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Mrs G Lowe  
Clerk to the Council  
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Warwickshire  
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Your Ref:  
Our Ref: FPS/H3700/14D/1  
Date: 03 April 2017

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Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14  
Warwickshire County Council

Application for a Direction to modify the Definitive Map and Statement by adding a public bridleway at route E6437 from B4086 at Pittern Hill Kineton (ref 52453245) to Pittern Hill, now Longbourne Farm (ref 51153230) (Parish of Kineton)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 24 January 2017 for a direction to be given to Warwickshire 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 public bridleway between Brookhampton Lane and Pittern Hill, Kineton.
2. The Council was consulted about your request for a direction on 17 February 2017 as required by the Act. The Council's formal response was received on 15 March 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 or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

## Your case

4. On 27 January 2009 the Parish Council submitted an application to the Council to add a public bridleway to the definitive map and statement. Your understanding is that the relevant landowners had agreed to the route being recorded as a bridleway. The

application was supported by 26 witness statements with witnesses giving evidence of unhindered use of the path over periods in excess of 20 years; you understand that the Council has further statements of evidence of use in correspondence which is held in the Council's files.

5. Since the application was made, it has remained in the Council's backlog of applications awaiting consideration. The Council sets its priority by means of a geographical progression through the county; you say that a study of the applications register suggests that there are 93 other applications which fall to be considered before yours.
6. Successive reductions in the number of staff allocated to definitive map work has led to a reduction in the number of cases processed; you say that in 2013 only one case was brought to a conclusion; in 2014 only one case was dealt with; in 2015 4 cases were concluded and one case had been completed by November 2016. You consider that it is likely to take 46 years for your application to be determined, based on an average of two applications being determined each year.
7. You say that the application route is recoded in the List of Streets as a highway maintained at public expense, that until 2003 it had been waymarked as a public way. Despite this, you say that the Council has determined that maintenance and enforcement should be deferred until such time as the status of the route is determined. As your case is based on evidence of use, you are concerned that the passage of time will take its toll upon user witnesses, many of whom have already passed away. You consider that for the remaining user evidence to be viable and for it not to be lost due to the passage of time, it is essential that the application is considered without further delay.

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

8. The Council says that since you requested information about progress in November 2016, seven definitive map applications have been determined either by rejection or by order as appropriate and two further applications have been determined with orders being made.
9. The Council's statement of priorities forms part of its Rights of Way Improvement Plan and was amended in 2011 to ensure that applications received after that date did not 'jump' the queue of existing applications. The Council provided a copy of the applications register noting that no significance is to be attached to the position of any application on the list.
10. Your application is at position 28 in the planned order of work; of these 28, four have had decisions made on them, 2 are out for consultation and an additional 9 are actively being researched. The Council say that your application is currently at position 14 of those applications which have yet to be investigated; it is estimated that your application will be dealt with within 4 to 8 years.
11. It is acknowledged that the application route is a highway maintainable at public expense the status of which is unclear. The route is however, open and available for public use and the landowner has not prevented use of the path.
12. The application is no different to others in the register and was made more recently than some of the other applications awaiting determination and the fact that individual witnesses are lost through the passage of time is a common factor shared

with many other applications. The Council do not consider that the circumstances of this case warrant it being considered out of sequence, particularly given that it remains open for use and is recorded on the list of streets.

## **Consideration**

13. The Secretary of State recognises the scale of the task facing all surveying authorities dealing with definitive map modification order and other rights of way casework and acknowledges that the Council has limited resources available to it. She recognises that the Council has developed a prioritisation scheme to assist in the allocation of those scarce resources. In this case the Council approaches the review of the definitive map on a geographic basis around the county, and although the Council states that the application at issue is numbered 28 in the planned order of work this is application number 28 within Stratford on Avon district not number 28 in the whole of the list of applications which is some 167 in total.
14. It is for the Council to determine which factors to take into account in setting out its priorities in allocating the resources available to it. However, these are not matters to be taken into consideration when determining whether a right of way has come into existence through long use. Whilst nothing is apparent to suggest that the adopted policy is unreasonable, the limited resources available to the Council means that there is uncertainty for applicants regarding when a decision is likely to be reached.
15. In this case, it does not seem to be disputed that the application route is one to which the public have access as it is acknowledged to be a route which is maintainable at public expense; what appears to be at issue is the status of that publicly maintainable route. Evidence of the use of the route by the public has been submitted to the Council and it may be that this evidence will assist in the determination of the status of the way. On the face of it, this does not appear to be a case which would be unduly difficult or onerous to resolve.
16. You expressed your concerns that further delay in determining this application would result in witness evidence being lost as elderly witnesses pass away. Whilst the Council considers this to be a common factor with other applications which await determination, you have already waited 8 years for the application to be considered. Your estimate of having to wait a further 46 years before the application is determined is at odds with the Council's own estimate of between 4 and 8 years. Taking the Council's lower estimate of 4 years at face value would mean that you will have waited 12 years for the application to be determined; the Council's upper estimate of 8 years would mean that 16 years would have elapsed between the application being made and its determination.
17. The Secretary of State is aware that the legislation leads applicants to expect a decision within 12 months under normal circumstances. The Secretary of State does not consider it reasonable for an authority to take 8, 12 or 16 years to determine this type of application, nor does the Secretary of State consider it reasonable for the Authority to afford this level of uncertainty for applicants and it appears unlikely that a determination will be made in the near future without intervention.
18. The Secretary of State accepts that the Council will require some additional time to carry out its investigations and to make a decision on your application. The Secretary of State therefore proposes to allow the Council a further 6 months to undertake its research and to determine your application.

## **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 Warwickshire County Council to determine this application not later than 1 October 2017.
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

*Alan Beckett*

Inspector