



## 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: 21 September 2020

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**Ref: FPS/D0840/14D/42**

**Representation by Barry Litton**

**Cornwall Council**

**Application to downgrade a section of Byway Open to All Traffic No.47 Tintagel to a Footpath from north west corner of field OS 818 (the boundary of The Hermitage) to join with FP No.46 (OMA ref. WCA570)**

- 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 29 May 2020 is made by ET Landnet Ltd on behalf of Barry Litton and his successors in title.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 30 August 2010.
  - The Council was consulted about your representation on 5 June 2020 and the Council's response was made on 24 July 2020.
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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 applicant<sup>1</sup>.
3. Cornwall Council's current policy statement is based on a two-tier system. This application fulfils the criteria for preferential status and has been given a higher priority as it relates to the downgrading of a right of way categorised 'Gold', as defined by the Public Path Improvement Programme approved by the Council's Executive in 2005. Nevertheless, it currently stands at number 53 in their priority list of undetermined Definitive Map Modification Order (DMMO) applications. This is partly due to other applications (some submitted more

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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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- recently) having been promoted above it after successful appeals to the Secretary of State for directions to make determinations. As the Council anticipates processing between 10 and 12 DMMO applications each year based on current resource levels, it estimates this application will be determined in approximately 4 to 5 years' time.
4. The application, made on 30 August 2010, was validated in September 2010, the Applicant having been made aware of the backlog of DMMO applications waiting to be processed. No investigation of this application has begun, and the Council does not consider there to be any mitigating factors or exceptional circumstances in this case to warrant its promotion over and above other similar cases awaiting determination. The Council considers applications where the path is obstructed and unavailable for use, or where the application relies on witnesses where evidence of use might be lost by further delay, will suffer were this application promoted above them.
  5. In making the application, the Applicant seeks to ensure the proper recording and management of the public rights of way network at this location. They are concerned that with the Council having been directed to determine other applications out of sequence, there is a risk that this one will fall further behind in the Council's register. This is acknowledged by the Council and they express concerns about the number of directions given by the Secretary of State and what will happen should the number of successful appeals continue to grow, notwithstanding the priority policy it has in place. In this particular case the Council considers the appeal is not in the public interest and the Applicant has failed to provide sufficient grounds to justify why this application should be elevated above others.
  6. Whilst the Council believes that a direction in this case would be to the detriment of other cases on their priority list, 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, some 10 years have passed since the application was submitted and no exceptional circumstances have been indicated by the Council for its non-determination, and it is anticipated they will not determine it for a further 4 to 5 years. This cannot be considered reasonable. I note the Council's view that, had it not been directed to determine so many other cases, this application would have naturally reached its turn for processing within the next 1-2 years. However, this would still have meant a delay of some 11 to 12 years in its determination.
  7. 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 reach a decision on the application. I note that the Applicant seeks its determination within 6 months. However, with restrictions in place due to the outbreak of the Covid-19 virus, it would seem that exceptional circumstances have arisen which could not have been foreseen. Accordingly, to give the Applicant some certainty that the application will be determined in the not too distant future, and for the Council to undertake its investigations, 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 12 months from the date of this decision.

*S Doran*

**Inspector**