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Your Ref:
Our Ref: FPS/G3300/14D/6
Date: 10 November 2016

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Somerset County Council
Direction for Route known as Otterham Lane in Isle Abbotts

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 24 July 2016 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 upgrade a footpath known as Otterham Lane in Isle Abbotts to the status of bridleway.
2. Somerset County Council was consulted about your request for a direction on 26 August 2016 as required by the Act. Its formal response was received on 3 October 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 applied for a modification order in July 2008, and were told then that applications would be processed in chronological order. Subsequently the County Council changed its policy and now estimate that your application will be processed in 30 to 40 years.

5. You put forward the following special reasons as to why this application should take precedence over some of the applications which are due to be processed ahead of it.
6. When the application was submitted 8 years ago, you were told that cases would be processed in alphabetical order.
7. Since your application is 129th in the queue it is unlikely to be processed even in your grandchildren's lifetimes.
8. There are no recorded bridleways in Isle Abbotts. The only way to reach bridleways in the neighbouring parish of Fivehead is by riding on roads.
9. The County Council has stated that it is not going to start processing applications for modification orders for the foreseeable future. Unless it is directed to do so, horse riders in Isle Abbotts will be denied rights which were awarded nearly 200 years ago in the Inclosure process.
10. You note that unless this application is processed at the same time as the one for Isle Abbotts Drove, the result could be a cul-de-sac bridleway. The County Council should not be allowed to refuse to process applications like these separately on the grounds that a dead-end route might be the result.

The County Council's Case

11. Somerset County Council responds to your 'special reasons' as follows.
12. Its mechanism for prioritising applications was changed in 2008 from one based on chronology to one where applications were assessed against the criteria set out in a scorecard based on its Statement of Priorities. The resulting scores were used to rank applications and produce a prioritised list. The system is intended to prioritise those applications which, if successful, would be of maximum public benefit.
13. The County Council concedes that it has a significant backlog of cases which will take many years to process, but insists that this is because there has been a disproportionate number of applications in the last eight years. It has a target of determining 10 applications a year, but in the last 4 years it has averaged fewer than 7. It finds it difficult to provide a clear timescale within which your application is likely to be determined, due to a number of factors, but based on current rates it is likely to be several years before work begins on it. However, it is expected to be significantly sooner than 30 to 40 years. Two vacant posts in the Council's Definitive Map Modification Order team have recently been filled. This should assist progress to meeting the Council's targets.
14. The County Council states that there is provision for cases to be taken out of turn but that you have not made a case to it.
15. It is not the case that no applications are being processed. Priority is currently being given to those cases where investigation has already started.
16. The County Council agrees that, were your application (and that for Isle Abbotts Drove) to be successful, it would be beneficial to horse riders in Isle Abbotts, but states that that has already been considered in the scoring process.

17. The County Council states that your application will be considered together with the application for Isle Abbotts Drove and will not be disadvantaged on the grounds that either route might be a cul-de-sac considered on its own.

Consideration

18. The Secretary of State has considered the way that Somerset County Council prioritises applications for modification orders. It appears to her that it is generally well thought out, fair and comprehensive, and she notes that its rationale is not criticised *per se* by you.
19. The Secretary of State has considered the provision in the County Council's scorecard for applications to take cases out of turn, and notes that it appears highly unlikely that it could apply to this case.
20. The Secretary of State accepts that the County Council is processing some cases and intends to process more. She has not been provided with the breakdown of the score for your application, and cannot therefore comment on whether it takes account of the fact that there are no bridleways within Isle Abbotts. She considers that it was not unreasonable for the County Council to have changed the way it dealt with applications for modification orders in 2008.
21. Nevertheless, the officer resource the County Council has in place to deal with modification orders is clearly inadequate in the context of the backlog of applications and the fact that officers are only processing a small number of applications annually. Although the Secretary of State understands that councils have the difficult task of making decisions about the application of limited resources to the fulfilment of their statutory duties she does not consider that to expect an applicant to wait for an undetermined 'several more years' after already waiting for 8 years is acceptable. She does not regard it as reasonable to cite a 'disproportionate' number of applications as a reason for delay.
22. Having considered your request in the light of all the information provided, the Secretary of State believes that it would be appropriate to issue a direction to ensure that your application is dealt with in a known timescale. She appreciates that at the current rate of dealing with cases, to further prioritize your application might result in other cases being deferred, but she considers that that does not outweigh the need for a determination within a reasonable time.

Decision

23. 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 December 2018.
24. 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

Peter Millman

Peter Millman

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

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