



3/25 Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5226
Customer Services: 0303 444 5000
Fax No: 0117 372 6153
e-mail: caroline.baylis@pins.gsi.gov.uk

Sally Madgwick
Wiltshire Council
Department of Neighbourhood &
Planning
County Hall
Bythesea Road, Trowbridge
BA14 8JN

Your Ref: PC116/2012/04
Our Ref: FPS/Y3940/14D/1
Date: 19 July 2013

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Wiltshire Council

Non-determination of Wall to Wall Public Vehicular Highway to the East of The Old Coachworks, Heddington, running from Church Road in a North West direction for approximately 55 metres (The Access Road)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to the application made by Mr A Fenwick on 17 May 2013 under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, seeking a direction requiring Wiltshire Council ("the Council") to determine the application to it, under section 53(5) of the Act, for an order to modify the authority's Definitive Map and Statement of public rights of way for the area so as to upgrade part of Footpath 5 to a Byway Open to All Traffic to include its full width between boundaries. I am satisfied that the terms of paragraph 3(2) have been met.
2. The Secretary of State having considered the application and after consulting the Council as required by the Act, has concluded that the application should be determined without further significant delay. Accordingly the Secretary of State in exercise of the powers vested in him by paragraph 3(2) of Schedule 14 to the 1981 Act hereby directs Wiltshire Council to determine the above-mentioned application not later than 31 July 2014.
3. I have sent a copy of this letter to Mr Fenwick and I enclose a copy of our letter to him for your information.
4. As soon as practicable after determining the application, you should give notice of the decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1) of Schedule 14. I should be grateful if you would inform me when notice of the decision is given.

Yours faithfully

S Doran



Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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Mr A Fenwick
Coach House
Heddington
CALNE
Wiltshire
SN11 0PQ

Your Ref:
Our Ref: FPS/Y3940/14D/1
Date: 19 July 2013

Applicant

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Wiltshire Council

Non-determination of Wall to Wall Public Vehicular Highway to the East of The Old Coachworks, Heddington, running from Church Road in a North West direction for approximately 55 metres ("The Access Road")

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 17 May 2013 for a direction to be given to Wiltshire Council under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981. The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the Act, to modify the Council's Definitive Map and Statement of public rights of way for the area so as to upgrade part of Footpath 5 to a Byway Open to All Traffic to include its full width between boundaries.
2. The Council was consulted about your request for a direction on 28 May 2013 as required by the Act. The Council's formal response was received on 3 June 2013.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether he 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 were advised by the Council that it had 176 Definitive Map Modification Order applications outstanding spanning over 20 years, and that your application was ranked 176, therefore the Council appears to be making little or no progress.
5. You believe yours is a strong case for priority treatment as The Access Road is the

approved access to and within a new brownfield housing development which has extant planning permission. The approved access has Highway's approval and detailed planning consent. However, uncertainty over the status and extent of The Access Road has prevented the sale of the site to a developer for over 4 years because without the approved access, the planning consent cannot be implemented. Any further delay, you say, could thwart development due to the expiry of the outline consent. New brownfield housing is, you argue, a top Government priority. You say it is not reasonable to cause the development to be delayed for several decades due to non-determination of the application. Because the planning consent is due to expire, you seek that the Council be directed to determine the application within 3 months.

6. You were advised by the Council in 1990 that it was obtaining a copy of the 1910 Finance Act Map to determine the status and extent of The Access Road, but have received no copy or determination. You refer to the Court of Appeal case *Fortune v Wiltshire Council* [2012] EWCA Civ 334 which clarified that significant weight should be given to the colouring of roads in 1910 Finance Act maps. You say the depiction of The Access Road in these records indicates it is most probably a vehicular way. Furthermore, it would appear to be an ancient vehicular highway for access to open lands prior to their inclosure.
7. You point out that, compared to their handling of your case, the Council dealt swiftly with another application to upgrade a Footpath in Heddington to Byway, making an order in 11 months.

