

|  |
| --- |
| **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: 14 August 2024** |

|  |
| --- |
| **Ref: ROW/3344212****Representation by Maurice Alan Collins****Somerset Council****Application to add a public bridleway from the public highway adjacent to Kings Farm Drive to River Barle, Withypool (Council ref. 945M)** |
| * 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 Maurice Alan Collins (the applicant) and is dated 10 May 2024.
 |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 15 February 2023.
 |
| * The Council was consulted about the representation on 13 May 2024 and the Council’s response was made on 27 June 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 the 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. Under the Council’s former Statement of Priorities, applications received on or before 28 November 2011 were scored against set criteria which was 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 are investigated in order of receipt, with those received between 2008 and 28 November 2011 remaining in the order they were placed under the scorecard system. Once investigations have begun for those applications scored against the old criteria, the Council will commence investigating the applications received after 28 November 2011, in chronological order, with the oldest applications being investigated first.
4. The Statement of Priorities sets out that applications can be investigated out of order in certain circumstances: where the path is subject to a Small Improvement Scheme or affected by a Future Transport Plan; where claimed rights are likely to be obstructed through development; where an application severely impacts property and is supported by the local Councillor or the Chairman of the Strategic Planning Committee; where the path is subject to a Section 130A notice and the status of the path or alignment is in dispute, with resolution enabling the Council to respond with greater certainty to the notice; where a direction is given under paragraph 3(2) of Schedule 14 by the Secretary of State; where batching applications makes best use of resources; where the application is supported by 5 or more user evidence forms originating from multiple addresses.
5. The application in question was made on 15 February 2023 and confirmed as valid by the Council on 14 March 2023. It was submitted following the obstruction of the claimed route by one of the landowners, who erected fencing, which the applicant states has caused controversy and strength of feeling in the community. The applicant also states that some of the users who have provided evidence are of advancing years and the applicant feels that all of these factors make the determination of the application very much in the public interest. The applicant advises that this feeling is echoed by the Exmoor National Park Authority, who have provided a statement as part of the application saying there would be significant public benefit for access to be reinstated.
6. The applicant further points out that the application fulfils the Council’s criteria for being investigated out of turn, due to the application being supported by 5 or more user evidence forms originating from multiple addresses.
7. The Council have advised that the application is currently placed at 364 in its prioritised queue. It is acknowledged that this case fulfils the criteria for addressing the application out of turn and, that as a consequence, this will reduce the timescale before investigation to 4-5 years, rather than 20 years.
8. Although the Council acknowledge the strength of feeling caused by the obstruction and the public benefit of determining the claim, they feel that these factors are not unusual in an application of this type and are of the opinion that it does not warrant being dealt with before others in the backlog. They further consider that if the investigation finds there to be public rights, the existence of these rights would not be lost as a result of the obstruction.
9. The Council is conscious that it has a significant backlog of cases awaiting determination but states that this is in part, due to a disproportionately high number of cases having been received since 2010. They submit that their rate of determination of cases is comparable to other surveying authorities with a rights of way network of a similar size. Subsequently they feel that they are making reasonable progress in keeping their Definitive Map and Statement under review.
10. I accept that there are a large number of applications awaiting determination and consider that the Council has an adequate and reasonable Statement of Priorities to ensure fair ranking. 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. More than 12 months have passed since the application was submitted and no exceptional circumstances have been indicated. The prospective wait of a further 4-5 years is 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.
11. 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.
12. Correspondingly, I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require time to carry out its investigation and make a decision on the application and I am mindful that the 12 month period has not long expired. I also recognise the cumulative effect of the Council being directed to determine multiple applications in a relatively short period of time, and taking this into consideration, a further period of 18 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 18 months from the date of this decision.

A Behn

INSPECTOR