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| **Direction Decision** |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 19 April 2024** |

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| **Ref: ROW/3335740**  **Representation by South Somerset Bridleways Association**  **Somerset Council**  **Application to upgrade to a Restricted Byway the footpath running from 544328 to 542326 (Withy Lane, Barton St David) (OMA ref. 652M)** |
| * 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 to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by South Somerset Bridleways Association is dated 17 December 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated June 2013. |
| * The Council was consulted about the representation on 19 December 2023 and the Council’s response was made on 1 February 2024. |
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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. Guidance on directions is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains that 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. Each case must be considered in light of its particular circumstances.
3. The South Somerset Bridleways Association submitted this application with the form dated June 2009 and with the accompanying certificate dated June 2013. The application seeks to have recorded on the Definitive Map and Statement the upgrade of a footpath to a restricted byway. The applicant believes that Somerset Council (the Council) introduced a priority policy in the past which disadvantages this application, and it will not be processed by the Council before other applications which are deemed to have a higher priority, nearly all of which were submitted after this application.
4. The South Somerset Bridleways Association has set out what it considers are special reasons to justify a direction and include that it believes that the Council has more resources than before to determine Definitive Map Modification Orders (DMMOs). It is explained that the route which is sought to be recorded would be a useful off road route and local riders wish it to be recorded for future generations.
5. The Council has explained that those applications received before 2008 were dealt with in chronological order. In 2008, the Council’s procedure for prioritising applications was revised and those received between 2008 and 28 November 2011 were assessed against criteria in a scorecard. This was used to rank each application and those with the highest score examined first. Subsequently, a new Statement of Priorities was adopted on 19 December 2018 and applications which were submitted by or before 28 November 2011 (which is the case with this application) were to be ordinarily investigated in previously assessed score order. The Council set out that applications received since 28 November 2011 will ordinarily be investigated in chronological order, with the oldest being investigated first, unless given a higher priority in accordance with the Statement of Priorities.
6. The Council detail that it currently has a significant backlog, and continue to seek and implement measures to improve the rate at which cases are determined. It is explained by the Council that there is much still to do but it believes that it is making reasonable progress with bringing the Definitive Map and Statement up to date.
7. The Council consider that the timescale for this application is likely to be determined by a number of factors that can influence the rate at which cases can be dealt with by the Council. In this case, the application is No 19 in the prioritised queue, although there are another 14 applications below it that are subject to directions which the Council indicate will take precedence. The Council estimate that, based on current rates, it is likely to take about 2 years before work begins on this application.
8. The Council has commented on the special circumstances which the Somerset Bridleways Association has detailed in its submissions for a direction. However, it believes that the same arguments could be applied to other applications that have been delayed. The Council explain that it has now prioritised this application in accordance with its scheme and consider that the backlog is largely a function of the exceptionally high number of applications which have been made since 2010. The concern is raised that if an application or applications are directed to be determined then this will have a knock-on effect on other applications which it considers should have a higher priority. The Council considers it would be unfeasible for it to determine a large number of cases within a short period of time.
9. In this case, the application has been with the Council for about 15 years (about 11 years from the date of the submission of the certificate). It appears that it will be about another 2 years before works commence. Furthermore, it is assumed that there will then be a further period once work starts to investigate and prepare a report before any decision is made. This could be further delayed if the applications which are subject to directions take precedence. The delay so far has been unreasonable, especially when the application has been submitted with detailed evidence to support the case.
10. I appreciate that the Council has put resources into determining DMMO applications and has a priority scheme, however, there is a need to ensure that the very oldest applications, such as this one, are moved to a decision in a timely way.
11. 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, without some form of intervention, it is likely that about 17 years would have passed before a decision is made. Prioritising this application and similar applications may have an effect on the ability of the Council to process other submissions, including others with directions. However, the delay and likely further delay to process this application is not reasonable.
12. In these circumstances, I have decided that there is a case for setting a date by which the application should be determined. The Council will require some time to carry out its investigation and make a decision, and considering all the circumstances, including the application’s priority position and the time period that it has been in the system, I conclude that a further period of 12 months should be allowed.

**Direction**

1. 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.

David Wyborn

INSPECTOR