



Direction Decision

by **Heidi Cruickshank** BSc (Hons), MSc, MIPROW

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

Decision date: 19 February 2018

Ref: FPS/D0840/14D/16

Representation by Mr G Ronan

Cornwall Council

Application to add a footpath from the A30 County Road at Buryas Bridge, Madron CP to Footpath No. 60, Penzance CP

- The representation is made under Paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981 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 25 August 2017, is made by Mr G Ronan.
- The certificate under Paragraph 2(3) of Schedule 14 is dated 19 November 2005.
- The Council was notified of the representation on 4 October 2017 and submitted its response on 12 December 2017.

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

Reasons

1. Authorities are required to investigate applications made under Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act") 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.
2. 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 and Statement 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, as set out in the Circular¹.
3. Cornwall Council ("the Council") referred to their policy statement 2006, which sets out that, subject to exceptional circumstances, priority will be given to applications under the 1981 Act if the path: is categorised as or links with a 'gold' status path; is within the 'Coastal Corridor'; links to areas of 'Open Access' or land within areas of public access identified in the Environmental Stewardship Scheme; or links to Public Open Spaces, Country Parks,

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

- Woodlands, Heritage Sites or Local Nature Reserves with approved or promoted access.
4. The Council say that as this application affects Footpath No. 60, a gold status path, it has been added to the lower priority list (C) and is positioned at No. 22. With the current level of output for this work, progressing 10 applications to determination per year, the Council anticipate that this application would progress to the top of the list in 2 to 3 years' time.
 5. The applicant suggests that insufficient resources have been allocated to deal with applications "*...as soon as reasonably practicable...*" as referred to in the 1981 Act² and the Circular. The Circular sets out, "*Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way...*". The Council are satisfied that they are performing their statutory duty.
 6. Whilst the Council say that a direction on this application will displace other applications from the priority list, I can only deal with the application which has been made. It is noted that there has been a spike in direction appeals in the past twelve months.
 7. The applicant has referred to Article 6(1) of The European Convention on Human Rights, enshrined in law in the United Kingdom by the Human Rights Act 1998, which sets out that "*In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time [my emphasis] by an independent and impartial tribunal established by law...*". I agree with the applicant that a period of thirteen years from the date of application could not be viewed as being "*...within a reasonable time...*".
 8. In relation to the user evidence I note the suggestion of the Council that the potential loss of oral evidence, as a result of the time taken until it might be tested, such as at public Inquiry, could be addressed by way of statutory declarations. Although this may have some value, I agree with the applicant that the strength of the evidence weakens with time, because people pass away, leave the area or become uninterested or unable to attend an Inquiry. I also consider this unfair to the affected landowner, who may have witnesses suffering similar limitations in providing direct evidence and who may not get the opportunity to test the evidence given through cross-examination.
 9. I do not consider it helpful to compare the timescales in different processes within the Council; I am only considering this application in relation to this process. However, I do not agree with the Council that "*...the inclusion of the appeal process recognises the fact that applications will not be determined within 12 months.*" I consider that the applicant's right to seek a direction from the Secretary of State actually shows an expectation of determination of an application within 12 months under normal circumstances, as suggested by the applicant.
 10. I recognise that there are a large number of cases for the Council to deal with, and accept that they are trying to deal with them in a fair way. However, taking account of the time likely to be taken to determine this case if no direction is given and the effect that this will have on the evidence available to "*...a fair and public hearing...*", should that become necessary, I consider that a direction should be made in this case.

² Schedule 14, paragraph 3(1)

11. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. Taking account of the applicants view on the matter, I consider it appropriate to allow a further 6 months for a decision to be reached.

Direction

12. 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 31 August 2018.

Heidi Cruickshank

INSPECTOR