



Direction Decision

by **Heidi Cruickshank** BSc (Hons), MSc, MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 February 2018

Ref: FPS/A4710/14D/5

Representation by Shibden & District Bridleways Association

Calderdale Council

Application to upgrade to a Bridleway Footpath 111, Boggart Lane, from Northedge Lane to Bramley Lane

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Calderdale Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, received 10 October 2017, is made by Shibden & District Bridleways Association.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 13 May 2008.
- The Council was notified of the representation on 31 October 2017 and submitted its response on 11 December 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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. 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 and Statement 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, as set out in the Circular¹.
3. Calderdale Council ("the Council") referred to their Statement of Priorities, Priority Matrix. To score applications the Priority Matrix takes account of factors such as 'Benefit to Network', 'Impact on Local Community' and 'Threat to Route', as well as how long the application has been waiting. This

¹ Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

application has been scored as having 20 points and so ranked at 47 of 78 claims.

4. In light of comments made by the applicant, regarding barriers on the route preventing equestrian use and the importance of the route to the local network, the Council has re-scored the application. Whilst apparently initially informing the applicant that the matter would be determined in the financial year 2030/31, that has now been revised to 2026/27. The Council indicate that staff resources are limited to one officer at present across a range of public rights of way and highway roles, although it was hoped that additional resources may be provided in the future.
5. The application apparently included a number of user evidence forms detailing twenty-years use of the route, presumably dating back from the mid-2000s. 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 public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...*". It is important that both the users and the landowners against whom the application is made have the opportunity to be heard and hear the evidence from the other party. As the applicant has indicated, the availability of users able to give evidence another nine years, or more, from now becomes increasingly less likely. Landowner witnesses would be similarly disadvantaged.
6. Schedule 14 to the 1981 Act, in allowing for applications to the Secretary of State for a direction 12 months after the certificate² is served on the surveying authority, envisages a time scale in the order of a year for determination of an application. The Department for Environment, Food and Rural Affairs Rights of Way Circular (1/09) ("the Circular") refers to the need to "*...investigate applications as soon as reasonably practicable...*".
7. Although I sympathise with the Council with regard to current staff availability, the Circular sets out that, "*Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way...*".
8. I consider waiting the suggested 18 year period (2008 – 2026) for an application to be determined is not "*...as soon as reasonably practicable...*". Taking account of all the circumstances I have decided that there is a case for setting a date by which time the application should be determined. I consider it appropriate to allow a further 12 months for a decision to be reached.

Direction

9. 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 Calderdale Council to determine the above-mentioned application not later than 28 February 2019.

Heidi Cruickshank

INSPECTOR

² Paragraph 2(3)