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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/3331831**  **Representation by South Somerset Bridleways Association**  **Somerset Council**  **Application to add a public bridleway from Furland to Four Elms, Crewkerne (Council ref. 647M)** |
| * 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 20 October 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 31 August 2011. |
| * The Council was consulted about the representation on 23 October 2023 and the Council’s response was made on 30 October 2023. |
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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. 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 (DEFRA), 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 on 12 January 2009. SSBA felt that the proposed bridleway would provide a useful off road route and that at the time of the application, the landowner was happy not to object. They were concerned that in the intervening years this situation may have changed. The Council acknowledged this point and urged SSBA to contact them if the landowner was still found to be in support of the application. The Council advised that they were willing to accept and process express dedications, should such a dedication adhere to the guidance issued by DEFRA to Natural England in November 2012.
4. SSBA stated that when they first submitted the application in 2009, 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 considered that nearly all of the ‘scored’ applications were submitted later than theirs, albeit the Council refuted this, but did advise that those applications that scored higher under the assessment criteria, would be determined first, in line with their Statement of Priorities.
5. 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.
6. 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.
7. The Council advised that the application was currently placed at 99 in its prioritised queue. They were unable to give an accurate timescale as to when the case would be investigated, but estimated a timeframe of approximately 6 years. The Council recognised that it had a significant backlog of cases awaiting determination but submitted that this was due to a disproportionately high number of cases having been received. They also submitted that their rate of determination of cases was comparable to other surveying authorities with a rights of way network of a similar size. Subsequently they felt that they were making reasonable progress in keeping their Definitive Map and Statement under review.
8. I accept that there are a large number of applications awaiting determination and that the Council has a Statement of Priorities to ensure fair ranking. I also acknowledge that the resources allocated to this area of work has increased and therefore the number of applications being determined has increased.
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 12 years have passed since the certificate under Paragraph 2(3) of Schedule 14 was served and no exceptional circumstances have been indicated. The prospective wait of a further 6 years is well beyond the expectation of determination under the legislation, and the applicant is entitled to expect their application to be determined within a finite and reasonable period. The Council have a statutory duty to keep their Definitive Map and Statement up to date and although I appreciate the circumstances the Council find themselves in, difficulty complying with this due to a backlog is not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
10. Correspondingly, I have decided that there is a case for setting a date by which time the application should be determined. However, I accept that the Council will require time to carry out its investigation and make a decision on the application. I also appreciate the cumulative effect of directing the Council to determine applications and taking this into consideration, a further period of 12 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 12 months from the date of this decision.

A Behn

INSPECTOR