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Ms E Courtney  
39 Nore Road  
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BS20 6JY

Your Ref:  
Our Ref: FPS/D0121/14D/1  
Date: 26 August 2016

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Dear Madam

## WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

North Somerset Council

Direction for a Public Right of Way across land known as Portishead Golf Club, Portishead

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application, made on or just prior to 18 May 2016, for a direction to be given to North Somerset Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act"). The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the 1981 Act, to modify the Council's Definitive Map and Statement of public rights of way for the area so as to add a public footpath described as running from the windmill, small bridge at bottom to the Sailing Club, to the south of the large trees. The claimed right of way crosses land in the ownership of the Council and used as Portishead Golf Club.
2. The Council was consulted about your request for a direction on 2 June 2016 as required by the Act. The Council's formal response was received on 18 July 2016.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether she should direct an authority to determine an application for an order within a specific period. These issues include 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 that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

### Your case

4. You made your application in November 2013, having lived in the area since 1975 and used the claimed right of way every day. The application was accompanied by twenty-one user evidence forms. Having made your application, which was registered on the Definitive Map Register with the reference Mod 102, you were told

by the Council that the waiting time for a decision was around twenty years.

5. Following your application a second application was made by other parties in October 2015 to record a public right of way over the same area of land. This application apparently claimed a route similar to your application and an additional route commencing on Nore Road, through a pedestrian gate, and then northerly to join the generally east – west route. The Council have also logged this application under the reference Mod 102.
6. The second application was subject to a request that it be taken out of sequence, which led to a report to the Public Rights of Way Sub Committee on 29 March 2016 ("the 2016 Committee"). The report set out a number of matters and concluded that the applications should not be taken out of sequence. As a result of that decision you are now applying for a direction.
7. You refer to the historical use of the land and indicate that it is of particular local importance for recreational uses. You say that it has been used by the community, by dog walkers, recreational walkers, for access to and from the coastal path and as a direct route to other parts of Portishead<sup>1</sup>. You indicate the land to be invaluable to walkers and of particular importance as a right of way.

### **The Council's Case**

8. The Council have a considerable backlog of Modification Order applications at varying stages of progress and a copy of the Definitive Map Register has been submitted. The applicant was informed at the time of the application that it may be many years before research could commence. Since receiving this application a further application was submitted affecting the same land, relating to this route and another connecting route. This application was added to the other and both are dealt with under the reference Mod 102.
9. Investigation on Mod 102 has not commenced as other matters earlier in the list are being researched. However, the other applicants requested that their application be taken out of sequence and so a report was made to the 2016 Committee, who resolved that the request should be denied. This prompted this request for a direction.
10. The Council's current working practice is to deal with these applications in a chronological order unless it is proven that circumstances affecting the site show that the application needs to be taken out of sequence. There has been agreement in the past to take applications out of sequence when it has been proven that the existence of the claimed routes could be lost due to development or the submission of an application has caused severe disturbance to residents or the landowner. Neither of these factors apply in this case and the 25 year lease should be regarded as a positive protection to the land.
11. The Council are unable to advise when they will be in a position to issue a decision on this application. The Public Rights of Way Team consists of three full time members of staff and one part time. Two person deal with maintenance issues, the part time person with Public Path Orders and one Officer deals with Definitive Map Modification Orders, such as this, as well as undertaking the role of Manager of the

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<sup>1</sup> It is unclear in this context whether you make reference to the route that you have claimed or the additional route claimed by the second application

team. Due to lack of staffing, the current working practice is the fairest way of dealing with these applications.

12. The applicant confirms that she was advised of the considerable backlog, which could take twenty years to clear. Ideally the Council would like to determine four applications a year but, unfortunately, this is not always possible due to pressure on staffing.
13. The Council comment on their understanding of the historical position and more recent use of the land, including the leasing and planning issues. The comments of the applicant on historical recollection are based upon what she has been told and, to date, no supporting evidence has been submitted. The lessee and the Council, who are the landowners, are in discussion in an attempt to balance public access with use as a golf course. The transfer of the land in the 1980s includes a covenant which the Council are satisfied is met through the use as a public golf course.
14. The Council is attempting to deal with these matters in a fair and expedient manner. Directing the Council to deal with this application out of sequence will result in others listed before it being held back further. It would be appreciated if, having taken this information into account, no direction be issued in this case.

