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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 April 2024** |

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| **Ref: ROW/3329280**  **Representation by South Somerset Bridleways Association**  **Somerset Council**  **Application to upgrade a section of footpath CH9/14 to a restricted byway, along the route known as Bowood Lane (Council ref. 561M)** |
| * 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 (SSBA) and is dated 11 September 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 31 August 2011. |
| * The Council was consulted about the representation on 19 October 2023 and the Council’s response was made on 30 October 2023. |
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Decision

1. The Council is not 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. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs, details the following: 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 in question was made in August 2008. SSBA stated that when they first submitted the application, they were advised that it would be processed in chronological order, however the Council later changed its policy and ‘scored’ applications, which moved the application further back in the queue, and in the view of SSBA, effectively disadvantaged it. SSBA also expressed that nearly all of the ‘scored’ applications were submitted after theirs. The Council in response, acknowledged that those applications that scored higher under the assessment criteria, would have been determined first, in line with their Statement of Priorities.

It is the case that under the Council’s former Statement of Priorities, any applications received prior to 2008, were investigated in chronological order of receipt. However, applications received from 2008 until 28 November 2011 were assessed against criteria set out on a scorecard. The resulting scores were then used to rank each application and produce a prioritised list. A new Statement of Priorities was introduced in December 2018, whereby applications received after 28 November 2011 reverted to being investigated in chronological order, with those received between 2008 and 28 November 2011 remaining in the order they were placed under the scorecard system.

1. The Statement of Priorities set out that applications could be investigated out of order in certain circumstances: where the path was subject to a Small Improvement Scheme or affected by a Future Transport Plan; where claimed rights were likely to be obstructed through development; where an application severely impacted property and was supported by the local Councillor or Regulation Committee; where the path was subject to a Section 130A notice and the status of the path or alignment was in dispute, with resolution enabling the Council to respond with more certainty to the notice; where a direction was given under paragraph 3(2) of Schedule 14 by the Secretary of State; where batching applications made best use of resources.
2. Whilst the Council acknowledged that the priority system had resulted in some applications being rightly taken out of turn, they pointed out that the adoption of this system allowed for applications to be investigated in a reasonable and transparent manner. They considered that their rate of determination of cases was comparable to other surveying authorities with a rights of way network of a similar size and further felt that they were making reasonable progress in keeping their Definitive Map and Statement under review. The Council advised that the increase of staff resource, as referred to by SSBA in their appeal, had increased the rate at which applications were being determined, with the application in question now at the top of the queue and currently under investigation. They anticipated determination of the application within the next 12 months.
3. 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 12 years have passed since the certificate under Paragraph 2(3) of Schedule 14 was served, however as the application is now under investigation, I have decided that there is not a case for setting a date by which time the application should be determined. Nevertheless, that will not preclude SSBA from making further representations to the Secretary of State should the application remain undetermined following the expiration of the anticipated 12 month timeframe stated by the Council.

A Behn

INSPECTOR