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Mr PG Bennallick  
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Your Ref:  
Our Ref: FPS/D0840/14D/11  
Date: 20 December 2016

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Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SCHEDULE 14  
Cornwall Council

Direction: for an application for a byway open to all traffic in Rosenannon, St. Wenn parish, Cornwall

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 8 August 2016 for a direction to be given to the Cornwall Council ("the Council") under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act"). The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the Act, to modify the Council's definitive map and statement of public rights of way for the area so as to add a byway open to all traffic in Rosenannon within the parish of St. Wenn.
2. The Council was consulted about your request for a direction on 22 August 2016 as required by the Act. The Council's formal response was received on 23 September 2016.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether she should direct an authority to determine an application for an order within a specific period. These issues include 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 that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

## Your case

4. As the application has been placed in the lower category of the Council's policy for dealing with modification order applications it is not possible to say when it will be determined. It is likely that this application will be overtaken by new higher

category applications. At the current rate of progress it is unlikely that the application will be determined until at least 20 years after it was submitted. A proposed change to the Council's policy would not lead to an earlier determination of the application.

5. It is believed that a lack of resources is the reason why the Council has not dealt with applications as soon as reasonably practical in accordance with Schedule 14 to the 1981 Act. The Council's reference to a consultation on a proposed stopping up order shows a lack of understanding of the statutory processes and is not a valid reason for delay.
6. On the current rate of progress, it is likely that the list of undetermined applications is getting longer, each year the Council is receiving more applications than it can determine. The Council has considered the evidence presented with the application and added the route to the list of streets as a restricted byway. Based on the evidence supplied the Council determined that the route is an ancient highway. However, it has failed to make a modification order to add the route to the definitive map and statement.
7. The route was obstructed in 2005 and the loss of the path is set to continue until the matter is resolved. The Council now proposes to stop up a proportion of it. This proposal was strongly objected to by local residents and the parish council. The identification of the route in 2014 as a restricted byway and the reaction from the local community is a strong reason why the application should be given priority over other applications. The Council already appears to have determined this application. There should now be nothing to stop the Council from making an order to add the route to the definitive map and statement.
8. A regrettable consequence of the delay is the gradual loss of evidence from witnesses. In terms of the user evidence forms and statements provided one person has passed away and there are other elderly witnesses. Younger witnesses may move away from the area. There is a huge difference between the time taken to process modification order applications and applications involving rights of way under the Town and Country Planning Act 1990.
9. It is requested that the Council be directed to determine the application within 6 months of the direction.

### **The Council's case**

10. The Council's policy involves a two tier system. Subject to any exceptional circumstances, higher priority is given to cases that have preferential status under the policy and meet the defined set of criteria. Cases which do not meet the criteria are assigned a lower priority. This case does not meet any of the criteria and has thus been given a lower priority.
11. This case is currently positioned at 21 in the lower priority list and positioned at 90 out of 108 cases in total. In an attempt to increase the numbers and speed by which applications are processed the Council has been updating its systems to streamline throughput of cases and now employs two full time members of staff whose role is almost exclusively dedicated to resolving definitive map modification order cases. The current estimate for determination has risen to 8-10 modification order cases per year. With that as a guide it is predicted that the case will be determined within 9-10 years.

12. The applicant has failed to mention that his application was the subject of a previous request for a direction which was declined by the Secretary of State in July 2009. As the legal team at the Council has already declared the existence of a highway with the status of restricted byway over the route, it is aiming to prioritise the application. This means that it should be considered within 2 years.

## **Consideration**

13. There is nothing apparent to suggest that the Council's adopted policy as a whole is unreasonable. The Secretary of State recognises the resources currently available to investigate such applications and the backlog of cases that has amassed. Further, it is not considered that the time taken to determined applications under other legislation has any bearing on this application.
14. Nonetheless, a period of ten years has elapsed since the application was submitted. The original estimate given would lead to the application not being determined for around another ten years. Irrespective of the previous request made by the applicant, the Secretary of State considers such a period of time to be unreasonable. It is also apparent that the position may change if additional higher priority applications are received. The applicant rightly points to the risk of valuable evidence from witnesses being lost in such circumstances.
15. The Council has indicated that, in light of the view reached by its legal team, the application should be determined in around two years. On this issue, the Secretary of State agrees with the applicant that it should be possible to reach a decision sooner in the circumstances. It is apparent that the Council has taken a view that the route claimed is a restricted byway. The potential stopping up order is a separate matter to the application to modify the definitive map and statement. Further, the Council's response places no reliance on the proposed stopping up.
16. The Secretary of State takes the view that the determination of the modification order application should not be held up indefinitely. Nonetheless, sufficient time needs to be allowed for the Council to complete the formal determination of the application. In the circumstances it is considered that a period of 12 months should be allowed for the determination of the application.

## **Decision**

17. In the circumstances the Secretary of State has decided that there is a case for setting a date by which time the application should be determined. In exercise of the powers vested in her by paragraph 3(2) of Schedule 14 to the Act, the Secretary of State has directed the Cornwall Council to determine this application within 12 months.
18. A copy of the Secretary of State's letter of direction to the Council is enclosed, and a copy of this letter is being sent to the Council.

Yours faithfully

*Mark Yates*

**Inspector**

DIR DL1