



3G Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5226
Customer Services: 0303 444 5000
e-mail: caroline.baylis@pins.gsi.gov.uk

Mr & Mrs R Harrison
Cottage Farm Park
Treworgans
Cubert
Newquay, Cornwall
TR8 5HH

Your Ref:
Our Ref: FPS/D0840/14D/12
Date: 21 February 2017

Dear Sir and Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14

Cornwall Council

Application to modify the definitive map and statement by the addition of an unrecorded footpath from FP/302/10 to Unclassified Road U6086 (Cubert CP)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 9 December 2016 for a direction to be given to Cornwall Council under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the Act"). 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 record a footpath linking definitive footpath 302/10 with the U6086 unclassified road at Treworgans near Cubert.
2. The Council was consulted about your request for a direction on 18 January 2017¹ as required by the Act. The Council's formal response was received on 1 February 2017.
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 further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

Your case

4. It is your case that an early decision on your application for a definitive map modification order is required to resolve uncertainty and conflict in the hamlet of Treworgans and to restore access along a lane that has been walked for many years.

¹ Preliminary notification was sent on 20 December 2016

5. Your application to the Council was made on 8 January 2013 in response to access being denied along the lane in question when a gate was locked preventing the public from walking from the county road in the hamlet of Treworgans to the definitive footpath 302/10.
6. You submitted with the original application statements from 26 people who had used the route in question over periods dating back at least 20 years. During the 3 years since this evidence was submitted to Cornwall Council one of your elderly witnesses has died. You are concerned that a further delay of at least 5 years will result in more key witnesses becoming unavailable to support their written statements if needed.
7. Also, whilst the status of the claimed route is undetermined and remains closed, it is not only the public that is disadvantaged. Both your own holiday park business and that of your neighbours is being affected as your customers are unable to access local facilities because the lane is unavailable and there is no other means of reaching Footpath 302/10. Alternatives via roads in the locality, both for holiday makers and for local children going to school, are dangerous and not a safe option.
8. Further, disagreements with other parties over ownership of, and rights over, the lane are not helped by uncertainty over the public rights established over the route.
9. In 2013, Cornwall Council informed you that your application (no 580) was ranked 52 on its priority list for dealing with definitive map modification order cases. Today it is listed as No. 53 on the list. Based on the Council's current rate of progress, you predict a further wait of some 6-8 years. You consider that this is not reasonable and request that the matter be brought to a speedier conclusion.

The Council's Case

10. Cornwall Council acknowledges that your application (580) is currently positioned as No. 53 in its prioritised modification order list. This is on the basis that your claimed route affects Footpath 302/10 which is identified as a 'gold status' path. Your application is therefore categorised as priority 'C'.
11. In its statement of priorities for keeping its definitive map and statement up to date, unless exceptional circumstances apply, Cornwall Council gives priority to 'Gold Paths' (as identified by the Public Path Improvement Programme approved in 2005) as well as routes within the coastal corridor and routes which link areas of open public access of various types. All such cases which qualify for priority are then considered in the order in which they were received.
12. The team currently working on definitive map modification order applications is able to process around 10 cases per year. The Council therefore estimates that your case will rise to the top of the list in approximately 5 years' time.
13. In response to your submission that priority should be given to your application because of the risk elderly witnesses may be lost if there is further delay, the Council comments that written witness statements are a legal statement of truth and that these hold a weight of evidence which will be evaluated along with all other available evidence in the determination process once it progresses through the register.

14. Cornwall Council does not consider the grounds you have advanced for bringing forward your application to be exceptional. Neither does it accept that yours should be considered over other applications which have been prioritised in accordance with its published priority criteria.
15. The Council therefore submits that it is treating your application in accordance with its stated policy and that the Secretary of State should not grant your request to direct Cornwall Council to determine your case within a specified time period.

Consideration

16. Under Section 53 of the Act authorities are required to investigate applications for modifications to their definitive map and statement of public rights of way *as soon as reasonably practicable* and, after various consultations, decide whether to make an order on the basis of the evidence discovered.
17. The Secretary of State recognises the scale of the task facing councils in dealing with backlogs of such cases with limited resources. A system for prioritising this work has long been recognised as the most pragmatic way to address this task. The publication of a policy statement that sets out the authority's priorities for dealing with applications for modifications to the definitive map is generally accepted as a reasonable approach to take in the circumstances.
18. The Secretary of State is aware that the legislation leads applicants to expect a decision within 12 months under normal circumstances and that your case has been awaiting determination for over 3 years already. The Council estimates that it will be another 5 years (or longer if additional applications are made that are prioritised over yours and placed ahead of yours in the queue.)
19. Whilst Cornwall Council's criteria for allocating priority focuses on the potential usefulness of the claimed right of way, the 'exceptional circumstances' that might warrant earlier consideration are not defined.
20. Your application appears to rely primarily on evidence from users of the claimed footpath and there is a danger that vital witness evidence relevant to your case may be lost with the passage of time. Written evidence is valuable but in disputed cases witnesses are often required to appear at inquiries or hearings where cross-examination can add considerable weight to the evidence presented.
21. Also, further delays in establishing the status of this route will not best serve the local community, visitors, or the interests of those parties in dispute over private rights to the lane. Whilst it is not necessary for a public right of way to be recorded on the definitive map in order for action to be taken to remove an obstruction preventing public passage, it is understandable that a Council may prefer to establish the legal status of a claimed footpath before commencing any formal proceedings.
22. Given the facts of this case, the Secretary of State does not consider it reasonable for the determination of your application to wait until 2022 or later. She accepts the Council will require some time to carry out its investigations and to make a decision. The Secretary of State therefore proposes to allow the Council a further 12 months to complete its research and to determine the application.

Decision

23. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time your application should be determined. In exercise of the powers vested in her by paragraph 3 (2) of the Schedule 14 to the 1981 Act, the Secretary of State has directed Cornwall Council to determine your application not later than 1 March 2018.
24. A copy of the Secretary of State's letter of direction to the authority is enclosed, and a copy of this letter is being sent to the Council.

Yours faithfully

Sue Arnott

INSPECTOR

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