



Direction Decision

by **Mark Yates** BA (Hons) MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 12 June 2017

Ref: FPS/G3300/14D/20

**Representation by Ms S. Bucks on behalf of the South Somerset
Bridleways Association**

Somerset County Council

**Application for the addition and upgrading of the route known as Niddon's
Lane in the parish of Merriott as a restricted byway (Council ref: 562M)**

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") seeking a direction to be given to Somerset County Council ("the Council") to determine an application for an Order, under Section 53(5) of that Act.
- The representation, dated 3 February 2017, is made by Ms Bucks on behalf of the South Somerset Bridleways Association ("SSBA").
- The certificate under Paragraph 2(3) of Schedule 14 is dated 31 August 2011.
- The Council was notified of the representation on 27 February 2017 and submitted its response on 28 March 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers ("the certificate"). The Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account 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 already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
2. It is apparent that applications to modify the definitive map and statement for Somerset were previously determined in chronological order. However, since 2008 the Council has scored applications in accordance with the criteria set out in its 'Statement of Priorities'. The application in this case was submitted in August 2008 but I note that the certificate was not served until 2011. It

¹ Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

cannot be determined to what extent any assurances were given at the time the application was submitted; however, it falls to be considered under the new scoring system. The Council says that applications received between 2008 and 2011 will be determined prior to the post 2011 applications.

3. The Council outlines that the intention of the scoring process is to give priority to those applications which, if successful, would be of most benefit to people wishing to use the wider rights of way network. It is not my role to comment on the quality or quantity of the evidence. This is a matter for the Council to consider when it determines the application. The Council clearly does not believe that this should be taken into account when scoring applications. There is a need to prioritise this type of work and there is nothing to suggest that the system adopted by the Council is unreasonable.
4. The Council refutes SSBA's statement that it does not intend to process any more applications unless directed to do so. However, it acknowledges that resources are being focussed on those applications the Secretary of State has directed the Council to make a determination. When these cases are completed resources will become available to process the next application on the list.
5. There is uncertainty regarding when the application will be determined in light of the other potential factors. The Council says it is likely to be significantly sooner than the ten years mentioned by SSBA. It further states that it is likely to be at least two years before the investigation begins. Therefore, it appears that the application will not be determined until 2020 at the earliest and potentially much later.
6. Whilst the Council points to the large number of applications received in the last eight years, there is nothing to suggest that action has been taken to reduce the backlog of cases that have accumulated. In light of the number of cases being received and determined each year it cannot necessarily be concluded that the Council is making good progress in bringing its definitive map and statement up to date. There is a legitimate expectation that applications are dealt with in a reasonable period of time. It is noted that this application relies on historical documentary evidence, rather than user evidence that may be lost with the passage of time. However, SSBA refers to longstanding use by horse riders and the action recently taken to prevent horse riders from using the route.
7. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within twelve months under normal circumstances. In this case, six years have passed since the certificate was served and the investigation of the application is still to commence.
8. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. I appreciate that the Council has recently been directed to make determinations in respect of other applications. Therefore, a longer period than would normally be expected should be allowed for the Council to carry out its investigation and make a decision on the application. I consider it appropriate to allow a further three years for a decision to be reached.

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Somerset County Council to determine the above-mentioned application not later than three years from the date of this decision.

Mark Yates

INSPECTOR