



## Direction Decision

by Alan Beckett BA, MSc, MIPROW

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

Decision date: 23 November 2017

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**Ref: FPS/G3300/14D/34 and FPS/G3300/14D/35**

**Representations by Mrs Sarah Bucks on behalf of the South Somerset  
Bridleways Association ('SSBA')  
Somerset County Council**

**Application to add a Restricted Byway from the public road at Ball Farm  
eastwards to the B3081, Wincanton (Parish of Charlton Musgrove) (ref:  
644M)**

**Application to upgrade Footpaths L 24/5 and CH 24/14 to Bridleway  
(route known as Gummers Lane) (Parish of Puckington) (ref: 537M)**

- The representations are 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 representations, dated 13 September 2017, are made by Mrs Sarah Bucks on behalf of the SSBA.
- The certificate under Paragraph 2(3) of Schedule 14 in respect of 644M is dated 17 January 2011; the certificate under Paragraph 2(3) of Schedule 14 in respect of 537M is dated 7 June 2013.
- The Council was notified of the representations on 21 September 2017 and submitted its responses on 30 October 2017.

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

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### 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
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- expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant<sup>1</sup>.
2. The applications at issue are identified in the Council's list as application 644M and 537M; SSBA submitted application 644M on 23 November 2009 and application 537M on 27 June 2008. In 2008 the Council adopted a scorecard system to prioritise the applications which it had received, the aim of the scoring system to be to identify those routes which, if added to the definitive map and statement, would result in maximum benefit to the public. Whereas the SSBA claims that the former system of dealing with applications in chronological order of receipt would have resulted in both applications being higher up the list, as all applications received between 2008 and 2011 have been subject to the scoring process, the assessment of the applications under the scoring process has not disadvantaged either application.
  3. The Council's priority list shows in rank order those routes which the scorecard system suggests will result in maximum public benefit if they were added to the definitive map; this is considered to be a reasonable method by which scarce resources can be allocated to the determination of such applications. The Council states that 16 of the applications currently listed ahead of applications 644M and 537M have been determined. Consequently application 537M is currently number 83 in the priority list with application 644M being number 82. Clearly some progress has been made by the Council in reducing the backlog of applications it is faced with.
  4. Contrary to the assertion made by the SSBA that the Council will not undertake any new investigations for the foreseeable future, the Council states that new cases will be investigated and that 10 applications are being investigated at the current time. Once these matters have been investigated resources can then be allocated to other cases in the priority list. However, despite progress being made on other applications, the Council estimates that another 9 years are likely to pass before consideration is given to applications 644M and 537M.
  5. SSBA claim that the passage of time will have an adverse effect upon evidence of use of the route in application 644M as a number of those who have used the route are of advanced years and their evidence of use may be lost with the passage of time. With regard to application 537M, SSBA say that due to a history of reprisals, it will not submit user evidence as part of the application. However, the Council note that no evidence of use was submitted in either application with only documentary evidence being relied upon. The Council states that if there was evidence of use which SSBA considered relevant, then such evidence could be taken into consideration and the application assessed again under the scoring system. As use of the claimed path by the public was not a matter on which the SSBA relied when making the application, the effect which the passage of time may have does not amount to an exceptional circumstance in this case.
  6. The Council also submits that it has a significant backlog of cases which have been waiting longer than twelve months and for which the same arguments put forward for applications 644M and 537M to be taken out of turn could be made; it is considered that no special circumstances have been identified as to why these applications should take priority over others on the priority list. In the Council's view, consideration should also be given to the cumulative effect of directing the Council to determine 21 other cases by the end of 2021; it is

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

suggested that if further directions are given there will inevitable come a point where the Council is unable to comply.

7. The Secretary of State recognises the scale of the task facing all surveying authorities dealing with definitive map modification order applications and other rights of way casework and acknowledges that the Council has limited resources available to it. He recognises that the Council has developed a prioritisation scheme to assist in the allocation of those scarce resources and that the Council approaches the review of the definitive map in accordance with that scheme.
8. It is for the Council to determine which factors to take into account in setting out its priorities in allocating the resources available to it. Whilst nothing is apparent to suggest that the adopted policy is unreasonable, the limited resources available to the Council means that there is uncertainty for applicants regarding when a decision is likely to be reached.
9. The Council's submissions regarding the number of applications which it has recently been directed to determine is noted, but is not a factor which can attract significant weight in the determination of this application for a direction must be considered on its own merits. 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 Council have estimated that at its current rate of progress of around 10 applications per year, applications 644M and 537M will not be determined for another 9 years. It is not considered reasonable for 17 or 18 years to elapse between an application being made and its determination. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the applications.
10. In the circumstances I have decided that there is a case for setting a date by which time the applications should be determined and consider it appropriate to allow a further 6 months for decisions 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** the Somerset County Council to determine the above-mentioned applications not later than 6 months from the date of this Decision.

*Alan Beckett*

INSPECTOR