k

|  |
| --- |
| **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: 18 April 2024** |

|  |
| --- |
| **Ref: ROW/3332418****Representation by Sheila Greetham****Calderdale Metropolitan Borough Council****Application to upgrade to bridleways, Footpaths HR67, HR74, HR84 (part) ,HR72 (part) ,HR85 and HR76, Hebden Royd (Council ref. 3.15.1/02AG)** |
| * 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 Calderdale Metropolitan Borough Council (the Council) to determine an application for Orders, under Section 53(5) of that Act.
 |
| * The representation is made by Sheila Greetham and is dated 27 November 2023.
 |
| * The certificates under Paragraph 2(3) of Schedule 14 are dated 2 January 2023.
 |
| * The Council was consulted about the representation on 28 November 2023 and the Council’s response was made on 16 January 2024.
 |
|  |

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 (DMMO) applications to establish the order in which applications shall be determined. The priority matrix adopts a scoring system based upon the criteria set out below. Points are allocated according to the following criteria: (i) impact on local community, (ii) benefit to network, (iii) previous commitment, (iv) threat to route, (v) years of waiting, and (vi) time to determine. One point is designated for each year an application has been waiting. For each of the other criteria, a score of between 0-3 is applied depending upon the circumstances. Where there is an impact on local community or a threat to the route, the score is weighted by a factor of 3, thus increasing the priority.
4. The application from Sheila Greetham (the applicant) is dated 24 October 2022 and is currently ranked 72 of the 116 applications outstanding on the priority list. The application has been allocated a score of 6, and there is nothing to suggest that the scoring system employed is unreasonable, or that the application has been scored incorrectly. The applicant states that this is just one of over twenty DMMO cases she has filed with the Council, many relating to multiple routes. The applicant feels passionately about seeing these routes protected and is concerned that what she feels is procrastination by the Council, may result in her being unable to engage in the pursuit of the preservation of these routes within her lifetime.
5. Given the volume of applications registered with the Council, they are unable to give an indication of when the application is likely to be determined, but consider that with current resources it may be several years hence. Although they understand the applicant’s comments, they refute a policy of procrastination, advising that work on DMMO cases is progressing as resources allow.
6. I do recognise that there are a large number of applications awaiting determination and that the Council has a priority matrix to ensure fair ranking. I also appreciate that the issue of a direction would 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 a backlog is not an exceptional circumstance, as sufficient resources should be in place to deliver this statutory duty.
7. 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 12 months have passed since the application was submitted and no exceptional circumstances have been indicated.
8. 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 12 month period has not long expired and that the Council will require some time to carry out its investigation and make a decision on the application, which involves multiple routes. In view of this, a further period of 18 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** Calderdale Metropolitan Borough Council to determine the above-mentioned application not later than 18 months from the date of this decision.

A Behn

INSPECTOR