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Mr R Lane  
Town Clerk, Saltash Town Council  
The Guildhall  
Lower Fore Street  
SALTASH, Cornwall  
PL12 6JX

Your Ref:  
Our Ref: FPS/D0840/14D/9  
Date: 08 June 2016

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Dear Sir

## WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Cornwall Council

Addition of Footpath from Fairmead Road Grid Ref: SX41307 58886 to 25 Metres East of Spire Hill Park Grid Ref: SX41250 58866, Saltash

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 29 January 2016 for a direction to be given to the Cornwall Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981. The direction you have sought would require the Council to determine your application for an order, under Section 53(5) of the Act, to modify the Council's definitive map and statement of public rights of way for the area so as to add a footpath from Fairmead Road at Grid Ref: SX41307 58886 to a point 25 metres east of Spire Hill Park at Grid Ref: SX41250 58866, Saltash.
2. The Council was consulted about your request for a direction on 18 February 2016 as required by the Act. The Council's formal response was received on 11 March 2016
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether she should direct an authority to determine an application for an order within a specific period. These issues include 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 that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

### Your Case

4. Reliance is placed on the evidence of public use of the claimed footpath for a period in excess of twenty years. It is considered that the evidence is sufficient to demonstrate that a public footpath should be added to the definitive map and statement. The fact that a way has been obstructed, which has happened in this

case, should be disregarded. This application remains undetermined by the Council after many years.

5. Recently, the Secretary of State has considered that taking several years or more to come to a decision is unreasonable and has issued directions that a decision must be made within a specified period. It is requested that the Secretary of State directs the Council to make a decision within a specified period of time.

### **The Council's Case**

6. The Council's policy statement contains a two tier system with higher priority given to cases that have preferential status under the policy and meet a defined set of criteria. Cases which do not meet the criteria in the policy are given a lower priority. This application does not meet any of the criteria set out in the policy for higher priority. However, as the case was incorrectly assigned a higher priority on receipt the Council has continued to treat it as a higher priority case.
7. This application is currently positioned at number 41 on the higher priority list of 69 cases. In a review of the priority list the position of this application has changed as orders have taken some off the list and those remaining promoted accordingly. The Council has updated its systems to streamline throughput of cases and now employs 2 full time staff whose role is almost exclusively dedicated to resolving such applications. The current estimate is 8-10 modification orders a year. With that as a guide it is predicted that this case will be determined in approximately 4-5 years.
8. Receipt of the application was acknowledged by the Council in August 2010. The applicant will have been informed at the time that there was a very large backlog of such applications and this application would be held on file until it could be processed in accordance with the Council's published policy statement.
9. The Council is unaware of any directive from the Secretary of State regarding the length of time to determine applications and does not consider that any mitigating factors or exceptional circumstances have been presented to merit the promotion of the application. It is accepted that the route is obstructed but there are several alternative routes available in this urban setting.
10. A direction to make a decision would be to the detriment of other cases in the priority list and the applicant has failed to provide sufficient grounds to justify why this application should be elevated above others.

### **Consideration**

11. It would not be appropriate for the Secretary of State to comment on the merits of the application to modify the definitive map. Nor is there anything apparent to suggest that the Council's adopted policy as a whole is unreasonable. In terms of decisions by the Secretary of State on applications for a direction to be given to an authority, each case is determined on its own merits.
12. The Secretary of State is concerned about the period of time that has elapsed since the application was received and the anticipated date for its final determination. This could lead to the loss of valuable evidence. Should an order be made and opposed, a further period of time will elapse before the matter is finally determined. However, this issue has to be weighed against the Council's statement of priorities for dealing with the backlog of applications and the resources currently available.

13. It is anticipated that the application will be determined by 2020 or 2021. In this respect, the fact that the application is on the higher priority list should mean that it is not delayed any further. Overall, the Secretary of State is not satisfied that the estimated latest date for the determination of the application is of such significance to warrant it being determined in preference to cases that are higher up the priority list. In the absence of any exceptional circumstances, it is only right that older cases should be determined first in accordance with the Council's statement of priorities.
14. On the basis of the information supplied, it is not considered that a case has been made for the Council to be directed to reach a decision on the application.

**Decision**

15. In the circumstances, the Secretary of State has decided not to issue a direction to the Council.
16. A copy of this letter is being sent to the Council.

Yours faithfully

*Mark Yates*

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

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