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Your Ref: JMC/HJC/211630-1
Our Ref: FPS/Z4718/14D/3
Date: 3 August 2015

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Kirklees Council

Application for addition/deletion at Batley Footpath 49, Heybeck Lane

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application of 27 March 2015 for a direction to be given to the Kirklees Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981. 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 delete part of Batley Footpath No. 49 and add another section of footpath.
1. The Council was consulted about your request for a direction on 23 April 2015 as required by the Act. The Council's formal response was received on 28 May 2015.
2. 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

3. You have referred to the evidence supplied in relation to this case and request that the Council be directed to determine your application. The special circumstances in this case are stated to be that the Council created the issue by threatening prosecution for interference with a path that has not been used for decades. It subsequently took action to create a gap in a wall that has been in situ since the 1980s. In the circumstances the applicants have had to live with the public using their land, they cannot secure their grounds and have difficulty in selling the property.

The Council's case

4. The Council acknowledges the applicants concerns but in light of a backlog of such work it cannot at the moment process all applications as soon as they are received. Therefore, a priority matrix has been approved by the Council's cabinet. The review of the matrix was subject to consultation and was undertaken in line with the Council's Rights of Way Improvement Plan statement of action. This application scores zero and is currently in the lowest position in the priority statement. It is difficult to give an estimated date for the application to be determined due to the number of variables involved.
5. Work has not yet commenced specifically on deciding this application but particular matters were investigated in relation to enforcement action taken by the Council and responses were given.
6. One of the applicants was made aware of the situation 10 years earlier but showed no inclination to challenge the formal record or to re-open public access. The Council says that it has been more than reasonable in its explanation of the current position to the applicants, as outlined in correspondence provided.
7. The Council requests that the Secretary of State resists the application for a direction as it will require further investigative work and therefore affect other applications of higher priority.

Consideration

8. In the Secretary of State's view the Council is acting in accordance with its approved policy for dealing with applications to modify the definitive map. Whilst nothing is apparent to suggest that the adopted policy is unreasonable, there is uncertainty for applicants regarding when a decision is likely to be reached.
9. The personal circumstances are noted but are not considered in isolation to be sufficient to warrant the application being promoted in front of other applications. It is apparent from the Council's submission that the applicants have been aware of this issue for a number of years.
10. The Secretary of State particularly notes the contents of the letter of 28 March 2014 from the Council to the applicants' representative. This outlines that the substantive matters raised in the application have already been investigated and that the application may be taken to the relevant committee at an early stage, depending upon the results of further enquiries. It is apparent from this letter that the officer had reached a provisional view on the available evidence. There is no indication that any significant additional evidence has been tendered since this letter was sent.
11. Having regard to the above, it is the Secretary of State's view that it would be reasonable for the matter to be concluded in light of the investigations already undertaken. In reaching this decision it is appreciated that sufficient time should be allowed to undertake any further enquiries, carry out the required consultations and for a report to be placed before the relevant committee. As such, the Secretary of State takes the view that a period of 12 months should be allowed for the determination of the application.

Decision

12. 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 Wildlife and Countryside Act 1981, the Secretary of State has directed the Council to determine this application not later than 3 August 2016.
13. 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

Mark Yates

Mark Yates BA (Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

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