have decided that there is a case for setting a date by which time the applications should be determined.
 8. In light of the restrictions in place due to the outbreak of the Covid-19 virus, it would seem that exceptional circumstances have arisen which could not have been foreseen. Accordingly, I consider that a further period of 12 months should be allowed to enable the Council to undertake its investigations into these applications.

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

Directions

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.

Mark Yates

INSPECTOR