



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 5 December 2018

Ref: FPS/D0840/14D/23

**Representation by Robert Fraser, Ramblers' Association
Cornwall Council**

**Addition of a Restricted Byway from the B3276 road at Porthcothan to
footpaths 19, 1 and 33 St Merryn at Porthcothan Mill (OMA ref. WCA 619)**

- 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 is made by Robert Fraser on behalf of the Ramblers' Association on 7 August 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 9 April 2017.
 - The Council was consulted about your representation on 8 August 2018 and the Council's response was made on 21 September 2018.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, 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.
3. The Authority's policy for determining applications involves a two tier system. The application has been given higher priority as it meets the criteria set out in the policy. The application is listed at number 69 on the priority list and the Council predicts that the case will be determined in approximately 7 to 8 years.
4. 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, 19 months have passed since the Council

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

received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act and no exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application.

5. It is reasonable for the Council to determine applications in accordance with its policies. However, it is unreasonable, given the expectation of a determination within 12 months, for the determination of the application to take a further 7 to 8 years. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. A further period of 6 months has been allowed.
6. It is noted that other applications may be affected by giving priority to the application. However, as noted above for the determination of an application to take more than 12 months, and in this case a further 7 to 8 years, is unreasonable.
7. The representation refers to Article 6(1) of the Human Rights Act 1998. Article 6(1) provides that in the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, my decision as to whether the authority has investigated and determined this application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a decisive determination for the applicant's civil rights and obligations. Article 6(1) is not applicable.

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 Decision.

Martin Elliott

INSPECTOR