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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: 23 April 2024** |

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| **Ref: ROW/3332416**  **Representation by Sheila Greetham**  **Calderdale Metropolitan Borough Council**  **Application to upgrade Part of Hebden Royd Footpath 11 and Hebden Royd 12, Fairfield to restricted byway (OMA REF: 02AF)** |
| * 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 Calderdale Metropolitan Borough Council to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation made by Sheila Greetham, is dated 1 November 2023. * The certificate under Paragraph 2(3) of Schedule 14 is dated 2 January 2023. |
| * The Calderdale Metropolitan Borough Council was consulted about the representation on 28 November 2023 and their response is dated 9 February 2024. |
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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. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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. The Council use a priority matrix to establish the order in which applications should be determined. This aims to give a fair and balanced scoring and prioritisation. The priority matrix allocates a score to each application based on criteria set out in their corporate objectives. Points are allocated according to the following criteria: 1) impact on the local community, 2) benefit to the network, 3) previous commitment, 4) years waiting, and 5) time to determine. One point is given for each year of waiting. For the other criteria, a score of 0 to 3 is given depending on the circumstances. Where there is a threat to the route or an impact on the community, the points are weighted by a factor of 3, thereby increasing the priority. I consider this approach reasonable.
4. The application has a priority score of 3 and is at number 92 in a list of 121 applications awaiting determination. The highest scoring application has 45 points and applications date back to 1989 with 28 applications waiting for more than 20 years. The Council also has directions to determine 13 other applications which remain undetermined. Given the volume of applications, the Council are unable to provide a timescale for determining the application.
5. The applicant is concerned with the time taken to determine applications and believes this will lead to the loss of evidence if witnesses are no longer available.
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. Circular 1/09 makes it clear that Authorities should ensure sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way. A lack of resources is not considered to be an exceptional circumstance.
7. In this case, over 12 months have passed since the application was submitted and no exceptional circumstances have been indicated. I appreciate a direction to make a determination on the application would disadvantage applicants who have been waiting longer. However, I do not consider this should be grounds to justify not giving a direction when the 12 month determination period has passed.
8. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application, particularly given the number of outstanding directions. 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 Calderdale Metropolitan Borough Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Claire Tregembo

INSPECTOR