



Direction Decision

by **Helen Slade** MA FIPROW

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

Decision date: 22 January 2018

Ref: FPS/D0840/14D/18

**Representation by Sithney Parish Council
Cornwall Council**

**Application for the addition of a Bridleway near Poldown, Breage, Helston
(WCA 518A)**

- 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 made under Section 53(5) of that Act.
- The representation, dated 11 September 2017, is made by Sithney Parish Council.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 14 September 2006.
- The Council was notified of the representation on 21 September 2017 and submitted its response on 13 November 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. The application route currently appears at number 88 on Cornwall Council's priority register, and records the date of the application as being 22 October 2004. Cornwall Council ('the Council') indicates that at its current rate of progress this application will not be determined until about 2025.
3. Sithney Parish Council ('the Parish Council') acknowledges that the application was registered in October 2004, but the formal application papers (including the certification of service on the landowners) are dated 14 September 2006. The Parish Council collected user evidence in relation to the claimed route

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

- between 2002 and 2005. I therefore consider that the date of the formal application (and the date relevant to this representation) is the later date.
4. The application route itself is already recorded as a public footpath for half its length, and the Parish Council's application to modify the Definitive Map and Statement is to upgrade the public footpath to a bridleway and add the remaining length of the route as a bridleway.
 5. The Parish Council points out that the Council is under a statutory duty to determine such applications 'as soon as reasonably practicable' and that the lack of a determination is prejudicial to their case due to the loss of witnesses with the passage of time. It highlights the different approaches taken to public path orders under the Town and Country Planning Act 1990 ('the 1990 Act') which are dealt with by the Council, in many cases, within a matter of months rather than years. The Parish Council considers that the Council is failing in its duty to keep the Definitive Map up to date, and that it has not allocated sufficient resources to the task to allow it to comply with its statutory functions in this respect.
 6. The Council responds by stating that the application is being dealt with strictly in accordance with its published policy and its available resources, and that the path does not fall within any of its priority categories. These categories are given as being (in summary):
 - i. The path is categorised as, or links to, a 'Gold Path';
 - ii. The path lies within the 'Coastal Corridor';
 - iii. The path links to 'Open Access' land or other land with public access linked to Environmental Stewardship Schemes;
 - iv. The path links to other types of recognised public access such as public open space, Country Parks, Woodlands, Heritage Sites, Local Nature Reserves etc.
 7. I have not been provided with the documents to which the Council refers in its policy and which set out the parameters for the various criteria identified in the list above. In particular I have no information on what constitutes a 'gold path' or a 'silver path'.
 8. The Council considers that the application has no special merit which would warrant it being considered out of turn, and that by doing so it will prejudice other applications in the list. It points out that the powers available to the Council under the 1990 Act in relation to public path orders are very different from the duties set out in the Wildlife and Countryside Act 1981 in relation to Definitive Map Modification Orders ('DMMOs'). The Council states that DMMOs are more time consuming and are not generally considered to have the same time pressures associated with them. The Council denies that it is failing in its statutory duties and considers that the existence of an appeal procedure implies that the expectation is that application will not be determined within the 12 months indicated in the 1981 Act.
 9. I do not consider that any of the reasons given by the Council for not determining this application could be considered to be exceptional circumstances. I accept that these applications involve a significant amount of time to investigate, but that is the nature of the work and it requires sufficient

- resources to be allocated to it. It is unacceptable to delay such a determination by a period of nearly 20 years, as indicated by the Council.
10. Neither do I accept that the displacement of other cases in its priority list is a justifiable reason for not determining this application. I have not been provided with information to allow me to understand fully the priorities assigned by the Council, but in any case the opportunity to seek a direction is available to all applicants and is there to be used. Sithney Parish Council has availed itself of the opportunity and should not be penalised by the lack of action by others also entitled to use the procedures. Indeed by seeking this direction the Parish Council has demonstrated the importance of the path to the applicant and the local community.
 11. I agree with the Parish Council that the loss of witnesses is a significant factor, and consider that this will apply to both the users and to the landowners. It is unhelpful to all parties, including the investigating Council, to delay determination of applications, and may prejudice a fair outcome. Statutory Declarations, as suggested by the Council as a means of mitigating the loss of witnesses, are only as good as the information they contain, and any issues which require clarification cannot be investigated satisfactorily if witnesses pass away or are otherwise unavailable.
 12. To imply that the existence of an appeal procedure indicates that it is not expected that applications will be dealt with in a timely manner is a misinterpretation of the requirements. 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 circumstances². In this case, 11 years have passed since the application was certified 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 a further projected 8 years is unacceptable.
 13. 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 six 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 decision.

Helen Slade

INSPECTOR

² The 12 month period commences on the date a valid certificate is submitted to the order-making authority in accordance with paragraph 2(3) of Schedule 14