



Direction Decision

by Mark Yates BA(Hons) MIPROW

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

Decision date: 12 March 2020

Ref: FPS/D0840/14D/40

**Representation on behalf of Lezant Parish Council
Cornwall Council**

Application for the addition of a restricted byway from lane from A388 Road to Trekenner Mill to lane down to Old Treburley and fork lower down the lane to Old Treburley

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 seeking a direction to be given to the Cornwall Council ("the Council") to determine an application for an order, under Section 53(5) of that Act.
 - The representation, dated 2 October 2019, is made on behalf of Lezant Parish Council.
 - The certificate under Paragraph 2(3) of Schedule 14 was served on 14 December 2016.
 - The Council was consulted on the representation on 8 November 2019 and the Council's response was made on 23 December 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. 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.
3. The Council's current policy statement is based on a two-tier system. This application is considered to not meet any of the criteria in the policy and has been given a lower priority. The application is currently positioned at 151 out of 186 applications to be determined. However, other newer cases could be promoted above it in certain circumstances. It is anticipated that the Council

¹ Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09

will be able to determine between 10 and 12 applications each year based on current resource levels.

4. The Council states that the applicant has provided no grounds to substantiate why this relatively recent application merits attention over similar claims. It is asserted that there are no mitigating factors, nor exceptional circumstances in this case. On this matter, I note that differing views have been expressed regarding the extent to which the route is currently available for use by the public.
5. The application was submitted relatively recently when compared with many of the applications awaiting determination. Further, the Council draws attention to the impact that the promotion of this application will have on other cases. However, 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 this case, 3 years have passed since the application was made and it is anticipated that the application will not be determined for a further 12-15 years. To expect an applicant to wait such a length of time for the determination of their application cannot be viewed as reasonable.
6. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined. Nonetheless, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I therefore take the view that a further period of 6 months would be reasonable.

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 to 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.

Mark Yates

INSPECTOR