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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: 23 November 2022** |

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| **Ref: FPS/P2745/14D/8**  **Representation by Diana Mallinson**  **North Yorkshire County Council**  **Applications to modify the Definitive Map and Statement by**   * **Adding a bridleway from the Otley-Blubberhouses Road at SE 168 551 to U2495 at SE 123 518** * **Adding a bridleway from the sealed section of U2485 at SE 149 502 to the public bridleway 15.30/5/1 at SE 158 521 and from High Badger Gate at SE 155 523 to the junction of U2484 and U8057 at SE 156 542** * **Adding a footpath from the junction of U2495 and public bridleway 15.50/21/1 at SE 165 529 to the junction of U2495 and U8064 at SE 148 524 and a bridleway from the junction of U2495 and U8064 at SE 148 524 to the junction of Parks Lane and Hardings Lane at SE 113 499** * **Adding a footpath from the Otley-Blubberhouses Road at SE 170 536 to the A59 at SE 137 552 and adding a footpath from U8057 at SE 149 547 to U8057 at SE 142 550** * **Adding a footpath from the A59 at SE 157 553 to U8057 at SE 159 541** * **Adding a bridleway from the road between Beamsley village and Middleton parish via Langbar at SE 101 511 to U2495 at SE 117 515** * **Adding a bridleway from U2495 at SE 148 524 to bridleway 15.30/5/1 at SE 159 523** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking directions to be given to North Yorkshire County Council (the Council) to determine 7 applications for Orders under Section 53(5) of that Act. |
| * The representation, dated 3 May 2022, is made by Diana Mallinson. |
| * The certificates under Paragraph 2(3) of Schedule 14 are dated 28 April 2021. |
| * The Council was consulted about the representation on 1 July 2022 and their response was made on 10 August 2022. |
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Decision

1. The Council is directed to determine the 7 above-mentioned applications.

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. Defra Rights of Way Circular 1/09 (version 2, October 2009) states 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.
2. The appeal concerns 7 linked applications seeking to add to the Definitive Map and Statement a network of public footpaths and bridleways in the area of Blubberhouses Moor in the parishes of Blubberhouses, Middleton, Denton, Great Timble and Nesfield with Langbar.
3. The Council does not have a published statement of priorities for dealing with applications but works to an in-house team plan that is reviewed annually and includes the full range of duties and responsibilities that fall to their Definitive Map Team to carry out. They believe that having a structured, planned work programme allows resources to be deployed most efficiently and provides some measure of predictability as to when particular cases can be dealt with.
4. The applications (dated 12 April 2021) were received together and were scored against the Council’s priority scoring system. Applications are awarded points on the quality and quantity of the evidence submitted based on evidence of use and/or historic documentary evidence; the value of the route to the network in terms of providing access to local services, schools, shops etc., and providing local circular routes near to small communities; higher status routes i.e., proposed bridleways and restricted byways score higher than proposed footpaths; and recently obstructed routes are given higher priority. Four of the applications achieved a score of 14 points, placing them at numbers 111-114 in the list of applications awaiting determination. One scored 11 points, placing it at number 153; another 9 points, placing it at number 170; and the final application was given 6 points placing it at number 183 in the list.
5. Occasionally, the Council will investigate an application ‘out of sequence’, where there are exceptional circumstances, for example, where a well-used route becomes unavailable and the alternative is much longer; where the characteristics of an application enable it to be used as a training and development vehicle for new staff members; or where there are a group of linked applications in the same area that rely on the same historical or user evidence. However, they do not consider there are exceptional circumstances to warrant these applications being dealt with ahead of others with higher priority scores. Neither do they consider the reasons given by the applicant warrant them being considered out of turn.
6. Whilst accepting that several routes in the area were subject to Temporary Traffic Regulation Orders, the Council says these have since expired and no significant complaints about damage being caused to the application routes have been made subsequently. In any event, they consider the long and protracted Definitive Map Modification Order (DMMO) investigation and order making process is not an expedient or effective way to resolve any issue of damage being caused to the routes by recreational mechanically propelled vehicles (MPVs). Further, they do not consider the applicant’s claim that damage is being done to them by MPV use is a valid reason for the applications to be afforded greater priority than the established scoring system would give them.
7. Neither does the Council favour taking applications out of turn on the basis of an applicant’s preference to deal with more recent claims over pre-existing ones they have made and which remain to be determined. To do so would move lower priority or older applications up the list, displace other applications and move them to a lower position. This, they say, would be unfair on other applicants. However, the applicant cites support for the applications from local landowners and users and claims that determining them will clarify the alignments of the routes which are currently unclear.
8. 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, currently 4 full time equivalent Definitive Map Officers processing DMMO applications. The county is large and the Council currently receives more such applications than the Definitive Map Team can deal with. As of 10 August 2022, there were 211 undetermined applications on file, a significant increase from 89 on 1 January 2020. In addition, they are experiencing what they describe as an unprecedented increase in work associated with enquires from landowners and user groups. The Council currently has 11 files awaiting submission to the Secretary of State, with additional cases being added on a weekly basis. With new applications being submitted which may attract a higher score, other applications inevitably slip down the list, and there are some very lengthy delays in dealing with some files low down on the list. They are considering adopting an ‘oldest first’ system which would ensure all applications are dealt with within a specific identifiable time frame and allow a structured work programme to be implemented.
9. Nevertheless, the Council considers its current approach has resulted in a significant increase in performance over the last 3 years and is a clear indication that their priority scoring system works and is fair to all applicants. Any deviation, they say, will have a knock-on effect on other applications, a significant impact on their workload and prevent higher priority and older applications being dealt with, leading to further delay for other applicants. However, these factors do not alter their duty in respect of DMMO applications, and suggests insufficient resources are being allocated by the Authority to determining them. A lack of resources does not amount to exceptional circumstances. Indeed, as argued by the applicant, Circular 1/09 (at paragraph 1.8) states that authorities *“should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the … recording of public rights of way”.*
10. It is 18 months since these 7 linked applications were submitted and the Council has given no indication as to when they will be considered. Any new method of prioritising cases, if implemented, as well as any new applications achieving higher scores, will have further consequences for their consideration. In any event, it is likely to be many more years before the Council is in a position to investigate some or all of these applications.
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. Whilst it is reasonable for the Council to determine applications in accordance with its policies, it is unreasonable, given the expectation they will be addressed within 12 months, for their determination to take a further unspecified number of years. Therefore, I have decided that there is a case for setting a date by which time the applications should be determined.
12. It is appreciated that the Council will require some time to carry out its investigations and make decisions on the 7 applications. A further period of 9 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 applications not later than 9 months from the date of this decision.

S Doran

**Inspector**