

|  |
| --- |
| **Direction Decision** |
| **By A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 March 2024** |

|  |
| --- |
| **Ref: ROW/3334819****Representation by South Somerset Bridleways Association****Somerset Council****Application to upgrade to a bridleway the footpath from 323101 (Cuttiford's Door) to 321104 (Lower Langham) (Order Making Authority reference: 526M)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Somerset Council (the Council) to determine an application for an Order, under Section 53(5) of that Act.
 |
| * The representation is made by South Somerset Bridleways Association (the SSBA) and is dated 8 December 2023.
 |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 17 February 2011.
 |
| * The Council was consulted about the representation on 11 December 2023 and the Council’s response was made on 25 January 2024.
 |
|  |

Decision

1. 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, 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.
2. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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. The application to upgrade the relevant footpath to bridleway, was submitted by the SSBA, to the Council, in February 2009. The SSBA raise concerns that when the application was submitted, they were advised that it would be processed in chronological order. However, the Council later changed its policy and scored applications against criteria, resulting in the SSBA’s application being moved further back in the queue. The SSBA maintains that the Council’s policy for determining applications in chronological order has been replaced with a policy which disadvantages their application. The SSBA has further put it to me that the bridleway would be a useful off road route for local riders, and that, since the date of the application, the Council now has more resources in terms of increased staff numbers who determine such applications.
4. The Council confirms that, as set out in their Statement of Priorities at the time, all applications received before 2008 were investigated in chronological order. In 2008 the Council revised its mechanism for prioritising applications. Subsequently, all applications received between 2008 and 28 November 2011 were assessed against criteria set out in a scorecard. The resulting scores were then used to rank each application and produce a prioritised list.
5. A new statement of priorities was adopted by the Council on 19 December 2018. In that regard, applications which were received on or before 28 November 2011 and which had been scored under the previous above-mentioned Statement of Priorities, would, ordinarily, be investigated in scored order. Furthermore, in terms of applications received since 28 November 2011, such applications would ordinarily be investigated in chronological order.
6. The application to upgrade the relevant footpath to bridleway, was submitted by the SSBA on 15 February 2009. The Council advises that, whilst it would be difficult to provide a clear estimated timescale for determining the application, based on current rates it is likely to be two years before work on this application can start. The Council maintains that, as a result of having received a high number of applications since 2010, it has a significant backlog of outstanding applications which will take many years to process. Furthermore, the Council contends that the rate at which it determines such applications is comparable to that of other surveying authorities who have a similar size rights of way network. Consequently, the Council suggests that reasonable progress is being made in bringing the Definitive Map and Statement (the DMS) up to date.
7. The Council acknowledges that, in accordance with its current Statement of Priorities, some applications will be investigated out of turn, and that staffing resources have increased which, in turn, has increased the rate at which applications are determined. However, even with such additional resources, it would take some time to work through the abovementioned backlog of applications. The Council would like to determine this application as soon as possible. Moreover, the Council maintains that many of the applications which comprise the backlog, have been waiting longer than twelve months to be determined, and that the arguments for determining this present application out of turn, could equally apply to the applications which comprise the backlog. In the event that a Direction is made, the Council requests that consideration be given to the cumulative effects of directing the council to determine multiple applications within a short timeframe.
8. I accept that the Council currently has a significant backlog of applications awaiting investigation and determination. I also acknowledge that, as a result of any Direction to determine this present application, the determination of other applications that are currently before the Council, and which would take priority in accordance with their current Statement of Priorities, may be further delayed.
9. Nevertheless, 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 12 months under normal circumstances. In this case, more than 15 years have passed since the application was submitted and it is likely that, under the current priority system, it may be a further two years, or more, before this present application is determined. Whilst I acknowledge the issues raised by the Council, the Council has a statutory duty to keep the DMS up to date, and no exceptional circumstances for the delay in determining the present application have been indicated.
10. In these circumstances, I have decided that there is a case for setting a date by which time the application should be determined. However, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Consequently, a further period of six months has been allowed.

**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** Somerset Council to determine the above-mentioned application not later than 6 months from the date of this decision.

Mr A Spencer-Peet

INSPECTOR