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| **Direction Decision** |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 June 2023** |

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| **Ref: ROW/3315783**  **Representation by Nils Clemmetsen**  **Newcastle Upon Tyne City Council**  **Application to add a footpath from north end of Queens Terrace to the east end of Reid Park Road, Jesmond, Newcastle upon Tyne.** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Newcastle Upon Tyne City Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Nils Clemmetsen, is dated 25 January 2023. * The certificate under Paragraph 2(3) of Schedule 14 was dated 24 January 2022. |
| * Newcastle Upon Tyne City Council was consulted about the representation on 22 February 2023 and their response was dated 31 March 2023. |
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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 any 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.
2. 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 be considered in light of its particular circumstances.
3. The Council has responded that it does not presently have a statement setting out the authority’s priorities for keeping its Definitive Map and Statement up to date. It is explained that historically and in general the Council has not received many Definitive Map Modification Order (DMMO) applications. For instance, from 2000 to present, the Council received eight DMMO applications.
4. The Council has explained that, between the period from March 2022 to November 2022, the Council was without a Public Rights of Way Officer and during this period a backlog built up, including of casework and inspections. This is the main reason the Council has not yet determined the application.
5. The Council has confirmed that this application is currently under investigation. It has detailed the information it has from the applicant and indicated that further research is required. It is stated that this research is presently being undertaken, including investigating documentary evidence sources from the City Central Library, local/county archives, and the National Archives. The statement from the Council also explains that should the documentary evidence be found to carry little evidential weight, then additional examination of the user evidence will likely be necessary. Additionally, it is commented that several of the landowners have submitted representations to the authority concerning the status of the route, its history, and the public’s use which also require further examination.
6. It is regrettable that the lack of a Rights of Way Officer during parts of 2022 has led to a backlog of rights of way work. However, the evidence indicates that the Council is actively working on this application. Furthermore, in terms of the list of outstanding applications, the Council has explained that this application is presently first in the Authority’s priority rankings, due to it being the oldest DMMO application. The Council anticipate that the application will be determined by 31 December 2023, if not well before.
7. It is appreciated that DMMO cases can take time to determine because of the nature of the investigations and research that can be required. Nevertheless, applicants have an expectation that they will be determined within a reasonable timescale. The application has been with the Council for some time, with the certificate of service dated 24 January 2022, and I consider that it would be appropriate to set a date for the application to be determined.
8. The Council has indicated that it expects to make a decision by the end of 2023, if not earlier, and I consider that this is a reasonable timescale to help ensure that the application continues to be prioritised by the Council. Accordingly, I propose to allow a period until 31 December 2023 for the Council to reach a decision on this application.

**Direction**

1. 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** Newcastle Upon Tyne City Council to determine the above-mentioned application not later than 31 December 2023.

David Wyborn

INSPECTOR