



## 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: 03 January 2018

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Ref: FPS/D0840/14D/19

Representation by Georgina Harvey

Cornwall Council

**Application to upgrade Footpath 419/38 to Bridleway, linking roads U6101, CO217 and CO499, Polgooth (Parish of St Mewan)(OMA ref. WCA 572)**

- 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 1 October 2017, is made by Georgina Harvey.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 3 May 2011.
- The Council was notified of the representation on 9 October 2017 and submitted its response on 20 October 2017.

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

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### 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 applicant<sup>1</sup>.
2. The Council's policy for dealing with modification order applications involves a two tier system, and I consider this approach to be reasonable. Higher priority is given to cases that have preferential status under the policy and meet a defined set of criteria. This is one such case, and is currently number 38 on the priority list. With current resources, the Council estimates it will determine approximately 8-10 modification orders each year, and predicts that this case will be determined within approximately 3 to 4 years. However, this may

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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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- change if the Council receives more directions from the Secretary of State in the interim.
3. The applicant considers the delay will severely prejudice the outcome of the application as it is user based. None of the witnesses have been interviewed and many have already moved away or will have passed away by the time the application is processed: this is unfair both to users and to the landowners affected.
  4. The Council acknowledges the applicant's concerns, but points out that this case has progressed up the priority list, albeit more slowly as a result of other cases being promoted. Indeed, during a previous Schedule 14 direction appeal the Council accepted an error in its position on the list, and the case benefitted by being promoted 6 places. The Council does not specify what exceptional grounds might be relevant, but states that none have been put forward to demonstrate why this case should rise higher up the list and take priority over others that have waited longer than six years to reach their turn to be processed. Nevertheless, this case is fourth in line for processing on the relevant officer's case list, thus demonstrating the Council's intention to deal with it in a meaningful timescale.
  5. 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. Six years have passed since the application was submitted and it will be a further 3-4 years, as a best estimate, before the Council determines it, taking it to 2021, some ten years in total. Such a delay risks the loss of relevant witness evidence as time passes. Notwithstanding that a previous direction request was made by the applicant, in the present circumstances such a period of time is not considered to be 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. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I consider it appropriate to allow a further 12 months for a decision to be reached.

### **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**