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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: 30 July 2021** |

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| **Ref: FPS/G3300/14D/48**  **Representation by South Somerset Bridleways Association**  **SOMERSET COUNTY COUNCIL**  **Application to modify the definitive map and statement for the area by upgrading to restricted byway status part of the footpath (Y16/24a) known as Broad Drove[[1]](#footnote-1) at Huish Martock** |
| * 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 661M) under Section 53(5) of that Act. |
| * The representation, dated 28 January 2021, is made by South Somerset Bridleways Association. |
| * The certificate under Paragraph 2(3) of Schedule 14 was dated 17 April 2013. |
| * The Council was consulted about the representation on 2 March 2021 and the Council’s response was made on 19 April 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 October 2009[[2]](#footnote-2). This sought to record, in parts as a restricted byway and bridleway, a route that runs from the public road at Hinton Bow southwards to Bower Hinton.
2. The evidence adduced in support of the claimed bridleway dates back to 1811. It includes Ordnance Survey and other early parish maps, tithe maps and sale documents together with 1910 Finance Act and 1940s farming records.
3. The applicant raises five 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 100 other cases have been dealt with, nearly all of which were submitted after this one and which SCC now considers attract greater priority through its scoring system. Thirdly, local riders are keen to see this route investigated. Fourthly, the route is currently ridden but there have been informal discussions concerning a new planning application which would impact on the use of the route by horse riders, and fifthly, local riders and carriage drivers have asked South Somerset Bridleways Association to request the Secretary of State to 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[[3]](#footnote-3).
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 661M) has not yet begun. Although providing a reliable timescale is difficult because of the factors involved, it is estimated 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 661M 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. SCC notes that no relevant planning application has been submitted. Until such time as the informal discussions translate into a formal application for development, such factors can have no meaningful impact on the priority afforded to this case.
10. SCC recognises its significant backlog of cases awaiting determination but submits that the arguments for determining 661M 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. An 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 8 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 have 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 note that SCC has answered the points raised by South Somerset Bridleways Association and defended its priority system, but the applicant is nonetheless entitled to expect that their application is processed within a reasonable length of time. A delay of 8 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. However, I accept that SCC will require time to carry out its investigation and make an informed decision on this application. I also recognise that current 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. Also referred to as Broad Lane [↑](#footnote-ref-1)
2. The original applicant (Mrs S Wheeler) was succeeded as Chair of SSBA by Mrs S Bucks who submitted the representation. [↑](#footnote-ref-2)
3. Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-3)