



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 4 August 2017

Ref: FPS/D0840/14D/15

Representation by Mrs Jane Combes

Cornwall Council

Application for addition of a Bridleway from bridge in Colan Woods, Fir Hill, to Tregoose Road, Nanswhyden, also upgrading Footpath from Colan to Nanswhyden

- 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 28 May 2017, is made by Jane Combes.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 17 July 2006.
- The Council was notified of the representation on 16 June 2017 and submitted its response on 21 June 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to 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.
2. It is noted that the Council's current policy for dealing with applications involves a two tier system with higher priority being given to cases that have preferential status under the policy and meet a defined set of criteria. It is appropriate that the Council determines applications in accordance with its current policy. The application (WCA 539) relates to a section of path which meets the criteria for being given a higher priority.

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

3. With current resources the Council estimates that approximately 8 to 10 modification orders will be determined each year. It is predicted that this application will be determined within approximately 2 years unless further directions are made by the Secretary of State.
4. The applicant has identified a number of grounds for a direction and the Council acknowledges those concerns. The application has already been re-evaluated and is now next in line for processing on the relevant case officers case list. 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, 11 years have passed since the application was submitted and determination may take a further two years. It is unreasonable for the determination of an application to take 11 years and more and no exceptional circumstances have been identified by the Council.
5. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. However, in the circumstances I have decided that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 12 months for a decision to be reached.
6. I recognise that any direction will have an effect on other applications of a higher priority. However, as noted above, it is not reasonable for an applicant to wait 11 years and more, before the determination of an application.

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** Cornwall Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Martin Elliott

INSPECTOR