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| **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: 12 October 2021** |

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| **Ref: FPS/P2745/14D/7**  **Representation by Caroline Bradley, on behalf of The British Horse Society**  **North Yorkshire County Council**  **Application to modify the Definitive Map and Statement for the area by the addition of a Restricted Byway along the unrecorded sections of Gillgate Road and Appleby Lane[[1]](#footnote-1) in the Parishes of Kirkby Malzeard & Laverton, District of Harrogate (OMA Ref: HAR/2017/05/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 24 May 2021 is made by Caroline Bradley. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 6 February 2017. |
| * The Council was consulted about the representation on 27 May 2021 and their response was made on 16 June 2021. |
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Decision

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

Reasons

1. 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 applicant[[2]](#footnote-2).
2. The Council does not have a published statement of priorities but works to an in-house team plan that is reviewed annually. Having a structured, planned work programme, they say, allows them to deploy resources most efficiently and provides some measure of predictability in dealing with the current backlog of applications. Presently, this stands at 165 undetermined applications.
3. This application initially scored 23 points placing it at number 36 of the then 164 applications. Applications are prioritised on receipt with points allocated on the quality and quantity of evidence (user and/or historic documentary evidence); the value of the application route to the network in terms of providing access to local services, shops etc., and providing local circular routes near to small communities; with proposed bridleways and restricted byways attracting a higher score than proposed footpaths, and recently obstructed routes given higher priority. Those applications with the highest scores are investigated first. In this case there is a considerable amount of documentary evidence, some of it statutory; the route provides a rural link; and the Applicant comments that there is local support for the application, including from landowners. Occasionally the Council will investigate an application out of sequence where there are exceptional circumstances - where it can be used as a training and development tool for new staff members, or where there are linked applications in the same area that rely on the same historical or user evidence. However, the Council considers there are no exceptional circumstances to warrant this application being dealt with ahead of others with higher priority scores.
4. The Applicant expresses concern that the Council is reconsidering the basis on which it determines applications. The Council recognises some weaknesses in its prioritisation system that can result in anomalies. To that end, it is engaging with user groups and applicants to come to an informed decision as to whether to move to an ‘oldest first’ system - this they say would ensure all applications were dealt with within an identifiable time-frame and allow a structured work programme to be implemented.
5. I acknowledge the Council’s efforts to find the most appropriate way to resolve its backlog of cases in light of its available staffing resources. Presently, this is through seeking to process the highest number of applications in the shortest period of time using its current prioritisation scheme. I appreciate that it is a large county and the Council has recently experienced what they describe as an unprecedented rise in the number of definitive map modification order applications since January 2020, together with an associated increase in workload following enquiries from landowners and user groups. In addition, I understand it currently has 20 files awaiting submission to the Secretary of State, and as a result has put on hold dealing with its definitive map and public path order applications until October 2021. This, the Council believes will pay dividends in the long term. Nevertheless, these factors do not alter the Council’s statutory duty in respect of definitive map modification order applications, and suggests insufficient resources are being allocated by the Authority to determining applications.
6. I accept that any deviation from its planned programme will impact on its workload and detrimentally affect other applications, causing those lower priority applications to slip further down the list. However, it is more than 4 years since this application was submitted to the Council. There is no indication as to when the application will be considered, and any new method of prioritising cases, if implemented, will have further consequences for its consideration. In any event, it is likely to be many more years before the Council is in a position to investigate the application. 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. Therefore, I have decided that there is a case for setting a date by which time the application should be determined.
7. 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**

1. Also referred to in the submissions as Gillgate Lane and Appleby Road [↑](#footnote-ref-1)
2. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)