



Direction Decision

by **Mark Yates BA (Hons) MIPROW**

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 June 2017

Ref: FPS/D0840/14D/13

**Representation by Mr Herr
Cornwall Council**

**Application to modify the definitive map and statement in respect of
Footpaths 540/28 and 540/10 in the parish of St Gennys (OMA ref.
WCA/567)**

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") seeking a direction to be given to the Cornwall Council ("the Council") to determine an application for an order, under Section 53(5) of that Act.
 - The representation, received on 13 February 2017¹, is made by Mr Herr.
 - The certificate under Paragraph 2(3) of Schedule 14 was received by the Council on 9 October 2010.
 - The Council was notified of the representation on 13 March 2017 and submitted its response on 6 April 2017.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. 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. 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 applicant².
3. The Council has a policy statement for prioritising applications which involves a two tier system and there is nothing to suggest that the Council's adopted policy is unreasonable. This application is stated to be a higher priority case as it relates to a section of the South West Coast Path National Trail. The Council also points to the longstanding existence of an alternative route for the public

¹ It is a copy of a letter from the applicant in relation to an earlier appeal to the Secretary of State

² Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

to use. However, it is apparent that the application seeks to resolve an anomaly which dates back to the production of the definitive map for the area in 1954.

4. It is not possible for me to decide how difficult the case will be to determine and I recognise that the application needs to be investigated and a report prepared for the relevant Council committee. I agree with the Council that the applicant has provided no reasons to support the case being elevated above other applications. Nonetheless, the applicant is rightly concerned about the time taken to determine the application. The Council estimates that this case will not be determined for approximately a further three to four years.
5. 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 twelve months under normal circumstances. In this case, nearly seven years have passed since the application was submitted and the determination of the application is not anticipated to commence for at least another three years. I do not consider that such a delay can be viewed as reasonable.
6. 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. Bearing in mind the other applications to be determined a further period of eighteen 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 to the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Cornwall Council to determine the above-mentioned application not later than eighteen months from the date of this decision.

Mark Yates

INSPECTOR