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**Direction Decision**

**by Grahame Kean B.A. (Hons), Solicitor HCA**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 28 May 2021**

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**Appeal Ref: FPS/A4710/14D/15**

**Representation by Angela Johnson on behalf of Upper Calderdale Footpaths and Bridleways Association**

**Calderdale Metropolitan Borough Council**

**Application to amend the Definitive Map and Statement for the area by upgrading Footpath Heptonstall 39, known as Acre Lane, Colden in Calderdale, to a Bridleway (OMA ref: Heptonstall 39)**

* 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 Calderdale Metropolitan Borough Council (the “Council”) to determine an application for an order, under s3(5) of that Act.
* The representation was made by Angela Johnson on behalf of Upper Calderdale Footpaths and Bridleways Association, dated 9 November 1992.
* The certificate under Paragraph 2(3) of Schedule 14 is dated 9 November 1992.
* The Council was consulted about the representation in August 2020 and the Council’s response was made on 10 March 2021.

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**Decision**

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

**Reasons**

1. Local authorities are required to investigate applications 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.
2. Applicants have the right to ask the Secretary of State to direct the Council as the surveying authority to reach a decision on an application if no decision has been reached within twelve months of the Council’s receipt of certification that the applicant has notified the application to affected landowners and occupiers.
3. In considering w• hether to direct the Council to determine such an application within a specified period, account is taken of the Council’s priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any actions already taken by the local authority or expressed intentions of further action on the application in question; the circumstances of the case; and any views expressed by the applicant.[[1]](#footnote-1)
4. The Applicant in this case has expressed concerns as to the Council’s inability to provide an estimate for the determination of the Application. The application has been outstanding since 1992, an unconscionable delay.
5. The Council’s policy appears to be determine applications in accordance with a standardized matrix of criteria by which points are allocated to give priority to the application. The Council has confirmed that there are currently some 80 applications to be considered. The Application is placed at number 1 on this list.
6. I have no reason to believe the application should not have been properly assessed as having such a priority. It appears not to be in dispute that when the application was originally made by the Upper Calderdale Footpaths and Bridleways Association it was accepted as valid but shelved by the Council for several decades. No explanation has been given to me for this omission.
7. Further, I have reason to believe that the Council’s policy for prioritising applications may be unreasonable because although it ostensibly makes use of rationally selected criteria in according priority to applications, there is no evidence before me that it makes any difference to the way in which a particular application such as the present one will actually be dealt with. This is because whilst the Application is first in line to be determined, the Council’s officer states specifically with regard to it, “*I cannot give a specific time for determination. Likely to take many years due to current workload and lack of resources*”. This appears to contradict the Council’s register of applications in respect of the Application that states “Investigation underway“.
8. In addition I note that the same formula of *Likely to take many years* appears to be applied by the Council irrespective of where on the priority list the applications sit. For example the page extracted from the “prioritized list” of outstanding applications with which I was supplied, shows the same formula is applied whether the priority is No 1 (as in this case), or No 65 or No 49 out of 80.
9. It also seems unreasonable to me not to provide a more specific estimate of when applications are expected to be determined other than “*likely to take many years*”, which does not give the applicants any realistic idea of when any decision can be expected to materialise from the Council’s offices.
10. Eighty prioritized applications may represent a substantial body of work to carry out. However I see no good reason why a management system cannot operate to match current resources with estimates of work involved, with particular types of application and the likely depth of investigation needed, being properly identified and a more precise time estimate given in each case to the Applicant.
11. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that their Application should be determined within twelve months under normal circumstances.
12. I consider it high time this application was dealt with and in an expeditious manner, having regard nonetheless to the difficulties experienced by the Council’s staff due to the Covid-19 pandemic.
13. In all the circumstances a further period of three months should be granted to determine the Application and I will make a direction to that effect.

**Direction**

1. 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 Calderdale Metropolitan Council to determine the Applications not later than three (3) months from the date of this Decision.

Grahame Kean

INSPECTOR

1. Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 Version 2, October 2009. [↑](#footnote-ref-1)