



Direction Decision

by **Barney Grimshaw BA DPA MRTPI (Rtd)**

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

Decision date: 23 May 2017

Ref: FPS/D0840/14D/14

**Representation by Graham Ronan
Cornwall Council**

Application to add a footpath near Hilly Field Cottage, Ludgvan (Cornwall Council Ref: WCA 578)

- 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 6 February 2017, is made by Graham Ronan.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 19 October 2012.
- The Council was notified of the representation on 28 February 2017 and submitted its response on 4 April 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application not later than 6 months from the date of this Direction.

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. In this case, the applicant points out that a considerable time has already passed since the application for the claimed footpath to be added to the definitive map was made and that it was made entirely on the basis of user evidence. It is feared that, if further delay occurs in dealing with the matter,

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

- users who provided evidence may no longer be available to provide evidence at a public inquiry should one be necessary.
3. On behalf of Cornwall Council it has been stated that applications are dealt with in accordance with a policy statement revised in 2006 which sets out criteria used to prioritise applications. The current application has been afforded high priority under the policy but, even so, it is currently positioned as No. 53 in the list of 113 outstanding applications. The current rate of dealing with applications is 10 per year which suggests that it is likely to be over 5 years before it is dealt with.
 4. The council further states that, if it is directed to deal with this application before it has risen to the top of the priority list, this will inevitably mean that the determination of other higher priority applications will be delayed.
 5. I have no reason to believe that the council's policy for the prioritising of applications is unreasonable but, nevertheless, the fact that it appears that even high priority applications might have to wait 10 years before they are determined seems excessive. What is reasonably practicable for an authority to achieve will inevitably be affected by the resources allocated to dealing with application such as this and it appears to me that Cornwall Council is currently not allocating sufficient resources to this work so as to effectively carry out its statutory duty to keep the definitive map under continuous review.
 6. 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, over 4 years have passed since the application was submitted and no exceptional circumstances have been indicated. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application but, it is not in my view reasonable for a further 5 years or more to elapse before it is determined.
 7. 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 6 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** Cornwall Council to determine the above-mentioned application not later than 6 months from the date of this Direction.

Barney Grimshaw

INSPECTOR