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Mrs S Bucks  
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Your Ref:  
Our Ref: FPS/G3300/14D/8  
Date: 10 November 2016

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Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14  
Somerset County Council  
Direction for Route known as River Drove in Somerton

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 ("the 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 add a restricted byway along River Drove in Somerton
2. The Council was consulted about your request for a direction on 26 August 2016 as required by the Act. The Council's formal response was received on 4 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. The South Somerset Bridleways Association applied for a modification order to record River Drove as a restricted byway in August 2008.
5. The Council is diverting resources to designing new prioritization criteria to deal with the large backlog of applications. This untimely and unnecessary administrative task will further delay the progress of applications.

6. There are additional factors, as well as the Council's Statement of Priorities, which should be considered in this case. These are as follows.
7. The application was submitted 8 years ago and could easily have been processed in the intervening years.
8. The historical documentary evidence for River Drove is very strong, including an inclosure award.
9. The track is 1.7 km long and joins two communities.
10. The Council has stated that it is not going to process modification order applications for the foreseeable future.
11. Unless and until the Council is directed to process this application, the public will continue to have its legally awarded rights denied.

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

12. The Council sets out how its Statement of Priorities, and the associated scorecard, lead to the prioritizing of applications for modification orders, and explains that, of the applications scored in 2011, this one is effectively 65<sup>th</sup> in line. No clear timescale can be given for when it will be investigated, although it is likely to be several years before work begins.
13. The Council notes that no application to take this case out of turn (for which there is provision in the Statement of Priorities) has been made.
14. Referring to the additional factors you mention, the Council comments as follows.
15. Your application received a low score. There was therefore no justification to process it in preference to others above it. Resource limitations and the length of time it takes to properly research applications have meant that this application remains in the backlog queue. Unrealistic levels of resource would have been needed to deal with the quantity of applications the Council has received over the past 8 years. The sufficiency and strength of documentary evidence in supporting an application is not relevant to the application's position in the priority list and can only be determined by a full assessment of the case. In addition, the Council considers that it may be unwise to prejudge an application; there is no justification in allowing research to have a serious and unreasonable effect on other applications which have been scored more highly and which would be of more benefit to the public.
16. It is true that officer time has been taken preparing for the implementation of the Deregulation Act 2015 as far as it impacts on applications for orders, but this is necessary work which should ultimately result in reducing the time take to deal with applications. There has been no decision to design new prioritisation criteria.
17. The length of the route and the fact that you view it as linking two communities are not material factors to be considered under the Statement of Priorities.
18. Contrary to your suggestion, new cases will be investigated, but at the moment resources are necessarily concentrated on submitting opposed orders to the Planning

Inspectorate, on cases already under investigation, and on applications the Council has already been directed to determine.

19. In conclusion, the Council states that it would like to determine this, and all other cases in the backlog, as soon as possible. It has applied a scoring system which takes into account local circumstances and priorities to achieve the greatest public benefit using the available resources. However, there is a significant backlog of cases, many of which have been waiting longer than 12 months to be determined and for which the same arguments which have been put forward by you for determining this application out of turn could be made. The available resources would make it unfeasible for the Council to determine all the outstanding cases within a short period of time, and there are no special circumstances which apply to your case alone.

### **Consideration**

20. The Secretary of State has considered the way that the Council prioritises applications for modification orders. It appears to her that it is generally well thought out, fair and comprehensive, and she notes that you do not criticise its rationale *per se*.
21. The officer resource the 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' which, based on the figures given by the Council, seems unlikely to be less than another 10 years, after already waiting for 8 years, is reasonable.
22. The Secretary of State has considered the provision in the 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. The Secretary of State accepts that the Council is processing some cases and intends to process more.
23. 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**

24. In exercise of the powers vested in her by paragraph 3(2) of Schedule 14 to the Act, the Secretary of State has directed the Council to determine this application not later than 1 December 2020.
25. 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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