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| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 March 2024** |

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| **Ref: ROW/3329354, 3329357, 3329674 & 3329678****Representations by Alan Kind****Northumberland County Council****(OMA ref. ADB)****Application to upgrade public footpath 229/029 (part) to restricted byway, from GR 03850-37420 eastwards to GR 04925-37675, then turning north eastwards to add a restricted byway past Bogle House and Blawearie, to the road junction at GR 06301-3935, Kyloe.****Application to add a restricted byway at the junction with bridleway 224/002 eastwards to the junction with county road 1086, Linhope.****Application to upgrade public bridleway 204/010 Bamburgh to restricted byway. From 19184-33188 off the public road, south of Fowberry, then a varying course overall south westwards to 18899-32871 on the on the public road known as Ingram Lane.****Application to upgrade part of public footpath 232/010 North Sunderland to restricted byway. From 19571-32640 south of New Shoreston Farm, then overall westwards to 19081-32657 on the public road known as Ingram Lane.** |
| * The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) a seeking direction to be given to Northumberland County Council (‘the Council’) to determine four applications for Orders, under Section 53(5) of that Act.
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| * The representations are made by Alan Kind and are dated 12 September 2023 (3329354 & 3329357) and 13 September 2023 (3329674 & 3329678).
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| * The certificates under Paragraph 2(3) of Schedule 14 are dated 25 February 2022 (3329354 & 3329357) and 22 July 2020 (3329674 & 3329678).
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| * The Council was consulted about the representations on 27 October 2023 and the Council’s response was made on 1 December 2023.
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Decision

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

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the Definitive Map and Statement (DMS).
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2 of Schedule 14.
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 DMS 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. Thus, each case must be considered on its individual facts.
4. The requests to direct the surveying authority, Northumberland County Council, were made on the basis that over a year had passed since the applications for the Orders had been submitted. Three and a half years have now passed since 3329674 and 3329678 applications were made and nearly two years have passed since 3329354 and 3329357 applications were made.
5. The Council’s approach to dealing with applications is generally to do so in order of receipt. Four exceptions exist to this approach, laid out in the Council’s Rights of Way Improvement Plan. Firstly, where the public is prevented from using the route and there is reasonable evidence that a right of way exists. Secondly, where an upgrade of the status of a route will offer significant benefits to a wider number and type of user. Thirdly, where the recording of a right of way will significantly enhance the network by providing a missing link or safe alternative to a busy road. Finally, where downgrading the status of a route will provide significant protection to an area of environmental or historical significance, which is currently under threat. Two of the applications that are the subject of this decision are user based so the first exception applies.
6. Based upon the list submitted by the Council, there are 44 applications awaiting investigation and determination. Given that the oldest of these applications was received in June 2019, I do not consider this to be a substantial backlog of applications.
7. The Council’s approach to dealing with applications in date order, unless one or more of the four exceptions apply, is fair and reasonable. I appreciate that the issuing of a direction to make four determinations would add to the workload of the Council and would disadvantage those on the Council’s list that have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council’s prioritisations system. However, these factors do not justify directions not being given in this instance when the 12-month period has comfortably expired.
8. The Council predict that 3329674 and 3329678 will be determined by August 2024 and 3329354 and 3329357 by February 2025. On the basis of the submitted evidence, it appears these estimations are achievable.
9. Applicants should be able to expect a decision within a finite and reasonable time and I have therefore decided that there is a case for setting a date by which time these applications should be determined.
10. However, it is appreciated that the Council will require some time to carry out its investigations and make decisions on the four applications. The Council estimate they will be able to determine these applications within 12 months, and I consider this a reasonable period for determination. Accordingly, a further period of 12 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** the Northumberland County Council to determine the above-mentioned applications not later than 12 months from the date of this direction.

Charlotte Ditchburn

INSPECTOR