



## 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: 03 January 2018

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**Ref: FPS/D0840/14D/17**

**Representation by The Ramblers Association (Caradon Group)  
Cornwall Council**

**Application to add a Footpath near Newton Barn, Metherell, Callington  
(Parish of Calstock) (OMA ref. WCA547)**

- 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 Cornwall Council to determine an application for an Order made under Section 53(5) of that Act.
- The representation, dated 30 August 2017, is made by Mr Kevin Connor on behalf of Cornwall Ramblers.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 20 February 2008.
- The Council was notified of the representation on 20 October 2017 and submitted its response on 20 October 2017.

**Summary of Decision:** The Council is directed to determine the above-mentioned application.

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### Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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 applicant<sup>1</sup>.
2. The Council's policy for dealing with modification order applications involves a two tier system, and I consider this approach to be reasonable. Higher priority is given to cases that have preferential status under the policy and meet a defined set of criteria. This is one such case, and is currently number 29 on the priority list. With current resources, the Council estimates it will determine approximately 8-10 modification orders each year, and predicts that this case will be determined within approximately 2 to 3 years. However, this may

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

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- change if the Council receives more directions from the Secretary of State in the interim.
3. The applicant believes the Council has not allocated sufficient resources to deal with applications in accordance with Schedule 14 of the 1981 Act. Its original target for determining this application was February 2009, over 8 years ago. The Council's policy for prioritising cases is currently under review and in the meantime more applications are being received.
  4. The applicant has identified a number of grounds for a direction. These include the fact that the application is based on user evidence. Concerns are expressed about the age and ability of witnesses to give evidence and attend any public inquiry that may be held, and that some witnesses may have moved away. Consequently, this may have a prejudicial impact on the decision making process. The applicant believes the delay in determining this application is both unreasonable and unfair, and seeks a 6 month period in which the application should be determined.
  5. The Council acknowledges the applicant's concerns, but points out that this case has progressed up the priority list, albeit more slowly as a result of other cases being promoted. The Council does not specify what exceptional grounds might be relevant, but states that none have been put forward to demonstrate why this case should rise higher up the list and take priority over others that have waited longer to reach their turn to be processed.
  6. 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<sup>2</sup>. In this case, 9 years have passed since the application was submitted and it will be a further 2-3 years, as a best estimate, before the Council determines it, taking it to 2020, some eleven years in total. Such a period of time is not considered to be reasonable, and risks the loss of relevant witness evidence as time passes.
  7. 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. I consider it appropriate to allow a further 12 months for a decision to be reached.

### **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 Cornwall Council to determine the above-mentioned application not later than 12 months from the date of this decision.

*S Doran*

**Inspector**

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<sup>2</sup> The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14