The Council's Case

8. The Council's Statement of Priorities is contained in its Rights of Way Improvement Plan (ROWIP) 2008-2012 at pages 50-51. It sets out how definitive map modification order applications are prioritised. In summary, applications based on user evidence are prioritised, and other applications dealt with in order of receipt. There are exceptions, for example where a route is obstructed and cannot be used, where there are discrepancies between rights on the ground and those shown on the Definitive Map causing major conflict, where a route is at risk of being lost, to resolve anomalies, and where an application meets the aspirations of the ROWIP. A new ROWIP is currently being prepared and applications will (in future) be prioritised on a points system, however, the Council cannot say at this stage where this application will be placed in its new list.
9. The Council states it has limited staff resources and its staff members are engaged with other work in addition to definitive map issues. Thus, whilst the Council has sympathy for members of the public who apply for definitive map modification orders based on historical evidence, it is simply not possible with current levels of resources to meet expectations. In view of the level of resources and workload, the Council considers it likely that this application will not be determined for another 20 to 22 years. Nevertheless, its current position in the list is 168 indicating some progress from position 176 when originally made.
10. This application (reference 2012/4) is based on historical evidence. The Council is aware of issues concerning rights of way and highway boundaries near to Mr Fenwick's property and have produced 3 reports to address his concerns (copies of which have been provided). Had these investigations raised any concerns that the Definitive Map and Statement was incorrect with regard to Heddington Footpath 5, then, the Council says, it is under a duty under the 1981 Act to correct the Map and

Statement. However, these investigations did not, Council officers concluded, adduce sufficient evidence to show that on a balance of probabilities part of Footpath 5 should be recorded as anything other than a footpath. In addition, the Council refers to a complaint concerning Footpath 5 made by Mr Fenwick to the Local Government Ombudsman. The provisional view (a copy of which has been provided) was not to pursue the complaint.

11. Council Officers commented on access arrangements in respect of the proposed development at the planning application stage. No objections were raised in respect of the effect of the development on public rights, the issue of any private rights not being a matter for the Council.
12. The Council says there has been ample opportunity for officers to consider prioritising this application over others, but does not consider it fits any of the exceptions set out in its current ROWIP, there being no substantial public loss or public benefit involved.
13. The case referred to by Mr Fenwick related to an application based on user evidence made in 2002, which due to the circumstances at the time, the Council was able to deal with in a timely manner and an order made in 2004, and confirmed in 2011.

Consideration

14. The Secretary of State has considered the Council's system of prioritising applications for definitive map modification orders as set out in its Statement of Priorities contained in the current ROWIP, and finds it to be reasonable.
15. Having regard to your application, the Secretary of State notes that it does not fall into any of the categories identified by the Council which would cause them to prioritise it above others based on historical evidence that are waiting to be determined. Whilst it is noted that your application has progressed some 8 places up the list since it was made in 2012, it is also noted that the Council does not anticipate its determination until 2033 at the earliest.
16. The Secretary of State understands that the Council has limited staff resources currently available to it to deal with applications such as yours, but notes that its officers have investigated and reported on matters connected to the application route and/or its environs on three occasions. These investigations have included sourcing and examining historical evidence relevant to the status and width of the way (the basis on which your application is made). Furthermore, it seems the Council has already reached preliminary views on these matters. Thus although the Secretary of State notes that the Council is following the system of prioritisation set out in its ROWIP, it is not considered reasonable for the Council to take a further 20 to 22 years to determine the application in the light of the relevant research already undertaken and the findings made so far. However, the Secretary of State acknowledges the Council will require further time to fully investigate and determine the application, and proposes that they be given 12 months to complete this.

Decision

17. 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 him by paragraph 3(2) of the Schedule 14 to the 1981 Act, the

Secretary of State has directed Wiltshire Council to determine this application not later than 31 July 2014.

18. 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

S Doran

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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