

|  |
| --- |
| **Direction Decision** |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 April 2025** |

|  |
| --- |
| **Ref: ROW/3353030, 3353032-5 & 3353037****Representation by Stephen Parkhouse****Lincolnshire County Council*** **Claimed bridleway between Moor Lane and Valley Lane (PINS ref. ROW/3353030) (OMA ref. DMMO 446)**
* **Claimed bridleway between Main Road and Footpath161 and upgrade of Langton Footpath 161 and Thornton Footpath 161 (part) to public bridleways (PINS ref. ROW/3353032) (OMA ref. DMMO 487)**
* **Claimed bridleway between Lissingley Lane and two points on Friesthorpe Road (PINS ref. ROW/3353033) (OMA ref. DMMO 592)**
* **Claimed bridleway from Friesthorpe Road to Faldingworth Road (PINS ref. ROW/3353033) (OMA ref. DMMO 593)**
* **Claimed restricted byway between Moor Lane and Restricted Byway 34 (PINS ref. ROW/3353034) (OMA ref. DMMO 594)**
* **Claimed bridleway between Prior Lane and Metheringham Restricted Byway 15 (PINS ref. ROW/3353034) (OMA ref. DMMO 595)**
* **Claimed footpath between 50 Acres Road to Bridleway 165 (PINS ref. ROW/3353035) (OMA ref. DMMO 608)**
* **Claimed footpath between Roughton Bridleway 165 and Haltham Footpath 168 (PINS ref. ROW/3353035) (OMA ref. DMMO 609)**
* **Claimed footpath between Kirkby on Bain Footpath 170 to Wharfe Lane, Tattershall (PINS ref. ROW/3353035) (OMA ref. DMMO 610)**
* **Claimed footpath between Sleaford Road and the River Witham (PINS ref. ROW/3353035) (OMA ref. DMMO 611)**
* **Claimed bridleway along Ings Lane (PINS ref. ROW/3353037) (OMA ref. DMMO 620)**
 |
| * 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 Lincolnshire County Council to determine applications for Orders, under Section 53(5) of that Act.
 |
| * The representations, dated 23 September 2024, are made by Stephen Parkhouse.
 |
| * The certificates under Paragraph 2(3) of Schedule 14 are dated 30 January 2022, 24 October 2022, 25 March 2023, 18 May 2023, 22 May 2023, and 16 June 2023
 |
| * The Council was consulted about the representations on 3 October 2024 and their response is dated 15 November 2024.
 |
|  |

Decision

1. The Council is directed to determine the above-mentioned applications referenced ROW/3353030 and ROW/3353032-5.

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 direction requests concern six linked definitive map modification order (‘DMMO’) applications which were made over a twelve-month period between 2021 and 2022. They seek a range of outcomes including restoring access to the existing definitive route of a way severed by the A1, adding new routes, and filling gaps in the network where routes are currently a cul-de-sac. The applications are based on a mix of historic and user evidence with some having outcomes in the interests of the landowner and others of benefit to the public in terms of amenity value. Some follow on from previous applications which were undetermined or not fully processed. They include the discovery of new evidence, and some share the same evidence so could be considered as a single case to make best use of resources.
4. With a current backlog of around 574 cases (some dating back to the 1980s) and only a limited number being dealt with each year by the Council (currently 24 progressing to a conclusion), the Applicant maintains these applications will not be assessed for many years unless directions are made. For example, ROW/3353030 currently sits at number 152 in the Council’s priority ranking list. Whilst sympathising with the Council and its limited resources to tackle the backlog, the Applicant cites Article 6(1) of the European Convention on Human Rights enshrined in law in the UK by the Human Rights Act 1988 which states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal, together with Circular 1/09 and Schedule 14 to the 1981 Act emphasising the need to investigate applications as soon as reasonably practicable.
5. The Council has a ‘DMMO Priority Policy’ which requires cases to be dealt with in date order of receipt with the oldest progressed first unless they meet specific criteria and are given higher priority and dealt with sooner. Accordingly, there are more recent cases listed in the Priority Schedule above older ones. These applications are ranked between 151 and 310 of those cases awaiting investigation. The Council also has a procedure whereby applicants can request cases are given higher priority, though no such request concerning these applications has been made by the Applicant.
6. The Council acknowledges the applications have been registered for over 12 months. However, they do not consider directions should be given in the circumstances due to their existing caseload and the unprecedented level of applications being received – some 433 over the last 4 years alone, with the Applicant having submitted many of these. In addition, this generates associated queries from land and property owners. I have some sympathy for the Council, and agree it is unlikely that in drawing up the legislation Parliament envisaged a scenario whereby a surveying authority would receive so many applications in a short space of time.
7. Dealing with the current workload at present are 3 full time Definitive Map officers and one full time senior Definitive Map officer focussing on DMMO casework, and a part-time assistant rights of way officer in a supporting role, plus a new officer who will focus on DMMO casework. All the Definitive Map officers are new to their roles and are currently in training. The Council anticipates determinations of DMMO cases will increase as the officers become more experienced. Eventually each officer will deal with 3-4 determinations per year in line with the national average. Taking caseload levels together with resource levels, the Council considers they are determining applications as soon as reasonably practicable and will deal with these applications as soon as reasonably practicable in line with the Priority Policy and available resources.
8. The Council argues there is a further relevant mitigating factor, and that is the direction request is less about the progress of the cases in question and more a tool to ensure the Council directs more resources towards processing DMMO applications. This, the Council maintains, is not the purpose of the measure put in place to enable applicants to seek a direction. My decision, however, is reached on consideration of the factors set out in paragraphs 2 and 3 above.
9. I consider the Council’s Priority Policy and the opportunity for applicants to request that cases are afforded higher priority is reasonable. As the Council says, Schedule 14 does not mandate that all applications must be decided within 12 months. Nevertheless, 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. It is accepted that the Secretary of State is not bound to issue a direction and (as stated above) has discretion in this matter and will take into account how the Council is managing their workload together with the circumstances of the case(s). More than 12 months has passed since the applications were submitted, and a lack of adequate staff resources to address the large backlog of cases is not in itself justification for a delay of an unspecified period of time to investigate them. In the circumstances I have decided that there is a case for setting a date by which time the applications should be determined. Given that there are several applications, it is appreciated that the Council will require some time to carry out its investigation and make a decision on each application. The Council’s duty as Surveying Authority to properly investigate each application is noted, and it is accepted that following a thorough investigation and assessment of the evidence the Council, or indeed the Secretary of State (following any subsequent appeal) may reach a different conclusion to that reached by an applicant. It follows, as the Council points out, that the making of an order in respect of any of the applications is not guaranteed.
10. A further period of 18 months has therefore been allowed. However, as regards ROW/3353037 (OMA ref. DMMO 620), I understand a decision has been reached and an order made as it was found to meet one of the Council’s exception criteria (No. 7, where a new application is received that relies on evidence of a case already received or, if the new application forms part of or is adjoining an existing claim, the new claim will be dealt with at the same time as the older application). It follows that no direction be given in respect of this application.

**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 Lincolnshire County Council to determine the above-mentioned applications ROW/3353030 and ROW/3353032-5 not later than 18 months from the date of this decision.

S Doran

**Inspector**