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Mr N P Charlton
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Your Ref:
Our Ref: FPS/Z4718/14D/5
Date: 10 April 2017

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14
Kirklees Council
Claimed Public Rights of Way at Holmfirth Cricket Club

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 30 January 2017 for a direction to be given to Kirklees Council under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the Act"). The direction you have sought would require the Council to determine your application for an order, 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 a public bridleway from the junction of Summervale and Bridge Lane Holmfirth to the bridge access to the Sands Children's Recreational Play Area.
2. The Council was consulted about your request for a direction on 10 February 2017 as required by the Act. The Council's formal response was received on 15 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 an application for an order 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 application in question; the circumstances of the case; and any views expressed by the applicant.

Your case

4. You state that the application was lodged with Kirklees Council on 28 June 2011 and on the 7 August 2012 you requested the Secretary of State to investigate/appeal the non-determination of the application. In January 2013 you say that the Planning Inspectorate were instructed by the Secretary of State to treat the matter as an

appeal.

5. On 5 February 2013, after consultation with the Council, the appeal was dismissed on the grounds of the priority matrix advised and instigated by Kirklees Council in determining such matters.
6. It is now five and a half years since the application was lodged and it is evident from responses received from Kirklees Council that if the priority matrix continues to be used then the application will never be determined.
7. As the applicant you consider that five and a half years is more than a reasonable time to wait for the determination of this application and request once again that Kirklees Council be directed to determine the application without delay.

The Council's Case

8. The Council refers to the priority matrix scoring sheet which was approved by the Council's Cabinet in February 2012. The review of the matrix involved consultation and was undertaken in line with the Council's Rights of Way Improvement Plan statement of action.
9. The Council acknowledges your concerns but the Council has a backlog of such work and cannot process all definitive map modification order (DMMO) applications as soon as they are received. The priority themes are, amongst others, paths under threat, those providing a range of public benefits and also the age of both applicants and witnesses.
10. The Council refers to your previous representations in 2013 and submits a copy of a previous response on behalf of the Secretary of State to second representations in respect of another DMMO application.
11. The priority statement identifies all outstanding DMMO applications. Applications with the same score will be processed in date order, oldest first. Your application (file 169) scores 10 points and is currently number 28 in the priority statement.
12. Work has not commenced on the application and the Council say that it is difficult to give an estimate for the matter to be decided due to the amount of cases to be determined first. Work to be completed on ongoing files, the number of applications further up the priority list and the fact that any subsequent applications which score more highly will automatically be placed before your claim makes any estimate difficult to substantiate. The Council will also look to use staff resources at different levels efficiently which may affect the relative progress of files of differing complexity.
13. The Council contend that you have not identified any special circumstances against the Council's non-determination of the application. Previous representations have referred to the obstruction of the route which is addressed in the priority matrix. The value of the route to the community is also considered in the scoring process. All the applications above yours were made before it.
14. The Council asks the Secretary of State to resist the request for a direction as this would affect consideration of other DMMO applications of higher priority.

Consideration

15. The Secretary of State notes that the Council is considering applications for DMMOs in accordance with its approved priority matrix. It is appropriate for the Council to be acting in accordance with that matrix. However, Schedule 14 of the 1981 Act requires that applications for DMMOs should be determined as soon as reasonably practicable. The wording of the 1981 Act is likely to lead applicants to expect a decision within 12 months from the date of the application.
16. You made the application on 28 June 2011 over five and a half years ago. The Council are unable to give an estimated date for when the application may be determined; work on the DMMO application has not commenced. The date of determination will depend on the progress made on other applications further up the priority list and new applications which score more highly and will be placed at a higher priority. You have not identified any special circumstances to support the raising the priority of the application. However, the Secretary of State is of the view that it is unreasonable for the determination of an application to take more than five and a half years with no apparent prospect of the application being determined in the near future. The Secretary of State accepts that the Council will require some time to carry out its investigations and make a decision on the application. The Secretary of State therefore proposes to allow six months to investigate and determine the application.
17. The Secretary of State recognises that any direction will have an effect on other applications of a higher priority. However, as noted above, it is not reasonable for an applicant to wait five and a half years, and more, before the determination of an application.
18. The Secretary of State notes that you have made previous representations in this matter and the Council has submitted correspondence from the Planning Inspectorate in respect of a second representation on another application. However, the Secretary of State is of a view that there is nothing to preclude subsequent appeals for the determination of DMMO applications.

Decision

19. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the application 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 Kirklees Council to determine this application not later than six months from the date of this letter.
20. 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

Martin Elliott

Inspector

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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