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| **Direction Decisions** |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 January 2025** |

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| **Ref: ROW/3352239**  **Representation by Lymm Parish Council**  **Warrington Borough Council**  **Applications to:**   * **Add a Bridleway from the southernmost end of Millers Lane to a point on Lymm Footpath 35, approximately 140 metres from its easternmost end (OMA ref. 53(5)202304)** * **Upgrade Lymm Footpath 35 to a Restricted Byway from Mill Lane at its junction with Footpath 35 to a point along Footpath 35 where it leaves the field margin and heads southwest (OMA ref. 53(5)202305)** * **Add a Footpath from a point along an unrecorded public Bridleway, 50 metres northeast of Millers Lane to a point on Lymm Footpath 35, 20 metres west of its junction with Mill Lane (OMA ref. 53(5)202306)** * **Add a Restricted Byway from the northernmost end of Millers Lane, at its junction with Birch Brook Road to the southernmost end of Millers Lane (OMA ref.** **53(5)202303)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking directions to be given to Warrington Borough Council to determine four applications for an Order, or Orders, under Section 53(5) of that Act. |
| * The representation, dated 19 September 2024, is made by Lymm Parish Council. |
| * The certificates under Paragraph 2(3) of Schedule 14 are dated 20 July 2023 in respect of three of the applications. No certificate was served for the fourth application as no landowner(s) could be identified. |
| * The Council was consulted about the representation on 20 September 2024 and their response is dated 8 November 2024. |
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Decision

1. The Council is directed to determine the above-mentioned applications referenced 53(5)202304, 53(5)202305 and 53(5)202306.

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 12 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 does not have an active Statement of Priorities. However, over recent years applications have largely been considered in chronological order from the date of receipt of the application and certificate. The Council currently has four definitive map modification order applications predating the ones from the applicant. I understand that an order for one of these was to be made before the end of 2024 and the Council aims to determine the remaining three applications by the end of March 2026.
4. The applicant is not aware that any investigations have commenced on its applications which were submitted to the Council on 20 July 2023 when public access to the land was denied by the current occupier. They believed the applications would be considered within the 12-month time frame. However, over the last 12 months, they say the situation on site has deteriorated, and they see a definitive map modification order as the only way to restore public access. However, the Council confirms it is unlikely to be able to consider the applications until April 2026, due to the other applications referred to above having yet to be determined.
5. The applications are based on user evidence, although the Council says the applicant also relies on other evidence in support of their claims, so they are not exclusively reliant on the testimony of users. Nevertheless, the applicant points out that several longstanding residents who have provided user evidence are over the age of 70. Should the Orders be made, it is anticipated they will be objected to, and the matter will proceed to public inquiry. The applicant seeks that the applications be expedited so they can be assessed within the lifetime of these users to ensure their evidence can be heard. Although the Council notes the age of those who have completed evidence forms, this is not unique, and they do not consider these applications should be given a higher priority. The lack of availability of the application routes is also common to other applications awaiting determination.
6. I consider the Council’s method of determining applications in date order is reasonable and fair. However, an applicant’s right to seek a direction from the Secretary of State gives rise to the expectation of a determination of their applications and the evidence submitted with them within 12 months under normal circumstances. I am not aware of what other evidence has been submitted alongside the user evidence in these applications. Nevertheless, the age of the witnesses is a factor to consider when there is user evidence to assess, and the likelihood of whether that evidence can be properly tested in the future.
7. No exceptional circumstances have been indicated by the Council for the applications not having been determined. Therefore, given all these factors, I have decided that there is a case for setting a date by which time the applications should be determined. It is appreciated that the Council will require some time to carry out its investigations and make a decision on the applications. I note the Council’s request for sufficient time to be allowed, should a direction be given, to enable the relevant committee cycle to be accommodated. Coupled with there being several applications to be determined, a further period of 12 months has been allowed.
8. Whilst I note the applications concern connecting routes and ought to be determined together, no certificate of notice was served in relation to the fourth application listed above (OMA ref.53(5)202303) as no landowner(s) could be identified. Paragraph 2(2) of Schedule 14 to the 1981 Act provides that in such circumstances notice should be served on the land, and I have no evidence that this has occurred. It follows that the statutory requirements have not been complied with as respects this application, and I am unable to direct that it be determined at this time. However, that will not preclude the applicant from making further representations to the Secretary of State in future if this application remains undetermined for an unreasonable period of time.

**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 Warrington Borough Council to determine the above-mentioned applications as follows, OMA ref. 53(5)202304; OMA ref. 53(5)202305; and OMA ref. 53(5)202306 not later than 12 months from the date of this decision.

S Doran

**Inspector**