Planning Inspectorate Logo


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| **Direction Decision** |
| **by K R Saward Solicitor, MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 February 2022** |

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| **Ref: FPS/A4710/14D/19**  **Calderdale Metropolitan Borough Council**  **Application to:**  **- Upgrade to a restricted byway the footpath shown as public footpath Halifax 91 (part of) from junction with public footpath Halifax 86 to junction with public footpath Halifax 93**  **- Upgrade to restricted byway the footpath shown as public footpath Halifax 86 (part of) from junction with Cold Edge Road to junction with public footpath Halifax 91**  **- Upgrade to a restricted byway the footpath shown as public footpath Halifax 93 from Cold Edge Road (present day) to junction with public footpath Halifax 91**  **- Upgrade to a restricted byway the footpath shown as number Halifax 108 from junction with Cold Edge Road to junction with public footpath Halifax 93**  **- Upgrade to a bridleway the footpath shown as public footpath Halifax 72 (part of) from junction with public footpath Halifax 103 to junction with public footpath Halifax 83**  **- Upgrade to a bridleway the footpath shown as number Halifax 86 from junction with public footpath Halifax 91 to junction with public footpath Halifax 72**  **- Upgrade to a bridleway the footpath shown as number Halifax 94 from junction with public footpath Halifax 93 to junction with public bridleway Halifax 95**  **- Upgrade to a bridleway the footpath shown as number Halifax 99 from junction with Brow Bottom Lane to junction with public footpath Halifax 91**  **- Upgrade to a bridleway the footpath shown as number 69 (part of) from junction with public footpath Halifax 91 to ruined settlement called Hunter Hill Farm**  **- Upgrade to a bridleway the footpath shown as number Halifax 91 (part of) from junction with public footpath Halifax 93 to junction with public footpath Halifax 99**  **- Upgrade to a bridleway the footpath shown as 105 from junction with Cold Edge Road to junction with public footpath 93** |
| * An application was made by Sheila Greetham of Calder Valley Bridleways Group to Calderdale Metropolitan Borough Council for Orders to modify its Definitive Map and Statement of Public Rights of Way (‘DMS’) under Section 53(5) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’). * The Council’s reference for the application is 3.15.1/06L. * The certificates attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, are dated 13 October 2020. |
| * A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application. * The representation is dated 12 November 2021. |
| * The Council was consulted about the representation on 3 December 2021 and its response is dated 15 December 2021. |
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Decision

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

**Reasons**

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS. A single application form was completed by the applicant for a modification order to upgrade eleven sections of existing footpath to either bridleways or restricted byways, as identified in the heading above.
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2(3) of Schedule 14.
3. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains, at paragraph 4.9, that 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. Each case must therefore be considered in light of its particular circumstances.
4. The application was one of six registered by the Council on 16 October 2020. As of 14 December 2021, the application was positioned at 77 out of 80 on the Council’s list of applications awaiting determination.
5. To ensure consistency, the Council applies a priority matrix to all DMMO applications to establish the order in which applications shall be determined. The priority matrix adopts a scoring system based upon criteria set against the Council’s corporate objectives. Points are allocated according to the following criteria: (i) impact on local community (ii) benefit to network (iii) previous commitment (iv) threat to route (v) years of waiting, and (vi) time to determine. One point per year is given to the years of waiting. For each of the other criteria, a score of between 0-3 is applied depending upon the circumstances. Where there is a threat to the route the score is weighted by a factor of 3, thereby increasing the priority.
6. All of the bottom six entries have been awarded a score of 4. Each score is made up of 2 points against the criterion of ‘benefit to the network’ and 1 point apiece for ‘years’ awaiting’ and ‘time to determine’. There is no suggestion that this application has been scored incorrectly to warrant a higher position in the list.
7. As a system, it is a reasonable way of establishing priority. However, the fact remains that the Council has a large number of outstanding applications dating back many years. Indeed, I note that there is an outstanding application from 1989 which has 32 points for ‘years awaiting’ and numerous others received by the Council more than 20 years ago.
8. The Council acknowledges that it has been facing resourcing issues around the processing of DMMO applications for some time. Even so, the Council has a statutory duty to keep the DMS up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 is clear 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.
9. The Council is currently using external specialist resources ‘to try and plug the gap’. According to the Council’s list, there are six applications ‘with consultants’. In view of the number and age of outstanding applications, there remains a considerable backlog with little sign of any notable reduction in waiting time.
10. I recognise that the Council is also in the process of seeking approval for the appointment of additional internal resources and hopes to be able to do so in the months ahead. There is no firm indication of when those resources will be in place or the amount of anticipated resource, if approval is secured.
11. There are other applications ranked higher in the Council’s list. I appreciate that the issue of a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council’s prioritisation system.
12. However, those factors do not justify a direction not being given in this instance when the 12 month period has now expired.
13. The Council has provided no indication of when it anticipates being in a position to determine this application. Judging by its current position on the waiting list and the large number and age of applications ranked higher, it could be a very long time before this application reaches the top of the Council’s list. The applicant is entitled to expect their application will be determined within a finite and reasonable period.
14. 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. No exceptional circumstances have been advanced by the Council.
15. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. The Council will, of course, require some time to carry out its investigation and make a decision on the application. I am mindful that the 12 month period has not long expired and the impact of the ongoing global coronavirus pandemic could affect the speed of investigations and decision-making. A further period of 18 months shall be allowed to make a determination.

**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 Calderdale Metropolitan Borough Council to determine the above-mentioned application not later than 18 months from the date of this decision.

K R Saward

INSPECTOR