



## Direction Decision

By **Helen Heward BSc (Hons) MRTPI**

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

Decision date: 11 December 2019

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**Ref: FPS/D0840/14D/39**

**Representation by Clive R Walley**

**Cornwall Council**

**Application for the addition of a footpath running from Trierieve Estate to Deviock Hill, Deviock (OMA ref. WCA 544)**

- 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 Clive R Walley, dated 11 March 2019.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 14 January 2007.
  - The Council was consulted about your representation on 30 July 2019 and the Council's response was made on 16 September 2019.
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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.
3. 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>.
4. The applicant's representation sets out a number of matters pertaining to the merits of the claim. However, whilst the circumstances of the case are before me, the merits of the claim are not for me to address in this decision.
5. The Council advises that it has a very large backlog and that they determine 8 to 10 definitive map modification order applications per year. The application is No 121 on the Council's list of applications and predicts a determination within approximately 12 years with the current level of resources.

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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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6. The Council gives higher priority and preferential status to cases meet a defined set of criteria. Other applications have also been promoted above it by virtue of successful appeals. The Council considers this claim to be a lower priority case because it concerns a relatively short length of footpath to a woodland which does not connect to other routes on the rights of way network. The claimed route is open to the public and available for use and the Council has limited knowledge about the permanence of access to the woodland in the long term. The Council does not wish this claim to be promoted above claims concerning currently obstructed and not available to use routes.
7. However, Circular 1/09 makes it clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way, and the Council has statutory duties to keep the definitive map up to date. 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.
8. This application was submitted in 2007. The Council's current estimation is that it will likely be another 12 years before the application reaches the top of the list. The Council admit that this may change, the delay could be more. But even on the 12 year estimate it would take the Council almost a quarter of a century to determine this claim.
9. A lack of resources and the prioritisation scheme that the Council has adopted are not sufficient excuse for such a significant delay in determining any application and do not amount to exceptional circumstances for the delay. Moreover, it is apparent from the applicant's representation that the claim relies at least partly on user evidence. Such a long delay would without doubt risk a loss of witness evidence.
10. 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 12 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 31 December 2020.

*JHeward*

INSPECTOR