### **Consideration**

15. Anyone who has applied to the local highway authority for a modification to the area's Definitive Map and Statement, and has not been advised of the authority's decision within 12 months, can apply to the Secretary of State for a direction. The 12 months is calculated from the date the authority receives the certificate from the applicant showing that the requirements of paragraph 2 of Schedule 14 to the 1981 Act have been complied with. The certificate in this case was dated 12 November 2013 and received on 18 November 2013.
16. The Secretary of State recognises that there are a large number of cases for the Council to deal with, and accepts the need to treat cases in a fair and expedient manner. The Council take the view that the fairest way is to deal with the cases in chronological order and so your case, at number 102, would not be dealt with until all other cases ahead of it, the earliest, Mod 03, having been made in 1992. The next listed case is Mod 15<sup>2</sup>, for which application was made in 1994, with research commenced in 2014 and authorisation for an Order to be made in 2015.
17. The Council have indicated to you that it may be twenty years from the date of application until they deal with this case, which would be in 2033. You refer to the importance of the land, and in particular the right of way, to the community. The Council indicate that, as the landowners, they are discussing with the current lessee ways to balance public access with the use as a golf course.
18. The Department for Environment, Food and Rural Affairs Rights of Way Circular (1/09) refers to the need to "*...investigate applications as soon as reasonably practicable...*" which arises from the 1981 Act itself<sup>3</sup>. The Secretary of State also notes that Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, sets out that "*In the determination of his civil rights and obligations...everyone is entitled to a fair and*

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<sup>2</sup> Other cases having been combined, e.g., Mods 02, 11, 17 and 29 with Mod 30

<sup>3</sup> Schedule 14, paragraph 3(1)

public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...".

19. The Secretary of State recognises that a direction in relation to this case would mean that others would be pushed further down the list. However, it is only possible to deal with the case for which a request has been made at this time. She does not believe a period of twenty years from the date of application could be viewed as being "as soon as reasonably practicable" or "...within a reasonable time...". There has already been some investment of Officer and Councillor time on the matter, in order to advise the 2016 Committee on the relevant points. Most importantly, there is user evidence which would need to be considered as part of any determination. Leaving such an application for twenty years means that people will have moved away; lost interest either because they have been unable to use the route for such a length of time or have become used to using it on a permissive basis<sup>4</sup>; or, unfortunately, passed away.
20. Such a delay may also be unreasonable to a landowner, who has no right of appeal for early direction under the 1981 Act and whose land may be blighted by such an application. As the Council is the landowner in this instance that may not be of particular relevance, although it could affect the lessee. However, the fact that the Council own the land places them in a particular position with regard to demonstrating independence and impartiality in the decision before them. Taking that point into account, dealing with the matter within a reasonable timescale would allow full and fair testing of the evidence on both sides of the case.
21. Despite the time already spent on the matter, the Secretary of State recognises that further work will be required in order to complete the investigation, carry out required consultations and meet any relevant Committee cycles. As such, the Secretary of State takes the view that a period of 18 months should be allowed for determination of the application.
22. It should be noted that this direction can only relate to the application to which it relates. It is for the Council to decide whether or not to deal with the other route included in the second application, which is also registered under Mod 102.

## **Decision**

23. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the application should be determined. In exercise of the powers vested in her by paragraph 3(2) of the Schedule 14 to the 1981 Act, the Secretary of State has directed North Somerset Council to determine this application not later than not later than 28 February 2018.
24. A copy of the Secretary of State's letter of direction to the authority is enclosed, and a copy of this letter is being sent to the authority.

Yours faithfully

*Heidi Cruickshank*

**Inspector**

DIR DL1

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<sup>4</sup> As it appears may occur in this particular case