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| **Direction Decision** |
| **by Sue Arnott FIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 July 2021** |

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| **Ref: FPS/G3300/14D/49**  **Representation by South Somerset Bridleways Association**  **SOMERSET COUNTY COUNCIL**  **Application to modify the definitive map and statement for the area by upgrading to a bridleway the footpath from Netherton Lane to Closworth** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Somerset County Council to determine an application for an order (reference 593M) under Section 53(5) of that Act. |
| * The representation, dated 19 February 2021, is made by South Somerset Bridleways Association. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 8 March 2011[[1]](#footnote-1). |
| * The Council was consulted about the representation on 17 March 2021 and the Council’s response was made on 4 May 2021. |
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

1. South Somerset Bridleways Association submitted an application to Somerset County Council (SCC) in March 2010. This sought to record a route that links Netherton Lane and Closworth as a public bridleway rather than the footpath that currently appears on the definitive map of public rights of way.
2. The evidence adduced in support of the claimed bridleway dates back to 1811. It includes Ordnance Survey and other early commercial maps, a tithe map and 1863 Highway Board, 1910 Finance Act and 1940s farming records.
3. The applicant raises four main reasons why this case should be determined without further delay. Firstly, when the application was submitted, cases were being processed in chronological order, but SCC has since changed its policy. As a result, this case has been disadvantaged and now sits much lower on the priority list. Secondly, this application was submitted over 10 years ago and SCC has indicated that it will not be processed until approximately 130 other cases have been dealt with, nearly all of which were submitted after this one; SCC considers these attract greater priority through its scoring system. Thirdly, faults with a footbridge on the claimed route were reported 5 years ago. The applicant now understands that SCC is proposing to invest in a new footbridge. This would need to be replaced by a structure to accommodate horses if this application is successful. Since SCC is unwilling to consider temporary repairs in the interim and will not unnecessarily specify a bridleway bridge, the application should be determined as a priority to establish the correct status of the way. Fourthly, local riders are keen to see this route investigated and therefore the applicant is requesting the Secretary of State direct SCC to determine the application within a set period of time.
4. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, 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 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 applicant[[2]](#footnote-2).
5. In response Somerset County Council confirmed that applications received prior to November 2011 were assessed against criteria set out in a score card but it was those received before 2008 that were dealt with in chronological order. A new statement of priorities was issued on 19 December 2018.
6. SCC states that it has received a disproportionately high number of applications as compared with other authorities but in fact is processing them at similar rates and is making reasonable progress.
7. Investigation into this case (reference 593M) has not yet begun. Although providing a reliable timescale is difficult because of the factors involved, it estimates that it may be in the region of 7 years before it is determined. However additional resources have been made available recently for this area of work so that the rate of progress should increase.
8. Pre-2011 cases which were scored will normally be investigated in the order determined by the scoring process. Thus, some applications submitted after case 593M will be dealt with sooner if they scored higher, if they are now themselves subject to a direction to determine or have been taken out of turn due to exceptional circumstances.
9. The bridge in question (1520) was noted as being in poor condition in 2017 and added to the Rights of Way Bridge Programme in which bridges and structures are prioritised according to the risk to the public, the category of path and the date the issue was raised. Bridge 1520 is currently at number 51 on the list with no specific timescale for works. No decision has been made to replace footbridge 1520. At the last inspection, the bridge was considered to be safe to use. A decision to replace or repair the bridge will by taken only if that changes.
10. SCC recognises its significant backlog of cases awaiting determination but submits that the arguments for determining 593M out of turn could apply to many other similar cases and the available resources would make it unfeasible to deal with all those that deserved the same priority. There are no special circumstances which apply to this case alone. Further, it draws attention to the cumulative effect of directions issued to SCC; since 2016 it has been directed to determine 39 cases by the end of 2021, many within 6 months.
11. I note that the applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances. In this case more than 10 years have already passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
12. I recognise that the resources allocated to this area of work has not kept pace with the receipt of applications and has pushed SCC into an invidious position, gradually accumulating an increasing number of cases to be taken out of turn as a result of being directed to determine them, leaving other cases to fall even further behind the statutory timetable that is anticipated.
13. I also accept that SCC has answered the points raised by South Somerset Bridleways Association and defended its priority system, although I consider there to be good reason to afford a degree of priority to this claimed upgrading on the basis that, at some stage in the near future, a decision will need to be made about the bridge replacement. That issue aside, the applicant is nonetheless entitled to expect that their application is processed within a reasonable length of time. A delay of 10 years with the prospect of a further 7 years is well beyond the timetable anticipated by the legislation. I therefore consider that there is a case for setting a date by which time the application should be determined.
14. I accept that SCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that recent restrictions brought about by the Covid-19 pandemic are hindering research work and I must make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 18 months for a decision to be reached in this case.

**Direction**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY** **DIRECT** the Somerset County Council to determine the above-mentioned application not later than 18 months from the date of this decision.

Sue Arnott

**Inspector**

1. The original applicant (Mrs S Wheeler) was succeeded as Chair of SSBA by Mrs S Bucks who submitted the representation. A second certificate was also submitted by her dated 11 April 2013. [↑](#footnote-ref-1)
2. Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)