



Direction Decision

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 8 July 2019

Ref: FPS/D0840/14D/31-35

Representation by Gina Harvey

Cornwall Council

FPS/D0840/14D/31 To add a bridleway which runs from Ventonwyn Farm past Ventonwyn Wood to road near Dowgas/Downderry; adding the right of way from Downtonwyn Harvose Farm to Downderry to Coombe Hill Road; and upgrading the bridleway from Rosewyn to Harvose Farm (WCA589)

FPS/D0840/14D/32 Upgrading the bridleway from Ventonwyn Farm to Trewinnow Farm (WCA590)

FPS/D0840/14D/33 To add a bridleway running from road near Ventonwyn Mine to Dowgas known as Dump Lane (WCA591)

FPS/D0840/14D/34 Adding the bridleway from where path breaks left to Coombe Hill; and upgrading the bridleway from Coombe Hill near viaduct where path breaks left to towards Coombe Hill (WCA592)

FPS/D0840/14D/35 Upgrading the bridleway from Nantellan past Garlenick Manor to road (WCA593)

- 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 is made by Gina Harvey, dated 17 February 2019.
 - The certificates under Paragraph 2(3) of Schedule 14 are dated 12 April 2014.
 - The Council was consulted about your representation on 25 February 2019 and the Council's response was made on 3 April 2019.
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Decision

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

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
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- expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
3. The applications listed above were submitted some 5 years ago now. The applicant considers it likely that these applications will be disputed and takes the view that, in such situations, the cross-examination of witnesses can add considerably more weight to the evidence presented. Her primary concern is therefore that, as a result of the time taken to determine these applications, the outcome could be prejudiced as the availability of witnesses potentially decreases over time.
 4. In response, Cornwall Council explains that it processes applications in accordance with a revised policy statement published in June 2006. Other than in exceptional circumstances, the revised policy statement indicates that the County Council will give priority to applications to modify the Definitive Map if the path is categorised as a 'Gold Path'; is within the "Coastal Corridor"; links to "Open Access" land; or links to Public Open Spaces. Two of the above applications (WCA 592 & 593) have been added to the higher priority list and the County Council has committed to determining the other applications at the same time. The County Council advises that it has recently exceeded its target of progressing 10 applications to determination per year and accordingly anticipates that these applications would reach the top of the list in approximately six or seven years from now.
 5. The County Council notes that the above cases are accompanied by a significant number of witness statements and explains that in such situations it does not routinely interview users, relying instead on the quantity and quality of the evidence contained in those witness statements. Having regard also to documentary evidence that might be available, the County Council does not consider that the above applications would be compromised any more significantly by any delay than would other cases currently before the County Council that similarly rely on user evidence. Moreover, the County Council considers that directing the above applications to be determined would elevate them above other applications that have been waiting longer for their turn and that this would prejudice those other applications.
 6. The County Council also advises that it has experienced a spike in new modification order applications over the last two years and that it is anticipating an exponential increase in the number applications in the coming years. Whilst the County Council has demonstrated its commitment to determining applications by not reducing resources dedicated to this purpose, the anticipated increase in the number of applications likely to be submitted will represent an additional burden on the surveying authority. In these circumstances, the County Council considers that a direction to determine the above applications would ultimately be to the significant detriment of the other cases on the priority list.
 7. Authorities are required to investigate applications as soon as reasonably practicable. 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. In your case, some 5 years have passed since the applications were submitted. A period of 5 years cannot be

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

considered reasonable by any standard, even taking into account all the considerations that the County Council has outlined in its response.

8. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the applications. A further period of six 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 applications not later than 6 months from the date of this decision.

Paul Freer

INSPECTOR