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Dr K Armstrong-Braun  
Amazonia  
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CHESTER  
CH4 0RF

Your Ref:  
Our Ref: FPS/A0665/14D/2  
Date: 10 November 2015

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Dear Sir

## WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Cheshire West & Chester Council

Application for a Modification Order to claim a public footpath between FP270 Chester City and FP269 Chester City

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 10 August 2015 for a direction to be given to the Cheshire West and Chester 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 add a public footpath between Chester City Footpath Nos. 269 and 270.
2. The Council was consulted about your request for a direction on 24 August 2015 as required by the Act. The Council's formal response was received on 22 September 2015.
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 request that the Council is directed to determine your application. In support, copies of the forms relating to your application and correspondence with the Council have been supplied.

## **The Council's case**

5. The Council's current statement of priorities outlines matters to be taken into account to prioritise applications. It is anticipated that this application will be determined in July 2018.
6. This is the second application for the claimed footpath. The first application was refused in 2006. It is believed that the current application is a reaction to a planning application for a change of use for the land crossed by the claimed path. Planning permission has been granted for the land to be used as a practice ground for golfers. However, it is not considered that the change of use materially affects access to the claimed path and therefore has not altered the prioritisation of the application. There is a condition in the planning permission that will withdraw permission as part of the site is designated to be used as a relief road.
7. Reference is made to deposits made by the landowner in accordance with Section 31(6) of the Highways Act 1980.

## **Consideration**

8. It is not the Secretary of State's role to make a judgement on the merits of the evidence in a particular case but to consider whether the Council should be directed to make a decision. Therefore, the evidential matters referred to by the Council have no bearing on this application for a direction.
9. The applicant has provided no reason why he believes the Council should be directed to reach a decision on the application to modify the definitive map and statement. Nor is it alleged that any special circumstances exist in this case.
10. There is nothing to suggest that the Council's criteria for prioritising applications are unreasonable. Planning permission has been granted for the site to be used as a practice ground for golfers and there could be health and safety implications for members of the public walking across the land. However, the potential impact cannot be determined from the information supplied. Nor is it evident that a proposal in relation to the relief road is imminent.
11. On the basis of the information supplied, it is not considered that a case has been made for the Council to be directed to reach a decision on the application.

## **Decision**

12. In the circumstances, the Secretary of State has decided not to issue a direction to the Council.
13. A copy of this letter is being sent to the Council.

Yours faithfully

*Mark Yates*

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