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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: 04 January 2024** |

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| **Ref: ROW/3332175**  **Representation by Diana Mallinson (Yorkshire Dales Green Lanes Alliance)**  **North Yorkshire Council**  **Application to add a bridleway known as Tinklers Lane in the District of Harrogate, from the C256 Road to the B6165 Road, (Application Ref: HAR/2022/10/DMMO)** |
| * 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 North Yorkshire Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Diana Mallinson, dated 28 October 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 9 September 2022 |
| * The Council was consulted about the representation on 9 November 2023 and their response was made on 5 December 2023. |
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Decision

1. The Council is not 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 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 therefore be considered in light of its particular circumstances.
3. In October 2023, the Council implemented a new system of prioritisation for applications, and they are now considered in the order that they were received. Previously, applications were given a score according to the Council’s priority system. Low scoring applications were displaced by newer ones with higher scores. This resulted in a backlog of very old, low scoring applications which are harder to deal with due to the age of the evidence and less detailed user evidence forms. Considering applications in order of receipt assures applicants that their applications will be dealt with and enables the Council to give greater clarity as to when investigations will commence.
4. The Council believe no party is served by older applications being neglected and considers applications should only be taken out of turn in exceptional circumstances. The Council considers exceptional circumstances to be when directed to determine an application or make an Order by the Secretary of State, where two or more applications make use of the same historical evidence and connect to form a local network of paths, or for training purposes in relation to staff development.
5. The Council have invested significantly in the Definitive Map team to enable resources to be allocated to dealing with applications. They currently have seven Definitive Map Officers which they believe makes them one of the largest teams in the country. However, a large number of applications were submitted during the Covid-19 lockdowns. Whilst they consider they should have sufficient resources to deal with applications in a timely manner, they are only able to keep the backlog static or rising very slowly. Therefore, they must rely on a system that provides a fair and rational *modus operandi* when dealing with applications.
6. There are 219 applications awaiting determination, including 148 to add or upgrade routes to bridleway or restricted byway. The oldest application was made in 1989 and 35 applications are more than ten years old. Although I do not have the details of these applications before me, it is likely that some of these routes are not available to the public. Furthermore, the age of some of the applications means further delays could result in the loss of evidence or impact on the determination.
7. The applicant does not believe the new system will help significantly in reducing the backlog of applications because the backlog is increasing faster than the Council can reduce it. They consider the council need additional resources to determine applications within a reasonable time.
8. Tinklers Lane is recorded on the Council’s List of Streets (LOS) as a highway maintainable at public expense under section 36(6) of the Highways Act 1980. The applicant made the application because motorbikes are using Tinklers Lane in the belief that motorised vehicular rights exist. They claim motorised users are damaging the surface to the detriment of non-motorised users and considers the bridge over the river too narrow for motorbikes. The applicant cites support for the application from landowners, occupiers, and parish councils.
9. However, the Council has not seen any evidence of damage to the surface of Tinklers Lane and recent photographs show the route is in good condition with no evidence of motorised vehicular use. They consider the narrow bridge effectively creates two cul-de-sac routes reducing its attraction to motorised users. Furthermore, they do not believe the application is the most effective way to protect Tinklers Lane from damage. They would implement a Traffic Regulation Order to prevent vehicular use if there was evidence of damage. This could be achieved in a far shorter time than it would take to determine the application.
10. The application would establish with certainty the width, alignment, limitations, and status of Tinklers Lane. However, it is already recorded on the List of Streets establishing it is a public highway. Therefore, public access is unlikely to be prevented or lost. For this reason, I see no reason to justify prioritising the application over older applications where public rights may not be available or could be lost.
11. I consider the Council’s approach is reasonable. I daresay that most, if not all, applicants would consider their application to be important and deserving of priority. There are 190 applications older than the one before me. To issue a direction to make a determination would disadvantage those who have been waiting longer, particularly where delays could impact on the outcome or result in lengthier investigation.
12. 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. However, the 12 month period for this application has not long expired.
13. Having considered all the circumstances, I have decided that there is not a case for setting a date by which time the application should be determined. However, that will not preclude the applicant from making further representations to the Secretary of State in future if the application remains undetermined for an unreasonable period of time.

Claire Tregembo

INSPECTOR