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Mr J Andrews
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Your Ref:
Our Ref: FPS/V3500/14D/8
Date: 3 June 2016

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Suffolk County Council

Modify the Definitive Map and Statement by adding 2 Footpaths in the Parish of Hepworth

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 12 February 2016 for a direction to be given to Suffolk County 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 add two footpaths in the parish of Hepworth.
2. The Council was consulted about your request for a direction on 8 March 2016 as required by the Act. The Council's formal response was received on 22 April 2016.
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 made an application to the Council on 9 January 1995 to modify the definitive map and statement by the addition to it of two public footpaths.
5. You acknowledge that insofar as the evidence in support of the claimed public rights is based largely on their award in the local inclosure process under the 1801 Act¹, the

¹ The Inclosure Consolidation Act 1801

Council could not reasonably have been expected to investigate these applications until after the Court of Appeal overturned the 1993 High Court ruling in 2015². Further, you and the Council had agreed that determination should be delayed until such time as the courts had come to that position.

6. However, you submit that the policy approach (to determine applications) adopted by the Council is in conflict with its duty under the 1981 Act. In essence, you say the Council refuses to comply with the simple obligation to determine both claims and applications "*as soon as reasonably practicable*" and, relies instead on its own scoring system under which claims and applications are prioritised solely on the basis of the degree of 'public benefit' that each of them is perceived to provide.
7. Following informal email communications with the Council's officer, you believe that the application will be delayed on illegitimate grounds, and others may be set aside if new claims are received which score more highly in the Council's system.

The Council's Case

8. The Council has confirmed that your application remains in the backlog of cases, and it has not yet commenced a full investigation into it.
9. The Council's Statement of Priorities for dealing with such definitive map modification applications is contained within its Rights of Way Improvement Plan (ROWIP) 2006-16. With regard to claims, changes to the network need to be prioritised on the basis of those routes that provide the greatest public benefit (Objective E and E.3 of the ROWIP). In order to achieve this, Council Officers meet six times a year to consider and prioritise new claims and public path order requests. They are weighed against a prioritising scheme scoring sheet.
10. There are currently 52 definitive map modification order applications awaiting determination by the Council. These, with other cases not requiring a formal application, have been prioritised in order by priority score from high to low. Together they represent cases outstanding. Officers are currently working on 34 cases. The previous backlog includes 103 informal definitive map modification order claims, 47 potential public path order cases, 5 Traffic Regulation Order cases, one potential licensed path agreement and a further 261 cases where the procedure is yet to be confirmed.
11. The Council confirms it agreed that investigation of this (and several other applications based on inclosure evidence) should be delayed until the Ramblers' attempt to overturn the 1993 High Court ruling had been concluded. Following the Court of Appeal ruling in 2015, the scoring of this application was re-assessed. The score relating to 'strength of evidence' was increased to a maximum of 10 since the inclosure evidence is conclusive for both footpaths, thus raising the overall score to 53.7, placing it in the high priority category.
12. However, in 1994, following a public inquiry an Inspector declined to confirm an order for the application routes. Had the order been confirmed at the time, the affected landowners would have sought to divert the Inclosure Award routes to alternative alignments. Consequently, the Council considers the new modification consent order process under the Deregulation Act 2015 may offer a more efficient

² John Andrews v Secretary of State for Environment, Food and Rural Affairs [2015] EWCA Civ 669

means of addressing the application. Accordingly, the Council proposes to defer determining the application until the 2015 Act comes into operation later this year.

Consideration

13. The Secretary of State recognises the volume of definitive map modification and other rights of way cases the Council has yet to deal with and the need for the work to be prioritised. The Council's Statement of Priorities for dealing with claims, contained in the current ROWIP, as a means to achieve this is noted. The Secretary of State is aware though of the duty placed on authorities to determine applications "*as soon as reasonably practicable*", but notes that the Council's prioritisation of claims is based on the degree of public benefit arising.
14. As regards your application, the Secretary of State sees that it has progressed further up the list of Definitive Map cases achieving a higher priority score following the Court of Appeal decision in 2015, and now falls within the 'high' priority level. The Secretary of States acknowledges that a considerable proportion of the delay in this case follows the agreement reached between yourself and the Council pending the outcome in relation to the 1993 judgement. It is also noted that the application routes have been the subject of a previous investigation and an order made by the Council prior to a public inquiry in 1994. In addition, the Council comments that the evidence is conclusive as to the public rights claimed. Accordingly, it would appear that the Council has already spent a good deal of time considering the matter.
15. The Secretary of State notes the Council's proposal to defer your application pending the coming into force of the Deregulation Act 2015, later in 2016, under which it anticipates the modification consent order process will be the most appropriate way of dealing with it and the likelihood the landowners will seek diversion of the routes. This is considered not to be an unreasonable approach. However, the Council has not given an estimated decision time for determining this application beyond this statement. Furthermore, this does not take into account the effect of other cases being received in the meantime that achieve higher priority scores, thus placing them above your application.
16. Given these factors, the Secretary of State considers it unreasonable for there to be further delays of unknown duration before the resolution of your application, and it is considered that it is appropriate that a direction be made. Recognising that the Council will require further time to complete its investigations, the Secretary of State proposes they be given 9 months to undertake this.

Decision

17. 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 the Schedule 14 to the 1981 Act, the Secretary of State has directed Suffolk County Council to determine this application not later than 1 March 2017.
18. A copy of the Secretary of State's letter of direction to the authority is enclosed, and a copy of this letter is being sent to the authority.

Yours faithfully

S Doran

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

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