



Direction Decision

by **Barney Grimshaw BA DPA MRTPI (Rtd)**

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

Decision date: 19 February 2018

Ref: FPS/D0840/14D/21

**Representation by Claire Gunn for Mr and Mrs T Gunn (Dec'd)
Cornwall Council**

Application for the addition of a Public Footpath running from cul de sac end of footpath Kea 12 (grid ref SW 8296/4081) to the junction with public road (grid ref SW 8299/4080), Cowlands Creek (OMA ref. WCA537)

- 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 1 November 2017, is made by Clare Gunn.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 30 May 2006.
- The Council was notified of the representation on 29 November 2017 and submitted its response on 16 January 2018.

Summary of Decision: The Council is directed to determine the above-mentioned application not later than 6 months from the date of this Direction.

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 applicant¹.
2. In this case an application was made in May 2006 by Mr TR and Mrs WC Gunn for a footpath at Crowlands, Kea to be added to the definitive map of rights of way. Mr Gunn is now deceased and Mrs Gunn unwell so the appeal is being pursued on their behalf by their daughter, Clare Gunn.
3. Cornwall Council operates a prioritisation policy for dealing with applications such as this and the current application was given a relatively high priority and

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

is currently positioned No.26 out of 124 outstanding applications. The council estimate that 10 applications per year can be determined given expected staff resources available. It is therefore estimated that the application will be determined in approximately 2-3 years' time.

4. 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 circumstances². In this case, more than 11 years have passed since the application was submitted and it is unlikely that it will be determined for a further 2-3 years. No exceptional circumstances have been indicated and indeed the application is said to have been categorised as high priority. This would seem to indicate that the authority cannot be allocating sufficient resources to enable it to deal with applications in a reasonably timely manner.
5. Accordingly, I have decided that there is now a case for setting a date by which time this 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 and I therefore propose to allow a further 6 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** Cornwall Council to determine the above-mentioned application not later than 6 months from the date of this direction.

Barney Grimshaw

INSPECTOR

² 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