



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: 5 October 2018

Ref: FPS/D0840/14D/22

Representation by Mrs Janet Dallimore

Cornwall Council

Application to add a Bridleway from Road U6044 at Bosleake to Road U6044 at Bowling Green in Carn Brea CP (OMA ref. WCA556)

- 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, under Section 53(5) of that Act.
- The representation dated 1 June 2018 is made by Mr David Johnston on behalf of Mrs Janet Dallimore.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 12 April 2014.
- The Council was consulted about your representation on 20 June 2018 and the Council's response was made on 3 August 2018.

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

Reasons

1. 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 applicant¹.
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 72 on the priority list. With current resources, the Council estimates it will determine approximately 10 applications each year, and anticipates that this case will be dealt with in approximately 5 years' time. However, if determination were to be

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

earlier this would be at the expense of delays in processing other applications which may have equal merit.

3. The applicant states the appeal route forms part of a circular route linking with a network of historic ways which fall within the Historic Mining Area World Heritage Site. Although the route is currently available, a blockage having been removed, the situation remains volatile. Together with the age of the landowner (over 90 years old), it is believed this case based on historical and user evidence should be prioritised.
4. The Council does not consider the applicant's reason, that they want the application determined within a reasonable timescale, takes account of the impact of granting that request on other applications displaced because theirs is given higher priority. They consider all high priority applications should be treated fairly and equally. In this case, the Council considers the actions it has already taken to be sufficient, and that the applicant has failed to demonstrate why their application should be given greater priority over those currently sitting above it in the Council's register.
5. It is appreciated that taking an application 'out of turn' will displace others of equal or even higher merit. It is further recognised that the Council is trying to deal with applications in an equitable manner. Nevertheless, it is this application that is currently under consideration and 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. Therefore I do not share the view expressed by the Council that the appeal process under Schedule 14 recognises that applications will not be determined within twelve months of the application date. In this case, more than 4 years have passed since the application was submitted and it will be a further 5 years before the Council anticipates it will be dealt with. 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. A further period of 6 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 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Cornwall Council to determine the above-mentioned application not later than 6 months from the date of this decision.

S Doran

Inspector