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| **Direction Decision** |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 January 2023** |

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| **Ref: ROW/3307748****Representation by John Dent****Cumbria County Council****Application to upgrade an existing public footpath to a Byway Open to All Traffic (BOAT) in Parish of Greystoke** |
| * 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 Cumbria County Council to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation is made by John Dent, dated August 2021.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 23 November 2021.
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| * The Council was consulted about your representation on 21 October 2022 and the Council’s response was made on 3 November 2022.
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Decision

1. The Council is directed to determine the above-mentioned application by 31 July 2023.

Procedural matter

1. The date when the representation was made to the Council by Mr Dent is unclear. However, it was made sometime in August 2021 and given the lack of publicly available information as to the precise date, I am satisfied that neither party will be prejudiced if I confirm that the due date for making the representation was during August 2021.

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[[1]](#footnote-2).
2. The Council indicates that applications are dealt with in accordance with a published Definitive Map Modification Order Application Priority Matrix comprising of a list of applications that are presently awaiting processing. The accompanying policy explains that the Council deals with applications such as this on the basis of a priority scoring system which takes into account a number of factors, including where:
* There is a “threat to recorded or unrecorded route” to be addressed after accessing the nature of the threat and if there is a useable safe and convenient alternative in current usage (without conflict).
* According to the level of public and community interest in the route and whether that issue is causing local conflict. This will also include measuring the value of the route in question to both the local community and/or strategically.
* It can demonstrate “value for money” through establishing if the application will be supported by any third parties such as landowners, user groups, partner organisations and/or the community through Rights of Way Improvement Plans which is included in the Countryside Access Strategy.
* Where there are safety issues concerning users either from potentially hazardous areas (such as avoiding busy farmyards) or by developing off road alternatives to local services and avoiding busy roads.
* Where there it can be established that there is a strength of evidence is not only in place and proved but also relevant and presented in a suitable manner.
* Where this will lead to resolving problems such as river bank erosion and where this will lead to the application fulfilling a long term aim of the Council such as filling gaps in strategic local and area routes.
* Where there have been long term obstructions to the PRoW network
1. The policy statement also makes provision to avoid existing applications falling further down on the matrix as new applications are received. There is no evidence to suggest that the application has met any of the above criteria. While I have no reason to dispute that the Council’s policy and prioritisation procedures appear fair, timeliness is also a reasonable expectation.
2. The Council currently has some 72 fully served applications awaiting determination and the current application is ranked 51st amongst these. The Council has indicated that this application is unlikely to be considered within the next seven years given staffing resources.
3. It appears from the evidence that the application relies at least in part, on user evidence to support the case. Where reliance is placed on user evidence, the longer period between the date of calling into question and the date of investigation, the more difficult it is to get to the truth of the matter and for any discrepancy in the route of the path to be reconciled.
4. The anticipated period for resolving the issue is not acceptable. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
5. Normally, 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, some 18 months has already passed since the application was submitted and it is estimated that a further seven years or more is likely to pass before it is determined. Whilst I have sympathy with officers who are genuinely trying to deal with the backlog of applications, the situation they find themselves in would suggest that the Council is failing to deploy sufficient resources to the determination of such applications.
6. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly, I propose to allow a period of 6 months in this case.

**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** Cumbria County Council to determine the above-mentioned application not later than 31 July 2023.

Gareth W Thomas

INSPECTOR

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