



Direction Decision

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 4 February 2019

Ref: FPS/D0840/14D/24

**Representation by St Agnes Parish Council
Cornwall Council**

Addition of a Footpath running from Wheal Friendly grid ref 5120 7200 to Rocky Lane grid ref 5140 7195, Parish of St Agnes (OMA ref. WCA583)

- 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 St Agnes Parish Council, dated 12 February 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 30 August 2013.
 - The Council was consulted about the representation on 7 September 2018 and the Council's response was made on 22 October 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.
3. 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.
4. The application concerns a way which is recognised by the Council as a "Gold Path" and therefore of high priority. It is No 50 on the list and the Council determines 8 to 10 applications per year. With current levels of resources the Council predicts a determination of the application within 5 years.
5. The Council is keen to stress that they have applications that have been on the register for much longer than this and rely on witness evidence which could be lost with further delay. However, an applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that

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

- application within 12 months under normal circumstances. In this case the application is already over 11 years old and a further delay of 5 years is predicted.
6. I have no reason to believe that the Council's policy for prioritising applications is unreasonable and I realise that a direction to determine this case might put it above others. But Circular 1/09 makes it clear that 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, and the Council has statutory duties to keep the definitive map up to date. A lack of resources is not a sufficient excuse for a significant delay in determining any application and does not amount to exceptional circumstances.
 7. Moreover, whilst it is not for me to comment upon the merits of the application, I note that one undisputed fact of this case is that the way goes through a World Heritage Site. I therefore consider it is desirable that the matter be resolved at the earliest opportunity in order to minimise or limit any possible risk to the fabric of a heritage asset of such importance.
 8. Therefore 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. A further period of 6 months has been allowed.

Direction

9. 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 July 2019.

Helen Heward

INSPECTOR