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| **Direction Decision** |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 November 2024** |

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| **Ref: ROW/3343969**  **Representation by Sara Bucks on behalf of the South Somerset Bridleways Association**  **Somerset Council**  **Application to upgrade footpath CH 29/1, known as Court Field Lane, from the centre of Whitestaunton northwards and eastwards to Combe Lane in Whitestaunton to a Restricted Byway or Byway Open to All Traffic (OMA ref. 641M)** |
| * 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, dated 5 May 2024, is made by Sara Bucks. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 5 May 2011, and 11 April 2013. |
| * The Council was consulted about the representation on 8 May 2024 and their response dated 9 May 2024 was provided on 21 August 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 12 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 appellant understood that when the application was submitted to the Council on 13 March 2009 it would be dealt with in chronological order of receipt. Since then, they say, the Council’s policy on determining cases has changed with the introduction of a determination policy based on a scoring system. Accordingly, this application has dropped further back in the system and therefore has been disadvantaged. Further, they understand the application will not be processed until others with a higher priority have been considered, despite its pre-dating those applications. With the increased staff resources now available to the Council; the usefulness of this off-road route to local riders; and the nature of the documentary evidence provided, the appellant maintains that a direction should be made.
4. Before 2008 the Council considered applications in chronological order of receipt, then from 28 November 2011 they were assessed against a scoring system and ranked to produce a prioritised list, those with the highest score investigated first. However, a new Statement of Priorities was adopted on 25 March 2024, so applications received before 28 November 2011 are investigated in scored order, and those received after this date investigated in chronological order of receipt with the oldest being considered first. Various provisions allow for an application to be given greater priority and taken ‘out of turn’, although this can affect other applications awaiting determination.
5. This application falls within the period when the Council’s Statement of Priorities scored applications against criteria meaning it would be investigated against the scoring determined, unless qualifying to be considered ‘out of turn’ in accordance with the new Statement of Priorities. The Council does not intend to investigate these applications until others ahead in their prioritised queue have been determined. Whilst they are now able to determine cases at an increased rate due to additional staff resources, there remains a significant backlog of definitive map modification order cases awaiting investigation. This application is currently numbered 25 out of 384 cases awaiting determination, although some other cases have been taken out of turn and fall to be determined ahead of this list. Investigation of this application is not anticipated to commence for 8 years.
6. Whilst the Council’s Statement of Priorities is reasonable and it is making some progress in dealing with the backlog of cases to bring the Definitive Map and Statement up to date, an applicant’s right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application and the evidence submitted with it within 12 months under normal circumstances. In this case, some 15 years have passed since the application was submitted and 11 years since service of notice on the landowner was completed. No exceptional circumstances have been indicated by the Council for the application not having been determined within this period. Therefore, 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 some time to carry out its investigation and make a decision on the application. 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** the Somerset Council to determine the above-mentioned application not later than 12 months from the date of this decision.

S Doran

**Inspector**