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| **Direction Decision** |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 August 2023** |

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| **Ref: ROW/3316111****Representation by Margaret Strong****Cumbria County Council now Westmorland and Furness Council****Application to add a footpath from The Wardway, Alston 70400/45110 to The A686 70930/45100 (OMA REF: 302000-377)**  |
| * 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 Cumbria County Council to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation made by Margaret Strong, is dated 6 February 2023.
* The certificate under Paragraph 2(3) of Schedule 14 is dated 19 January 2021.
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| * The Cumbria County Council was consulted about the representation on 9 February 2023 and their response is dated 21 March 2023.
* Westmorland and Furness Council was consulted about the representation on 24 July 2023 and their response is dated 7 August 2023
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Decision

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

Reasons

1. Schedule 14 of the Wildlife and Countryside Act 1981 sets out provisions for applications made under section 53(3) for orders to amend the definitive map and statement. An application was completed by the applicant for a modification order to add a footpath 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 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.
4. The application was made to Cumbria County Council (CCC) in January 2021. In March 2023 CCC was split into two unitary authorities and the application now falls under the jurisdiction of Westmorland and Furness Council (WFC). Both were consulted about the direction request. If I direct the Council to determine the application, WFC will be responsible for determining it.
5. CCC determined applications in accordance with the definitive map modification priority criteria matrix. Seven criteria were used to assess the priority of an application against the current workload. These criteria were threat to recorded or unrecorded route, level of public interest, value for money, safety, strength of evidence, resolves problems and long-term obstruction. To ensure that poorly scoring applications did not permanently remain at the bottom of the list, an additional point was added to an application every time a new one was received.
6. WFC has advised that the CCC priority criteria matrix still applies and there were only a few minor changes to the list of applications awaiting determination.
7. The application currently sits at number fifteen in a list of forty-six applications. I note the oldest application on the list dates back to 1996. CCC were processing between two and seven applications a year and WFC considers they will process applications at the same rate. WFC considers it unlikely that this application will be determined within the next twelve months.
8. When the application was made, the applicant was advised it could take up to two years to determine. Two years have passed, and no progress has been made.
9. Authorities have a duty to keep the definitive map and statement up to date and Circular 1/09 makes it clear that they should ensure that sufficient resources are allocated to meeting their statutory duties with regard to the protection and recording of public rights of way.
10. 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 twelve months under normal circumstances. In this case, more than two years have passed since the application was submitted and no exceptional circumstances have been indicated.
11. In the circumstances, I have decided there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require time to investigate and determine the application. I will also allow some additional time for any delays due to the local authority changes. I consider it appropriate to allow a further period of nine months for a decision to be reached.

**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 Westmorland and Furness Council to determine the above-mentioned application not later than nine months from the date of this decision.

Claire Tregembo

INSPECTOR