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Mrs S Bucks  
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Your Ref:  
Our Ref: FPS/G3300/14D/16  
Date: 1 March 2017

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Dear Madam

## WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

### **Somerset County Council**

Addition of a bridleway running from 491235 at Kingsmoor Drove to 492241 where it joins UCR from Bineham City Farm, in Long Sutton (route known as Pennypost Drove)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 14 November 2016<sup>1</sup> for a direction to be given to Somerset County 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 record a bridleway along the route of 'Pennypost Drove'.
2. The Council was consulted about your request for a direction on 14 December 2016 as required by the Act. The Council's formal response was received on 2 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 further action on the application in question; the circumstances of the case, and any views expressed by the applicant.

### **Your case**

4. On 27 August 2008 an application was made on behalf of your organisation, the South Somerset Bridleways Association, seeking a modification to the definitive map and statement for the Long Sutton area so as to record a bridleway along the length

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<sup>1</sup> Received on 21 November 2016

of Pennypost Drove. This application was supported by a comprehensive list of documentary evidence.

5. At the time the application was received by Somerset County Council, such cases were being dealt with in chronological order. The Council subsequently altered the sequence in which applications are processed, instead adopting a scoring system to determine priority cases. As a consequence, your application slipped further down the list of outstanding cases and it appears there are now around 160 applications ahead of yours in the queue.
6. You take issue with the scoring system which you believe disadvantages your case. You also argue that the Council scored your application on the basis of erroneous information which has wrongly pushed your case further down the list of priorities. In your view Pennypost Drove is potentially an important part of the rights of way network for horse riders and cyclists, and even more so because a key bridleway (along Kingsmoor Drove and Pill Bridge Lane) cannot be used to connect with routes around Ilchester because there is no practical (and lawful) means of crossing the busy A303. The upgrading sought by your application would allow horse riders to link this with other routes in the network until a satisfactory crossing over the A303 is established.
7. The Council has indicated to you that it will not process any definitive map modification orders for the foreseeable future and unless and until they are directed to do so. That is not a satisfactory situation. You therefore ask the Secretary of State to direct Somerset County Council to determine your application within a set period of time.

### **The Council's Case**

8. The Council confirms that its mechanism for prioritising applications was revised in 2008 and that all applications received before that date were dealt with in chronological order. Your application (No. 555M) has been scored in accordance with the criteria set out in its 'Statement of Priorities'. The intention of the scoring process is to give priority to those applications which, if successful, would be of most benefit to people wishing to use the wider rights of way network.
9. Your application is currently ranked 155 on the list of outstanding applications submitted between 2008 and 2011 although it is in fact 146<sup>th</sup> on the list of cases awaiting determination. There is a substantial backlog of applications requiring determination. Although it is difficult to provide a clear timescale, based on current rates of progress (this being approximately 10 cases dealt with per year), it is not anticipated that work will begin on your application for another 14 years.
10. The Council does not dispute that the route at issue in your case may be of benefit to the public; it argues that those applications which appear above yours on its priority list are considered to be potentially of even greater benefit. The Council's Statement of Priorities does contain a provision for applications to be taken 'out of turn' in special circumstances, yet it notes that you have not made a case to the Council that your application should qualify for such treatment.
11. Resources are currently being focussed on cases where the Council has been directed to determine the application. Limited staff resources means that work on the prioritised list cannot begin until these cases are dealt with. Somerset County Council has been directed to determine twelve cases by the end of 2020 (10 of which

have been made by your association) and another 6 cases (including this application), are being considered for direction to determine.

12. In considering your request for a direction, the Council asks the Secretary of State to give consideration to the cumulative effect of directing it (the Council) to determine multiple applications. Should directions continue to be received at this rate there will inevitably come a point at which the Council is unable to comply with them. While it acknowledges that the Secretary of State will consider each case on its own merits, the Council has requested that consideration is also given to the reasonableness of directing a single authority to determine a large number of applications.

## **Consideration**

13. The Secretary of State recognises the scale of the task facing Somerset County Council in dealing with its considerable backlog of definitive map modification order cases. She accepts the need for a system for prioritising this work and notes the Council's statement of priorities for addressing this task and the factors this takes into account. In general terms, she considers this a reasonable approach to take in the circumstances.
14. Whilst you dispute the Council's scoring system and submit that corrections to the Council's inaccurate assessment would raise the profile of the application such that it should move forward in the queue, this is unlikely to make a substantive difference to the fourteen year wait anticipated by the Council given its current rate of progress in dealing with definitive map modification order applications.
15. Within the constraints of the resources it currently has available for dealing with this type of work, and the large numbers of applications it has received over the last 8 years, the Council considers it is making reasonable progress each year, at a rate comparable with other authorities. Yet it argues its system is undermined with each direction it receives to determine an application out of sequence.
16. It is not for the Secretary of State to direct the Council to increase its resources in this area of its duties, or to direct it to consider whether its current resources are being used in the most efficient way, but at the same time she does not consider that she should therefore accept as inevitable the consequent delay in dealing with applications which the public expects to be dealt with in a reasonable time. It is noted that your application relies on historical documentary evidence, rather than user evidence that may be lost with the passage of time. However, waiting twenty two years between application and determination cannot, by any standards, be considered to be 'as soon as reasonably practicable' which is the timescale required by the Act.
17. Given the facts of this case, the Secretary of State does not consider it reasonable for the determination of your application to wait until 2031 and therefore concludes that she should issue a direction in this case. She accepts the Council will require some time to carry out its investigations and to make a decision although this application is related to three other cases made by the South Somerset Bridleways Association and there may be some time saved by processing all four together.
18. Since directions have been issued for several other applications to be dealt with by 2020, the Secretary of State considers it reasonable to extend the time within which this application is to be determined beyond what she might normally be inclined to

allow. By allowing the Council a further 3 years to complete its research into this case and to determine your application by 2020, this further delay should enable the Council to consider the allocation of appropriate resources to this area of work.

**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 Somerset County Council to determine this application not later than 1 March 2020.
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

*Sue Arnott*

**INSPECTOR**

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