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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 September 2023** |

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| **Ref: ROW/3325384****Representation by Rae Tomlinson****Cumberland Council****Application for the addition of 2 footpaths, U4013 Moresby to Frizington Road and U4022 Whelpside to Frizington Road, at Keekle Woodland** |
| * 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 Cumberland Council (the Council) to determine an application for an Order, under Section 53(5) of that Act.
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| * The representation is made by Rae Tomlinson (the applicant) and is dated 5 July 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 March 2022.
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| * The Council was consulted about the representation on 12 July 2023 and the Council’s response was made on 19 July 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 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.
2. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: 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.
3. To ensure consistency, the Council applies a priority matrix to all Definitive Map Modification Order applications to establish the order in which applications shall be determined. The priority matrix has seven criteria including threat to recorded/unrecorded route, level of public interest, value for money, safety, strength of evidence, resolution of outstanding matters and long-term obstructions. The Council uses the matrix to assess priority against current workload and this application is currently placed at No.18 of the 31 fully served applications on the list. The Council advise that they are processing between 2 -4 applications per year and that it will be at least 4 years before this application is considered.
4. The application is dated 7 March 2022 and was submitted to the Council on 1 April 2022. The applicant is concerned that the reorganisation of local government in the area has increased the waiting time for investigation of the application, from 1 year to 4 years. The applicant is respectful of the priority matrix but considers that the substantial public interest and feeling towards the application, which aligns to a historical Section 106 agreement, should place the application higher on the priority list. There is also concern that funding streams which could be used to enhance the footpaths should the application be successful, would no longer be available given the current timeframe for determination of the application.
5. I do recognise that the Council has a priority matrix to ensure fair ranking. I also appreciate that the issue of a direction may disadvantage those applications that have been waiting longer, as well as those that rank higher on the priority list. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and the Council have a statutory duty to keep their Definitive Map and Statement up to date. Difficulty complying with this due to restricted staffing is not an exceptional circumstance, as sufficient resources should be in place to deliver this statutory duty.
6. 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, more than 1 year has passed since the application was submitted and no exceptional circumstances have been indicated.
7. Correspondingly, I have decided that there is a case for setting a date by which time the application should be determined. I am mindful that the Council will require some time to carry out its investigation and make a decision on the application. 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** Cumberland Council to determine the above-mentioned application not later than 9 months from the date of this decision.

A Behn

INSPECTOR