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| **Direction Decisions** |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 09 December 2022** |

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| **Ref: FPS/A4710/14D/20 to 24**  **Representations by Sheila Greetham of Calder Valley Bridleways Group**  **Calderdale Metropolitan Borough Council**  **App Ref. 3.15.1/07X:**   * **Application to add a restricted byway from Mill Hill, Brearley Bridge via Wheatley Royd to Blind Lane** * **Application to add a restricted byway and upgrade to restricted byway part of the footpath shown as Hebden Royd 57 from Brearley Lane along Lower and Upper Blind Lane to Scout Road at Hathenshelf**   **App Ref. 3.15.1/07W:**   * **Application to upgrade to restricted byway the footpath shown as Hebden Royd 54 from Brearley Lane, through Scout Bottom to Scout Road by Scout Road School Academy** * **Application to add a restricted byway from Scout Bottom to Scout Road, Mytholmroyd** * **Application to upgrade to restricted byway the footpath shown as Hebden Royd 61 from Scout Road to Hall Bank Lane near Brink Tor**   **App Ref. 3.15.1/05M:**   * **Application to upgrade to restricted byway the footpath shown as Sowerby Bridge 114 (Part) from Hubberton Green Road to where it diverts away from the original Red Brink Lane near Old Barton** * **Application to add a restricted byway from where Red Brink Lane was diverted at Old Barton to Upper Red Brink**   **App Ref. 3.15.1/02AC:**   * **Application to upgrade to bridleway the footpath shown as Heptonstall 51 from Lee Wood Road to New Bridge, Hardcastle Craggs** * **Application to upgrade to bridleway the footpath shown as Heptonstall 3 from Heptonstall Footpath 46 to Heptonstall Road** * **Application to upgrade to bridleway the footpath shown as Heptonstall 46 from Bankfoot/ Heptonstall Footpath 3 to Lumb Road/ Heptonstall Bridleway 42** * **Application to upgrade to bridleway the footpath shown as Heptonstall 46 from Edge Hey Road/ Slack Bottom to Widdop Road** * **Application to upgrade to bridleway the footpath shown as Heptonstall 47 from Heptonstall Road at Lily Hall to Heptonstall 3 at Cousin Delph**   **App Ref. 3.15.1/07Y:**   * **Application to upgrade to bridleway the footpath shown as Hebden Royd 168 from Hebden Royd Bridleway 167 to Hebden Royd Footpath 76 at Withens Gate** * **Application to upgrade to bridleway the footpath shown as Hebden Royd 76 from the northwest side of Withens Clough Reservoir to Hebden Royd Footpath 82 near the reservoir embankment** * **Application to upgrade to bridleway the footpath shown as Hebden Royd 82 from the reservoir embankment to Church Bank at Marshaw** * **Application to upgrade to bridleway the footpath shown as Sowerby Bridge 116 from Cragg Road up Marshaw Bank to an undefined road** * **Application to add a bridleway along an undefined road from Sowerby Bridge Footpath 116 to High Lane/ Sowerby Bridge Footpath 113** * **Application to upgrade to bridleway the footpath shown as Sowerby Bridge 113/ High Lane from an undefined road to Sowerby Bridge Footpath 110** * **Application to upgrade to bridleway the footpath shown as Sowerby Bridge 110 from Sowerby Bridge Footpath 113 along Bent Close Lane to High Stones Road;** * **Application to upgrade to bridleway the footpath shown as Sowerby Bridge 107 from Steep Lane to Wine Tavern Lane** |
| * The representations were made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Calderdale Metropolitan Borough Council to determine five applications for Orders, under Section 53(5) of that Act. |
| * The representations were made by Sheila Greetham of Calder Valley Bridleways Group on 13 April 2022. * The certificates under Paragraph 2(3) of Schedule 14 of the Wildlife and Countryside Act 1981 were dated 13 October 2020 (3.15.1/07X, 3.15.1/07W and 3.15.1/05M), 25 February 2021 (3.15.1/02AC and 3.15.1/07Y) and 3 March 2021 (3.15.1/02AC). |
| * Calderdale Metropolitan Borough Council was consulted about the representations on 24 August 2022 and their response was dated 1 September 2022. |
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Decision

1. Calderdale Metropolitan Borough Council (CMBC) is directed to determine the above-mentioned applications.

Reasons

1. Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) sets out provisions for applications made under section 53(3) for orders to amend the definitive map and statement (DMS). Five applications were completed by the applicant for modification orders to add a bridleway and four restricted byways, and to upgrade twelve footpaths to bridleways, and four footpaths to 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 twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
3. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 (Circular 1/09) 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. Application references 3.15.1/07W and 3.15.1/05M were registered by CMBC on 16 October 2020 and application references 3.15.1/07X, 3.15.1/02AC and 3.15.1/07Y were registered on 8 December 2020. Four other applications were registered on 16 October 2020 and two other applications were registered on 8 December 2020. The applications are positioned at 69 (3.15.1/07X), 70 (3.15.1/07Y), 73 (3.15.1/02AC) 75 (3.15.1/05M) and 77 (3.15.1/07W) on the councils list of applications awaiting determination.
5. CMBC use a priority matrix to establish the order in which applications should be determined. This aims to give a fair and balanced scoring and prioritisation. The priority matrix allocates a score to each application based upon criteria set out in their corporate objectives. Points are allocated according to the following criteria: 1) impact on local community, 2) benefit to the network, 3) previous commitment, 4) years waiting, and 5) time to determine. One point is given for each year of waiting. For the other criteria a score of 0 to 3 is given depending on the circumstances. Where there is a threat to the route or an impact on the community, the points are weighted by a factor of 3, thereby increasing the priority.
6. On 1 September 2022 application references 3.15.1/07X and 3.15.1/07Y had a score of 5 with the others having a score of 4. They are in the bottom ten applications to be determined out a total of 78. There is nothing before me to suggest that their scoring is inaccurate.
7. The priority matrix approach is a reasonable way of establishing the order in which applications should be determined. However, CMBC have a large backlog of applications including one dating back to 1989 which received 33 points for years waiting. Twenty four applications have been waiting for twenty years or more. The application with the highest score has 44 points. CMBC do not provide any reasons for the backlog or how they are dealing with it. They also do not provide any information about their intentions or actions taken to determine the applications which are subject to this appeal.
8. CMBC has a duty to keep the DMS up to date and Circular 1/09 makes it 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. If a lack of resources is the reason behind the backlog and failure to determine applications, this would not be considered as exceptional circumstances.
9. There are many other applications that are ranked higher in CMBC’s list. I appreciate a direction to make determinations on the applications before me would disadvantage the applicants who have been waiting longer. It would also potentially delay applications which warrant a greater urgency under the priority matrix system. However, I do not consider that these higher scoring applications should be grounds to not justify a direction when the twelve month determination period has expired.
10. CMBC has not provided any indication as to when it will be in a position to determine these applications. Judging by their positions on the waiting list and the large number of applications with higher priority matrix scores, it will be a very long time until these applications reach the top of the list. The applicant is entitled to expect that their applications will be determined within a reasonable timescale.
11. 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 between eighteen months and two years have passed since the certificates under Paragraph 2(3) of Schedule 14 of the 1981 Act were served and no exceptional circumstances have been indicated by CMBC.
12. In the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. I am mindful that there are five applications for twenty one routes which will take some time to investigate and make determinations. A further period of twelve months has been allowed to make the determinations.

**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 applications not later than twelve months from the date of this decision.

Claire Tregembo

INSPECTOR