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Mr R Fraser & Mr A Bigg
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Your Ref:
Our Ref: FPS/D0840/14D/8
Date: 2 September 2015

Dear Sirs

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Cornwall Council

Non-determination of an application to modify the definitive map of public rights of way in respect of the addition of a bridleway at Solomon's Lane, Zelah

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application of 23 March 2015 for a direction to be given to the Cornwall Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 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 bridleway.
2. The Council was consulted about your request for a direction on 7 April 2015 as required by the Act. The Council's formal response was received on 19 May 2015. You have drawn attention to guidance published by the Planning Inspectorate in respect of applications for directions. The issues the Secretary of State takes into account are more specifically set out in paragraph 4.9 of Department for Environment, Food and Rural Affairs Circular 1/09, as outlined below.
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 Schedule 14 to the 1981 Act specifies that as soon as reasonably

practical the surveying authority shall investigate matters and decide whether or not to make an order. If the authority does not determine the application within 12 months there is a right of appeal to the Secretary of State. The term "*reasonably practical*" is not defined but the intention of Parliament appears to be that the majority of applications will be determined within 12 months.

5. It is understood that the Council is currently failing in its statutory duty to keep the definitive map under continuous review. This application falls within the higher category of the Council's policy for dealing with applications but is unlikely to be determined within the next 6 years. It is not requested that this application is taken out of turn but that it is determined within a reasonable timescale.
6. It is felt that the user evidence submitted in relation to the application provides a compelling case in support of the route being public. This route has been obstructed by a landowner and it is unlikely that he will remove these obstructions voluntarily which will lead to the loss of the route for several years.
7. A consequence of the delay is the gradual loss of evidence from many years ago. Many of those who have completed an evidence form are elderly and some are unlikely to survive the 6 years until an inquiry or hearing is held, as has already happened. Others may move away from the area.
8. A comparison is drawn with the procedure undertaken in respect of the Town and Country Planning Act 1990. Although it is acknowledged that it may not be wholly relevant, reference is also made to the issue of landownership.
9. You request that the Council is directed to determine the application within 6 months of the direction.

The Council's case

10. The Council's criteria for dealing with applications are set out in its policy statement of 2006. At this stage, no proposals to change the policy statement have been accepted by the Council. This application is on the higher priority list and will be determined in approximately 6 years.
11. The Council does not accept that it is failing in its statutory duty to keep the definitive map under continuous review. The Council is applying its policy in accordance with the 2006 policy statement by utilising the resources it allocates for this type of work and performing its statutory duty as set out in Section 53(2)(b) of the 1981 Act.
12. If the Secretary of State were to decide that the application should be determined earlier than the current rate, then the determination of this application would be at the expense of other applications which may have equal merit. It is considered that all higher priority applications should be treated fairly and equally, and that the special circumstances identified by the applicants are based upon their preference for this application over applications by other applicants.
13. Such applications suffer from the fact that the evidence of use provided by some witnesses will not be available for cross-examination at a future public inquiry. Witnesses can, to some extent, overcome this concern by preparing a statutory declaration setting out their evidence in a sworn statement which will carry significant weight.

14. The comparison with the procedure under the Town and Country Planning Act 1990 is unreasonable. The Council agrees with the applicants that the issue of landownership is not relevant to the question of what rights subsist over the land.
15. The Council considers that the inclusion of an appeals process in the 1981 Act recognises the fact that applications will not be determined within 12 months of the date of the application. The applicants request for the application to be determined within a certain period is unreasonable as they have failed to show why their application should be given greater priority than other applications that sit above it on the list.

Consideration

16. 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. There is nothing apparent to suggest that the adopted policy as a whole is unreasonable. Whilst it is possible that this policy will be revised in the future, the application needs to be considered in light of the current policy.
17. It is the Secretary of State's role to consider the circumstances in this particular case. The allocation of resources to other types of casework is a matter for the Council to determine and is not considered to be material to this application.
18. It would not be appropriate for the Secretary of State to comment on the merits of the application to modify the definitive map. However, an issue potentially arises in relation to the loss of valuable evidence over a period of time. Although it may be the case that the evidence of certain witnesses can be set down in statutory declarations, there is the potential need for particular matters to be clarified with witnesses. This will be most apparent in respect of any public inquiry held to determine a case reliant on user evidence. It should be borne in mind that the evidence is likely to cover events dating back over a number of years.
19. The application to modify the definitive map was made on 19 December 2013 and it is anticipated that it will not be determined until sometime in 2021. Should an Order be made and opposed, a further period of time will elapse before the matter is finally determined. The applicants concerns about the age of many of those who have completed evidence forms and the risk of other witnesses moving away from the area is therefore considered to have merit.
20. Having regard to the above, the Secretary of State is of the view that the anticipated length of time to determine this application is not reasonable and there is the risk that valuable evidence will be lost. In reaching this conclusion it is appreciated that sufficient time should be allowed for the Council to investigate the application, carry out the required consultations and complete the decision making process. As such it is not considered that the period of time suggested by the applicants is reasonable. The Secretary of State takes the view that a period of 18 months should be allowed for the determination of the application.

Decision

21. 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 1981 Act, the

Secretary of State has directed the Cornwell Council to determine this application not later than 1 March 2017.

22. 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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