



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: 29 March 2019

Ref: FPS/P2745/14D/1

**Representation by Mr W B Tait, Ryedale Bridleway Group
North Yorkshire County Council**

**Application to record a Restricted Byway from Fangdale Beck to Low Mill,
Bilsdale Midcable (OMA ref. HAM/2016/01/DMMO)**

- 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 North Yorkshire County Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation dated 29 August 2018 is made by Mr W B Tait.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 2 March 2016.
 - The Council was consulted about the representation on 14 September 2018 and the Council's response was made on 10 October 2018.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. 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. 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 applicant¹.
3. The Applicant seeks to expedite determination of the application which he considers should have been given greater priority by the Council as it would provide a link in the bridleway network and benefit local tourism as part of a circular promoted route for horse riders and cyclists. Previously higher in the Council's priority list, new applications with higher scores will continue to push it further back.

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

4. North Yorkshire County Council applies a priority scoring system and this application currently stands at 81 of 132 undetermined Definitive Map Modification Order (DMMO) applications. The scoring system takes account of the quality and quantity of evidence submitted whether user and/or historic documentary sources; the value of the route to the network in providing access to local services and circular routes near to small communities; the claimed status of the application route; and whether it has recently been obstructed. In this particular case, the Council remarks there is limited documentary and no user evidence. The route is remote and does not appear to add any significant community value that would justify its consideration out of turn. No special circumstances apply, and the age of the applicant is not a relevant factor in terms of prioritisation. Safety is not a matter that can be taken into consideration when evaluating the evidence. In addition to dealing with DMMO applications there are many other demands on its limited resources. The Council aims to deal with the workload in a fair way. However, it is unable to say when this application will be determined, although it is likely to be a number of years, with those applications scoring higher on the priority list being dealt with first, as to do otherwise would be unfair.
5. I note the comments made with regard to demands on the Council's limited resources, but the legislation clearly sets out the statutory duties in relation to its function as Surveying Authority. Notwithstanding the Council's priority system, 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. In this case, over two years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation of it being addressed within 12 months, for the determination of the application to take a further unspecified number of years.
6. In the circumstances 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 6 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 North Yorkshire County Council to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

Inspector